

**NORTH SOMERSET COUNCIL  
DELEGATED PLANNING APPLICATION  
REPORT SHEET**

**Target Date:** 07 May 2014

**Application No.** 14/P/0605/LDE

**Application Type:** S191 Lawful

use/Development - existing

**Case Officer:** Karen Bartlett

**Application for:** Application for a Lawful Development Certificate for an existing use of the land for stationing of touring caravans during the month of 10 January to 10 February each year.

**Land at:** Purn Holiday Park, Bridgwater Road, Bleadon, BS24 0AN

### **The Application**

The application dated 11/03/14 is for a Lawful Development Certificate for an Existing Use, Operation or Activity (a CLEU) for an existing use, operation or activity in breach of a condition on a caravan site for the use of land for stationing of touring caravans. The application says that the land has been used for the stationing of touring caravans during the month of 10 January to 10 February each year for more than ten years, in breach of condition 3 of application reference 2980/89.

### **The Law**

Section 191 of the Town and Country Planning Act allows for any person to ascertain whether a use is lawful by making an application for the purpose to the local planning authority specifying a land and describing the use, operations or other matter. Uses and Operations are lawful at any time if –

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 191(4) states:

If, on an application under this section the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

The burden of proof in these applications is on the applicant and the relevant legal test is on the 'balance of probabilities', if there is no evidence that the local planning authority have of their own to contradict or undermine the applicant's version of

events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

Section 191(5) states as follows:

A certificate under this section shall –

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matters to be lawful; and
- (d) specify the date of the application for the certificate.

### National planning policy guidance

Circular 10/97 Annex 8 was replaced with the NPPG on 6 March 2013 which provides additional guidance.

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under s191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force. The granting of a certificate does not remove the need to comply with other legal requirements such as The Building Regulations 2010 or the Planning (Listed Building and Conservation Areas (Act) 1990 or licensing or other permitting schemes.

An application needs to precisely describe what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing the certificate. This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a local authority always needs to cooperate with an applicant who is seeking information that the local authority may hold about the planning status of the land. A local planning authority is entitled to canvas evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence.

If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently

precise and unambiguous to justify the grant of a certificate 'on the balance of probability'.

A local planning authority needs to consider whether on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessary conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

## **The Evidence**

Statutory declaration of Mr G Bass states he bought the site on 28 February 2006. The park closes for holiday use between 10 January and 10 February each year. Mr Bass visited the site in early February 2006 and noted 34 touring caravans across the identified area. Mr Bass has allowed the stationing of touring caravans during the closed period every year since 2006. Supporting documents include

Document 1 – identifies the number of caravans that were stored on the land edged red on plan 1 for the closed period from 2006. Incomplete records from 2004 and 2005 are also included.

Supporting letters are also included:

Signed written statement of Richard Bowen dated 23 January 2014 states that he has kept his holiday touring caravan within the red line on plan 1 from September 2002 until the present day. The park closes between 10 January and 10 February each year and his touring caravan remained on the park during that closed period every year from 2002 until the present day. Mr Bowen recalls approximately 30-40 touring caravans being stored across the identified land during the closed period every year.

Signed written statement of Mrs D Scott dated 23 January 2014 states that she has kept her holiday touring caravan within the red line on plan 1 from January 2003 until the present day. The park closes between 10 January and 10 February each year and his touring caravan remained on the park during that closed period every year from 2003 until the present day. Mrs Scott recalls approximately 30-40 touring caravans being stored across the identified land during the closed period every year.

Signed written statement of Mrs Davies dated 20 January 2014 states that she has kept her holiday touring caravan within the red line on plan 1 from January 2003 until the present day. The park closes between 10 January and 10 February each year and his touring caravan remained on the park during that closed period every year from 2003 until the present day. Mrs Scott recalls approximately 30-40 touring caravans being stored across the identified land during the closed period every year.

## **Assessment of the Evidence**

### 1. Does the use, operation or other matter involve development or require planning permission? (see Annex 8, para 8.3, categories (1) – (9) of Circular 10/97)

The stationing of touring caravans during the closure period represents a breach of condition 3 of the permission 2980/89.

### 2. Are there any extant enforcement notices and if so, does the use, operation or other matter contravene any requirement of that/those enforcement notices?

There are no extant enforcement notices.

### 3. When did the material change in use/operational development in breach of planning control occur?

Four owners of caravans stationed at the Holiday Park, namely D.Scott, R.A Murphy, J.H Davies and R Bowen, state within their Statutory Declarations to have retained their caravans on site during the closure period of 10 January to 10 February from at least 2002. This is corroborated by a former Director of the company operating the Park (P.Suggit) as well as the current owner (G. Bass).

As a whole the evidence relates to various times and periods but overall the breach has been reported to have occurred from 1991. All Statutory Declarations corroborate that the breach has occurred continuously from the relevant year of March 2004

### 4. What is the relevant time for taking enforcement action (4 or 10 years) ?

The time limits determining when a use is immune from enforcement action are set out in on 171B of the Act and are:

- (1) where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The time limit for taking enforcement action is ten years.

5. What is the date of the application and has the time for taking enforcement action expired?

The application dated 11/03/2014 and so the period within which enforcement action could be taken is from 11/03/2004 to 11/03/2014. As such, the time for taking enforcement action has expired.

**Conclusions**

Planning permission was granted 22 November 1989 for operation of holiday park on eleven month per year basis under planning application 2980/89. Condition 2 states no static caravan shall be occupied during the period 10 January to 10 February in any year. Condition 3 states no touring caravan or tent shall be located on the site during the period 10 January to 10 February in any year. The reason for these conditions are to discourage permanent residential use.

The applicant claims that touring caravans have remained on site throughout the year in breach of condition 3 of planning application 2980/89. The council has no evidence to dispute the applicants claims and therefore the certificate should be granted.

**Recommendations**

The evidence has been assessed as set out above and the local planning authority is satisfied, on the balance of probabilities, that the information provided supports the claim and in consequence the application should be approved. The information is sufficiently precise and unambiguous to justify the grant of a certificate.

A certificate should be granted

Signed: ...Karen Bartlett

Dated:...05 June 2014