

DECISION DELEGATED TO DEVELOPMENT MANAGER**DECISION DELEGATED TO DEVELOPMENT MANAGER**

Application No:	H12-0859-18	Applicant:	Pure Leisure Lakes Limited
Proposal:	Use of land as caravan site for the stationing of a maximum of 40 caravans to be stationed other than on the positions indicated on approved plans in breach of Condition 4 of H12-0194-01 and subject to any relevant planning permission in relation to the buildings on the land		
Location:	Land Known Part Of Silverhill Caravan Park Luton Gowts Luton		
Terminal Date:	19th October 2018		

Planning Policies**Local Plan July 2016:****National Guidance****National Planning Policy Framework 2018****Representations:**

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

This application is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the case officer's judgment as to the case being proven on the balance of probabilities.

The applicant seeks the granting of a Certificate of Lawfulness of Existing Use or Development (CLEUD) in order to confirm that the caravan site has been used in breach of planning condition for a period exceeding 10 years. As such the caravans have been positioned on the land in breach of the positions indicated on the approved plans for a period that prevents the LPA from taking any enforcement action with regards to the breach.

The Caravan park is known as Silverhill Caravan Park and is located at Luton Gowts, Luton, the extent of which is shown on the site plan that has been submitted in support of this application.

The applicant has applied under s.191 (1)(c) of the Town and Country Planning Act 1990 and they have asked that the Certificate of Lawfulness is granted in the following terms:

"Use of the land as a caravan site for the stationing of a maximum of 40 caravans to allow caravans to be stationed other than on the positions indicated the approved plans in breach of condition 4 of the planning permission granted under the reference number H12-0194-01 on the 13 June 2001

and subject to any relevant planning permissions existing in relation to the buildings on the land"

Previous applications have been made for the site including a minor material amendment, however due to the complexity of the case, the evidence and the cited case law that deals with complex legal issues, the applicant has been advised that this application made under s.191 is the most appropriate way forward in reaching a suitable conclusion to the matter.

It is the applicant's case that the planning permission granted on 13th June 2001 under planning reference H12-0194-01 contained the following Condition 4:

"The site shall be used for the stationing of a maximum of 40 caravans on the positions indicated on the approved plans".

This condition, as evidenced by submissions, has in fact been in breach with regards to the location of the caravans. However, in addition to this the applicants had made a convincing legal case under their previously refused application under planning reference H12-0194-01, which was refused on process rather than content, to prove that the above mentioned 2001 permission is in fact extant and relevant rather than the permission later granted in 2004 (H12-069604).

The issue here is that the 2001 permission did not reimpose the seasonal restriction with regards to the occupation of the caravan, however the planning officer in the following 2004 application sought to remedy this by imposing the original occupational condition.

It is the applicants case that the planning permission for the additional static caravans in 2004 was not in fact necessary and the site was operating perfectly lawfully without the additional planning permission. Therefore the 2004 permission was not so significant as to begin a new phase in the site's planning history. This principle has been established in case law and the applicant cited appeal APP/J3720/X15/3003762 which relates to a similar situation and a seasonal restrictions which was sought to be re-imposed on a later scheme. Again as with this matter, the new permission did not revoke or cease to give effect to the previous extant permission by way of a s.106 legal agreement.

Upon reviewing the above mentioned appeal case and also the related High Court cases cited within that appeal, it is likely that an Inspector/Judge would deem the 2001 permission to be the extant permission and, in that regard, the breach of condition is considered with regard to condition 4 of that permission and not the most recent permission, which upon review was unnecessary and did not start a new planning chapter for the site.

In considering this breach of condition the following evidence has been submitted and considered:
1. Aerial photographs taken from Google Earth dated 17 April 2005, 11 March 2006, 31 December 2007 and 31 August 2016 and an additional aerial photograph taken independently on 4th August 2018.
2. Planning Permission H12-0194-01 and H12-0696-04 along with the determined site plans showing the permitted location of the caravans.

The evidence produced on balance demonstrates that for a period exceeding 10 years the caravans have been located on site in a position that is contrary to that permitted by the approved plans. The Council do not hold any records to dispute the evidence submitted and no comments have been made or objections. Therefore on the balance of probabilities the case has been proved in that the caravans have been located in a position that breaches condition 4 of the extant 2001 permission and as such is now immune from planning enforcement.

The further effect of accepting that it is the 2001 permission that is current and extant rather than the unnecessary 2004 permission, is that the 2001 permission did not restrict the seasonal occupation of the caravans. The writer is of the opinion that the case law submitted sufficiently demonstrates that the Council would face difficulties in establishing that the most recent permission is the extant permission and that it is likely that any legal case to establish this would result in the 2001 permission being declared as the extant permission. The appeal cited above has clear parallels to this case and it is likely that the 2004 permission, in its attempts to re-impose a seasonal condition whilst having no other planning effect (being unnecessary), therefore by granting this certificate it also has the effect of allowing the seasonal restriction to also fall away as the 2001 permission did not contain any kind of seasonal restriction.

If the Local Planning Authority have no evidence of their own, or 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". On the evidence submitted the caravans as shown in a number of google earth images, have been located contrary to the plan approved at condition 4 of the 2004 permission. On balance this has been for a period in excess of 10 years making it immune from planning enforcement.

A delegated approval is considered appropriate in this case which will also inadvertently establish that the permission granted under H12-0696-04 is the extant permission for this site.