

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPLICATION FOR PLANNING PERMISSION
FOR THE SUBSTITUTION OF A STATIC CARAVAN IN PLACE OF A TOURING CARAVAN
FOR USE AS A WARDEN UNIT AT GOLD PARK LEISURE CARAVAN PARK, KENT CT4 6LP

APPELLANTS' RESPONSE TO LPA AND THIRD PARTY SUBMISSIONS

Response to the Local Planning Authority Appeal Statement

The Appellants have read the LPA's written statement, much of which reiterates the original officer's report which led to the refusal of the Application. The Appellants' case in response to the original officer's report has been made in the Appellants' original Appeal Statement.

LPA's Submission of False Document in Lieu of Authoritative Legal Counter-Argument

At paragraph 9, the LPA gives its response to the Appellants' Appeal Statement. The Appellants' case is that there is no *material* change of use from touring to static caravans with the same use rights, rather than, as the LPA states, no change of use at all. The LPA goes on to state that it does not agree with the Appellants' case as it says "the lawful use does not include or permit the siting of a static caravan for use as a dwelling, nor the siting of static caravans for holiday purposes". However, the LPA's position here is not backed up by factual evidence or a legal authority.

The LPA appears to attempt to rely upon a new version of the Certificate of Lawfulness for the Appeal Site, which it includes as the first page of "Appendix 4". However, this is not the true Certificate, but appears to have been manufactured much more recently than "25 May 2007" when the LPA's document purports to have been signed by the Head of Planning. The LPA's document appears to have been produced at some point after the "Town and Country Planning (Development Management Procedure) (England) Order 2015: Article 39" came into force (15 April 2015) as this is the Order this document purports to have been issued pursuant to. It appears to have been backdated by the LPA to 25 May 2007 as the document could not have been signed prior to 15 April 2015. There are other errors in the document. For instance, it does not contain the "First Schedule", "Second Schedule" nor site plan referred to therein. It does not contain the "Notes". It differs significantly from the genuine Certificate of Lawfulness for the Appeal Site in that the LPA appear to have added an "Informative" that purports to limit the use of the site thus:

"This certificate does not extend to the lawful use of the land for the stationing of static caravans".

This informative does not appear in the genuine Certificate, which instead contains a number of notes including

"This certificate applies only to the extent of the development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action."

It is clear that the genuine Certificate allows the use described in Schedule First Schedule and any use which is not a material change from the use described. It is the Appellants' case that the substitution

of a static caravan for a touring caravan is not a material change of use. The Appellants' agent understands that the legal authorities concur with this view and is not aware of any legal argument which contradicts this. Indeed this was the view of the LPA in its recent decision Y14/1305/SH.

However, rather than attempting to provide any legal authorities to counter the Appellants' case, the LPA has instead attempted to persuade the Planning Inspector by providing a false version of the Certificate of Lawfulness which not only omits the confirmation in the "Notes" that a change of use other than a "material change of use" is lawful, but also includes additional wording seeking to exclude the use of static caravans.

The LPA's actions are ill-advised as not only is it extremely wrong for an arm of local government to seek to mislead a tribunal and unlawfully limit a citizen's lawful use of their property, it also futile as an "informative" may not limit the planning rights set out in a Certificate of Lawfulness and the legal position as set out to inform in the "Notes" prevails in any case.

The LPA needed to grasp the nettle and accept the wording on the genuine Certificate, the legal position that only a material change of use will require planning permission, and the fact that it has in the past agreed that the substitution of not only one, but twenty-four, touring caravans for static caravans is not a material change of use. The LPA has not accepted the facts and the legal position, and has therefore not provided any authoritative legal argument based upon the facts and the law.

Furthermore, at paragraph 9.7, the LPA indicates that it is not able to provide any legal principle for its decision making in this case, nor any argument for its difference in approach to other sites (Y12/0524/SH and Y14/0782/SH) stating *"It is not the role of the Local Planning Authority to provide a detailed explanation for the decision making process with regards to entirely different sites in relation to the appeal currently under consideration"*. The opposite is true. The LPA should be able to justify its position with a detailed legal argument. No two sites nor applications will be the same, but the same legal principles and policy must be applied to each application, whether by the LPA or the Planning Inspectorate. It is not for the LPA to make decisions willy nilly without being able to point to a coherent rationale so that the Appellants' only hope of an authoritative decision is by appealing to the Planning Inspectorate.

The fact that the LPA has failed to address the legal issues and instead sought to provide a false document to back up its case indicates that it is aware not only that there is no authoritative legal argument against the Appellants' case but also that the genuine Certificate of Lawfulness, as opposed to that amended by the LPA, allows the siting of static caravans.

Moreover, the inclusion of the LPA's version of the Certificate has created additional, otherwise unnecessary, work for the Appellants and their agent, and indeed the Planning Inspectorate. If the LPA insists that their version is genuine, this would create a difference in facts which would need to be decided at a full Inquiry creating additional costs in an otherwise straightforward written representations Appeal. There is plentiful intrinsic and extrinsic evidence that the LPA's document is not the genuine item and the LPA seems likely to face embarrassment or worse in explaining under oath how and why it came to submit such a document. In order to save everybody's time and costs and prevent further unreasonableness, the Appellants would respectfully suggest that the LPA withdraws this document.

LPA's Persistent Confusion of Site Licensing and Planning Restrictions

Despite its statement to the contrary at paragraph 9.4 (that the decision has been based solely on planning issues), the LPA persists in confusing the site licensing regime with the planning regime, most notably at paragraph 9.2 where it states that:

"it is not directly relevant whether one of the touring caravans could be occupied all year round, as that is not what is being applied for, and is contrary to the requirements of the site licence".

There is considerable confusion on the part of the LPA between the two regimes. As stated in the Appellants' original Appeal Statement, the site licensing is subordinate to the planning permission or certificate of lawfulness. A planning permission or certificate of lawfulness is a prerequisite to the issue or updating of the conditions of a site licence. A site licence will not necessarily indicate the limit of a planning permission if, for instance, a site with a widely worded planning permission for use as a "caravan park" is being used just as a touring caravan park due to the choice of the owner or manager, it is likely that a touring caravan site licence with a lower standard of infrastructure requirements will be applied for and issued rather than a licence requiring the higher, more expensive, standard required of a static caravan park. Provided the planning permission or certificate of lawfulness allowed it, there would be nothing to stop the owner of such a caravan park choosing to upgrade the licence to a static caravan licence. The provision in a site licence limiting the type of caravan is to ensure that the infrastructure is appropriate for the type of caravan and may be changed provided the infrastructure requirements in the site licence are upgraded. It is clear that site licence requirements are subordinate to planning rights and not vice versa (as set out in more detail in the Appellants' original Appeal Statement). Should planning permission be granted for the warden's unit then clearly the site licence would be updated accordingly.

The LPA's comment at para 9.2 that an application for a Certificate of Lawful Use is needed for the use of an existing *touring* caravan by a warden would be needed is clearly wrong as there are no seasonal or holiday restrictions on use in the existing Certificate.

Indeed, strictly speaking, the legal position is that the genuine Certificate of Lawfulness does allow the site licence to be updated to allow the siting of a static caravan for use by a warden. However, the Council's Site Licensing department has been entirely unreasonable about the updating of the Site Licence for the Appeal Site in the past, resulting in the Appellants being obliged to instigate appeal proceedings both in the Magistrates' Court and the First Tier Tribunal (Property Chamber) Residential Property. Although the Council eventually backed down and paid the Appellants' full costs in that matter, the Appellants were keen to avoid further conflict and had hoped that an application for planning permission would allow the matter to be dealt with in a mutually agreeable manner and for the Council to demonstrate that it had learnt lessons from its past unreasonableness. The Appellants are understandably disappointed that the LPA has not taken this opportunity and has unreasonably refused that planning application; again unreasonably forcing the matter to appeal, this time before the Planning Inspectorate.

The fact that the Council is well aware that the Appeal Site fell within the jurisdiction of the Residential Property Tribunal due to its lack of holiday or seasonal planning restrictions and the fact that the genuine Certificate of Lawfulness was appended in those proceedings, makes attempts to misrepresent the legal position all the more unacceptable, unreasonable and absurd.

LPA Failure to Take Into Account True Extent of Existing Use Rights

The LPA has failed to take into account the fact that the existing Certificate of Lawfulness allows the year round use of the land by touring caravans without any planning restrictions as to holiday or seasonal use. The current level of use and the use allowed under a caravan site licence are not relevant considerations when considering what is allowed under planning law. The level of use and the season allowed in the site licence may be subject to change from time to time, subject only to the wishes of the landowner and what is permitted by the existing Certificate of Lawfulness itself.

The LPA makes many untrue assumptions regarding the use of touring caravans. There is nothing to stop a touring caravan being parked somewhere permanently. Indeed, occupiers of touring caravans may acquire protected residential rights under the Mobile Homes Act (As set out in more detail in the Appellants' original Appeal Statement. The LPA does not deal with this point). Also long-term" seasonal touring" and winter storage, where touring caravans are parked up pretty much permanently in caravan parks all year round, are very much a normal part of the caravan park industry and many local authorities, especially highway authorities, prefer caravan parks to be permanently full of caravans than the alternative of having a large number of touring caravans driving along or parked on the roads. In any case, even if a particular touring caravan stayed for only a short time, there is nothing in the Certificate of Lawfulness to prevent it instantly being replaced with another caravan. The "permanency" allowed under the Certificate of Lawfulness for touring caravan sites is not materially different from that of static caravans. A static warden caravan is "in keeping" with the look of a touring caravan park. Moreover, the type and style of static caravans mean they have the scope to be more visually in keeping with local buildings with options for cladding, etc, as indicated by the landscape consultee and the LPA's own suggested "conditions" at paragraph 11.

The LPA's comment that there is no restriction on numbers is incorrect as, regardless of whether there are static or touring caravans, the number of caravans is physically restricted by the redline of the Certificate of Lawfulness. In fact, as static caravans require more space than touring caravans, the substitution of a static caravan for a touring caravan will reduce the numbers that can fit on site. Any lack of a restriction on numbers would be part of the original planning rights and not affected by the outcome of this Appeal in any case. Furthermore, it does not affect the position that what is being asked for is a substitution of an existing touring caravan with a static caravan with the same rights.

The LPA wrongly states (at paragraph 9.3) that the application is not for a substitution of a touring caravan for a static caravan. One of the reasons given is that the static caravan would not be on one of the laid out touring pitches. Clearly, the Appeal Site is within the redline of the Certificate of Lawfulness and accordingly on a part of the caravan park where touring caravans may lawfully be pitched. (Clearly, the caravan site licence will need to be updated in due course to reflect the siting of a static caravan, and this will most efficiently be done when this Appeal has been determined. Any infrastructure under the updated caravan site licence will be permitted development under Town and Country Planning (General Permitted Development) (England) Order 2015/596 Schedule 2 Part 5 Class B). Moreover, the Application Form and Application Statement make it absolutely and expressly clear that a "substitution" of one type of caravan for another is being asked for and the LPA's refusal to consider the application on the terms it was made without any justification is inherently unreasonable.

LPA Failure to Acknowledge This Is Not a New Home in the Countryside

As stated above, the caravan is simply an upgrading from a touring to a static caravan and is not a new home in the countryside. The status of the existing caravans is clear as they are not subject to any type of holiday or seasonal requirement and have, as stated above, been within the jurisdiction of the Residential section of the Property Tribunal in previous proceedings with the Council's Licensing Department. This point is dealt with in more detail in the Appellants' original Appeal Statement.

At paragraph 9.6 the Council does not adequately engage with national policy relating to the need for warden accommodation and distinguish between this and the LPA's "rural workers" policies. In the national policy, the need for wardens' units is axiomatic and does not require "proof" as such, in the same way as data is required for agricultural workers' dwellings. Where there is no specific LPA policy relating to warden units, the national policy must prevail. In any case, the LPA has not taken this approach in relation to similar decisions at other parks. The LPA's assertion at paragraph 9.7 that it does not have provide a detailed explanation for effectively applying different criteria to different planning application decisions is neither helpful to the Appellants or the Planning Inspector, nor correct.

The LPA accepts there is a problem with crime and a need for a member of staff on site and suggests that this could be dealt with by members of staff staying up all night on "night shift" in the site office, rather than a warden simply being present on site in a caravan. This is not an efficient or cost effective solution to the far more sensible option of having a warden on site on an existing caravan pitch, on a site without holiday or seasonal planning restrictions, simply in a static caravan instead of a touring caravan.

LPA Failure to Apply Correct Category for Flood Risk Vulnerability

Despite being fully aware that there are no seasonal or holiday restrictions on the caravans and that there is no reason in planning law why they should not be occupied all year round, permanently and/or residentially, the LPA has wrongly categorised the Appeal Site as having "seasonal" or "holiday" planning restrictions, whereas the caravans may be permanently occupied for residential or other purposes under the terms of the Certificate of Lawfulness. The caravans, whether touring or static, are therefore within the same flood risk category and substituting one kind of caravan for another does not affect that nor does it increase the risk. In fact, there is more opportunity for flood risk mitigation with a static caravan than with the status quo.

In any case, the Council has failed to engage with the suggestion that the question of flood risk could be avoided altogether by placing the warden's caravan elsewhere on the caravan park. It has sought to find reasons to refuse the application rather than overcoming potential objections by suggesting changes to the scope of the application or imposing suitable conditions. While at the same time it has sought to change the scope of its own and the Planning Inspectorate's decision to deny the nature of the proposal (as a "new home" rather than a substitution from touring to static) and the existing legal position (by the substitution of a false version of the Certificate of Lawfulness).

LPA's Suggested "Conditions"

The LPA purports to provide suggested conditions. However the "conditions" are simply a list of the type of condition and are not drafted. Furthermore, no reason is given for many of the conditions. If

the Planning Inspector would find it helpful, should the LPA wish to provide a fully drafted list of suggested conditions to the Appellants' agent via the Planning Inspectorate, these may then be considered.

In the meantime, the Appellants' agent would point out that the following:-

With regard to (4) the application is for the substitution of a static caravan for a touring caravan on an existing caravan site with permanent planning permission with no restrictions on seasonal or holiday use. The Appellants and their agents are not aware of any justification for removing the existing permanent rights by imposition of a condition requiring the land to be cleared after five years' use. The LPA has not provided any reason or justification for this.

With regard to (5) the suggested "condition" is vague with regard to "details to be submitted demonstrating the occupant is employed on the site..." and does not include the usual standard wording relating to family and dependents. Again, no reason is given for this. Given that an existing touring caravan may be used residentially without such a condition, any condition offered should be entirely reasonable with fair and transparent criteria.

With regard to (3) and (6) relating to external finishes and foul water drainage, the siting of a caravan is not operational development but use of land. A warden's unit may be updated many times over the life of a caravan park and any restrictions on appearance should be proportionate. Drainage is a matter for caravan site licensing rather than the planning regime.

With regard to (7) the LPA appears to confuse permitted development rights for dwellinghouses with those for caravan sites. The Classes listed to not apply to caravan sites.

Third Party Submissions

The Appellants have read the third party submissions from AT and JM Bull and from another unnamed contributor.

Comments of AT and JM Bull

AT and JM Bull misunderstand the subordinate nature of the caravan site licence. As planning permission or a certificate of lawfulness is a prerequisite to the issue or updating of a site licence, it follows that the grant of planning permission cannot be prevented simply because the site licence does not allow the development applied for (or indeed if there were no site licence at all). That approach puts the cart before the horse.

Similarly, warden units are not limited to wardens themselves, but allow the occupation of families and dependents. Additionally, given that the existing touring caravans are not restricted to holiday or seasonal use, it would be unfair to place a "warden only" restriction on a warden caravan.

AT and JM Bull refer to the existing planning rights as "mistaken approval" which indicates that they do not accept the legal position and their objection is against the existing rights which are not the subject of this Appeal. They object to the possibility that a land owner may in future make further planning applications. These are not reasonable planning objections to issues at the heart of this Appeal.

Comments of Unnamed Objector

The unnamed objector again mistakenly misunderstands the nature of the caravan site licence as having the effect of prohibiting both the existing planning rights and the right to make further planning applications. It is simply not true to assert that the Appellants "have attempted to circumvent the decision of Shepway Council" by making an application for planning permission, as it is not within the Council's gift to make any decision which would prevent an individual from applying for planning permission.

The objector refers to an "outcry" from MPs and the Parish Council. However, the objection appears to be against the Appellants' existing lawful planning rights and the law itself. What is referred to as a "loop hole" is in fact Section 191 of the Town and Country Planning Act 1991 and the issue of the Certificate of Lawfulness in 2007 to a previous owner. Furthermore, the objector is confused with regard to the legal position and refers mistakenly to an "original licence and subsequent granted permissions", whereas in fact there is only a Certificate of Lawfulness granted in 2007.

The problem appears to be that the law and the documentation is not what he or she wishes it to be, and the objector questions the legal position (which the Appellants' agent has dealt with elsewhere).

The objector seeks to minimise the crimes that have been committed on site which necessitate the presence of a warden by saying that the police have not contacted him or her. Clearly, the crime incident numbers indicate that the police have investigated and are taking the issue seriously.

Conclusions

For the reasons set out above the LPA has failed to engage with the points raised by this Appeal. Furthermore, the LPA has submitted a false document in lieu of providing an authoritative legal argument based on the true legal position. Both the LPA and the third parties appear to object to the existing planning rights which were established in 2007 by a previous owner, long before the site was purchased by the Appellants. It is this failure to come to terms with the status quo that has driven the objections and the LPA's refusal to grant planning permission, rather than any legitimate planning law or policy issue.

For the reasons set out in this document and in the Appellants' original Appeal Statement, the Appellants would respectfully request that planning permission be issued to allow the substitution of an existing touring caravan, which is not subject to any holiday or seasonal planning restriction, with a static caravan for use by a warden (and family and dependents) to allow the efficient running of the business and as a crime prevention measure.

Should it assist the Planning Inspector, the Appellants' agent would be happy to provide any additional documentation relating to the authenticity of the Certificate of Lawfulness, should this not be clear from the intrinsic evidence. Please do not hesitate to ask.

ROWLES DAVIS
FEBRUARY 2017

APPLICATION NO. Y07/0039/SH

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

**TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT PROCEDURE ORDER
1995: ARTICLE 24**

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING)

Mr & Mrs E Wanstall
Palm Tree Inn
Canterbury Road
Wingmore
Canterbury
Kent
CT4 6LP

C The Shepway District Council hereby certify that on 16th January 2007 the development described in the First Schedule hereto in respect of the property specified in the Second Schedule hereto and shown edged red on the site plan attached hereto (the Site Plan) is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

- 1 The land has been used continuously as a camping and touring caravan site for the last 10 years.

Corporate Director - Planning & Environment
On behalf of Shepway District Council

[Signature]
Dated this 25th day of May 2007

FIRST SCHEDULE

C **CERTIFICATE OF LAWFULNESS FOR CONTINUED USE OF LAND AS A
CAMPING AND TOURING CARAVAN SITE.**

SECOND SCHEDULE

**PALM TREE INN CANTERBURY ROAD WINGMORE CANTERBURY KENT CT4
6LP**

Notes:

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development specified in the First Schedule which has taken / is taking place on the land described in the Second Schedule was lawful, on the specified date and, thus, was not liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

