

OFFICERS REPORT

Application No: Y16/1083/SH

Location: Lydd Caravan Park Jurys Gap Road Lydd Romney Marsh Kent TN29 9JN

Proposal Certificate of existing lawful development for the continued use of the land as a static caravan site.

ASSESSMENT

Performance data:-

Date application valid: 28.09.16

Applicable 8/13/16 week target date: 23.11.

Planning Performance Agreement (PPA) or Planning Extension Agreement (PEA) ? No.

If Yes, revised 8/13/16 week target date: NA

Is the application being determined after 26 weeks without a PPA or a PEA? No

APPLICANT: Mr A Cook
AGENT: Mr Edmund Drewelus

SITE

The site which covers an area of approximately 0.7 ha is situated approximately on the northern side of Jury's Gap Road, adjacent to the entrance to Bretts Quarry. The Ministry of Defence Lydd Ranges lies on the opposite side of the road.

There are no residential properties in close proximity to the site, the nearest being Pigwell Farm which is 0.5 km to the north-east and Scotney Court which is 1 km to the west.

The site currently contains 30 mobile homes, some of which have boarding around the bottom and a couple have wooden decking (still meeting the definition of a caravan). It appears that many of them are occupied. It appears that electricity, water and waste services have been provided. There are also some ancillary buildings and structures. The site is relatively flat.

The site lies within open countryside within the Romney Marsh Local Landscape Area and is outside the identified settlement boundary of Lydd. Furthermore, the site lies within Flood Zone 3 as identified on the Environment Agency's flood maps and the Council's Strategic Flood Risk Assessment (SFRA) shows it as being of moderate to significant risk of flooding in 2115.

PLANNING HISTORY

There is a long and varied planning history for this site The most relevant is listed below.

Y14/0835/SH- Certificate of Lawful Development (existing) for the use of the site as a residential caravan site for 28 static mobile homes (Refused)

Y13/0854/SH - Certificate of lawfulness for the existing use of the land as a caravan park since 1984. (Refused)

Y05/0210/SH - Consultation in respect of change of use of the land from a travellers' caravan site to the operation of a waste transfer and recycling facility for non-hazardous skip waste, including the erection and use of a covered waste sorting bay. Feb 15 2005

Y04/0910/SH - Consultation in respect of the continued operation of a waste transfer and recycling facility for non hazardous wastes. July 7 2004

Y03/1194/SH - Consultation regarding change of use of land from Gypsy caravan site to waste transfer and recycling area and ancillary buildings. Oct 17 2003

Y01/0707/SH - Change of use of land from a Gypsy caravan site to a lorry park together with the erection of a drivers' amenity and office building. Aug 2 2001

86/1223/SH - Provision of further 7 pitches for Gypsy Caravans. Oct 27 1986

84/0677/SH - Use of the land for the stationing of 14 gypsy caravans. Jun 27 1984

82/0409/SH - Use of land as a gypsy caravan site with provision for fourteen pitches. May 12 1982

SH/78/1181 - Provision of a 12 pitch gypsy site for a temporary period.

PROPOSAL

This is an application for a certificate of lawfulness for the existing use of the land for a static caravan park.

APPRAISAL

This application has been assessed against S.191 of the Town and Country Planning Act and the guidance set out in the National Planning Policy Guidance, 2014.

For the purposes of this application, to gain immunity from enforcement, under the 1990 Act, the application needs to prove a continuous use of the land for 10 years, in accordance with section 171 B (3).

Site Visit:

There is no doubt that the use is existing, where at the time of the visit, there are numerous occupied caravans on site with domestic paraphernalia. The land was clearly identifiable, being enclosed with boundary fencing and served by a vehicular access. There were also several advertising boards being displayed stating the nature of the site and that there were vacancies for more tenants/occupiers.

BACKGROUND INFORMATION & ENFORCEMENT ISSUES

Planning history dates back to 1978 when a temporary planning permission was granted for a 12 pitch gypsy caravan site for a period of 5 years, this was renewed in 1982 to accommodate 14 gypsy caravans and similarly in 1984. An application in 1986 for the provision of a further seven pitches was withdrawn. The use ceased in 1999 and the site was cleared of all caravans in early 2000 prior to being sold.

The planning permission relating to the use of the land as a gypsy caravan site was granted by Kent County Council and it was a County Council run site. Regulation 4(7) of the Town and Country Planning Regulations 1976 (deemed permission for development by a local authority) states that:

A permission deemed to be granted by virtue of paragraph (5) of this regulation shall ensure for the benefit of the authority passing the resolution under that paragraph and not for the benefit of the land; but it shall be treated for all purposes of the Act as a permission granted by a planning decision given on an application, and as if it had been granted on the date of the authority's resolution under paragraph (5) of this regulation.

This was replaced by Regulation 9 of the Town and Country Planning Regulations 1992). It is clear that those planning permissions ensured solely for the benefit of the County Council which means that when the land was sold, the planning permission ceased and in consequence from a planning point of view the lawful use of the land reverted back to its previous use which is believed to be that of agriculture.

A lawful development certificate can only be granted for the use of land if that use has been carried out without the benefit of permitted development rights or planning permission for a period of at least 10 years. Therefore the period of time when the land was used as a caravan site under the planning permissions granted by Kent County Council cannot count towards the ten year period, even had there been no intervening use for purposes other than as a caravan site in between, because at that time the use was operating lawfully under a planning permission. Therefore the relevant 10 year period has to start from the time the current use as a non Council operated caravan site commenced.

In 2001 a planning application was submitted for the use of the land as a lorry park together with the erection of drivers' amenity and office buildings, this application was withdrawn. In 2003 and 2004 applications were submitted for determination by Kent County Council for the use of the land as a waste transfer station. These were subsequently withdrawn prior to determination. In 2005, a further application in respect of the use of the land as a waste transfer and recycling facility for non-hazardous skip waste, including the erection and use of a covered waste sorting bay, was refused on the grounds that the development was inappropriately located in the countryside, being remote from compatible industrial and waste related uses and which did not demand a rural location. The site was used as a waste transfer station for a period of time but that use ceased in 2005/2006 with the current use as a caravan site having commenced in October 2006. This date was confirmed by a planning contravention notice served on the current owner.

In 2008 complaints were received regarding the use. The issue of whether or not it had planning permission by virtue of its previous use as a gypsy caravan site was investigated and the conclusion was that it did not, for the reasons set earlier in the report. The owner indicated his intention to submit a planning application and a meeting took place between him and council officers in May 2009 where he was advised what would be required for such an application. He indicated at that meeting that the occupants of some of the mobile homes had gypsy status, although no evidence was submitted to that effect. A timescale was agreed for the submission of an application, however it was never submitted and subsequent letters sent were not answered.

In 2012 a report was considered by the Council's Development Control Committee for a determination whether or not to serve an enforcement notice to secure the cessation of the unauthorised use. The resolution of the Committee was that an approach be made to the site owner again, with a view to seeking the submission of a planning application that included flood mitigation measures. The Committee also agreed a second recommendation that if no such application was forthcoming within a reasonable period of time, an enforcement notice be issued requiring the cessation of the use and the clearance of the site.

In 2013 and 2014, the applicant then sought to regularise the site by the submission of two existing lawful development certificates, references Y13/0854/SH and Y14/0835/SH, which were both refused on the lack of sufficient information to prove a ten year use. The site continued in its current use and in July 2016, the Council served an enforcement Notice to cease the use of the land. However further information providing evidence came to the attention of the Local Planning Authority which resulted in the Enforcement Notice being withdrawn. Owing to the withdrawal of the enforcement notice, this indicates that the Local Planning Authority accepts the existing use as static caravan park, and no longer wishes to take enforcement action.

APPRAISAL OF EVIDENCE

Following the withdrawal of the Enforcement Notice, the primary source of evidence submitted by the agent and collated by the Council is the Council tax records.

From the Council's own records it is understood that there were 6 mobile homes occupied by people paying council tax on there in December 2005. A further 12 seem to have gone on the site prior to March 2006 as by then there were 18 mobile homes occupied by people paying council tax.

In terms of a continuous use, individually the mobile homes have been occupied for varying periods of time from a few days to several years. There have been breaks in occupancy, between tenants, when the site owner has been paying the council tax and this has varied from a day to 6 months or so. However, throughout the 10 year period since March 2006 there seems to have been a continuous occupation across the site as a whole by residents who have been paying council tax. Therefore it appears that the use of the site for a static caravan park has been continuous since at least March 2006 and possibly since late 2005.

Lastly the evidence in a Planning Contravention Notice (PCN) served by SDC needs to be taken into consideration. The PCN was served in April 2008 under section 330 of the 1990 Act and the evidence obtained from such a notice can be considered as primary evidence. However It appears that the information provided in the Planning Contravention Notice, stating that the use of the site for residential caravans and caravan sales commenced in October 2006, is false. Also the returned PCN is undated and unsigned. Council tax information indicates that it is likely the use commenced sometime in late 2005 or at the latest around March 2006 by which time there were 18 mobile homes on site occupied by residents paying council tax.

CONCLUSION

As such it is considered that the LPA is satisfied that a 10 year continuous use as a static caravan park has occurred since 2006 and therefore is immune from enforcement action.

RECOMMENDATION

It is recommended that the certificate be granted on the use of the site as a static caravan site.

File Note. The number of caravans cannot be specified in the certificate because the certificate refers to the use of the land only, not the number of caravans.

HUMAN RIGHTS

I have also taken into account the human rights issues relevant to this application. In my view, the Assessment section above and the Recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

Case Officer:

Report and draft decision notice completed and passed to senior officer.

Name: JM LING Position: Senior Planning Officer Date: 22.11.2016

Report and draft decision notice amended (if appropriate)

Name: Position: Date:

Senior Officer

Report not agreed. Details of further work required as follows:

Name: Position: Date:

Report and draft decision notice agreed and file passed to admin to issue decision.

Name: C Dethier Position: DC Team Leader Date: 23/11/16