
Site Address:	23 Haven Road, Hayling Island, PO11 9RX		
Proposal:	Application for Certificate of Lawful for proposed use relating to the proposed siting of up to 208 caravans on the land for use as a caravan site, throughout the year for either holiday or residential purposes.		
Application No:	APP/17/01316	Expiry Date:	23/05/2018
Applicant:	Elliotts Caravan Estates Ltd		
Agent:	Mr O James	Case Officer:	Lewis Oliver
	Bedford & Upton		
Ward:	Hayling East		

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

The application site at 23 Haven Road, is a caravan site, with an area of approximately 3.15 hectares. The site comprises 208 caravans, with an amenity block (which is not subject of this lawful development certificate. The estate was gradually established during the 1950's, which is outlined in the planning history below. A caravan site licence was issued for the site on 15th June 1961 following the introduction of Caravan Site Licensing by the Caravan Sites and Control of Development Act 1960.

The site is surrounded by caravan sites to the north and west, to the south and east of the application are residential dwellings.

2 Planning History

HWU/1467 - A site for mobile caravans - Permitted 18th July 1951 - This permission relates to the south section of the site, which is coloured pink on the submitted plan with this application BU/ECE/2 and provides for 124 caravans. This permission was subject to 21 conditions, none of which restrict neither the period or mode of occupation for the caravans.

HWU/3527 - The erection of two sanitary blocks and construction of hard standing for eight caravans - Permitted 11th March 1955- This permission was subject to 9 conditions, none of which restrict neither the period or mode of occupation for the caravans. The approved layout plan for this application shows 2 rows of caravans, providing 56 caravans

HWU/3527/3 - The siting of an additional 20 caravans at Elliott's caravan camp, and the erection of toilet accommodation in connection with - Permitted 9th February 1961. This permission was subject to 4 conditions, none of which restrict the period or mode of occupancy of the caravans.

These three planning applications account for 152 of the 208 caravans, for the Site Licence issued on 15th June 1961 provided. The remaining 56 caravans on the site are considered below.

A Caravan Site licence was issues on 15th June 1961 for 208 caravans on this site, this was issued following the introduction of the Caravan Sites and Control of Development Act 1960.

3 **Proposal**

The application is submitted as a Section 192 Application for Certificate of Lawful proposed use relating to use of site as a caravan site for occupation throughout the year for either holiday or residential purposes.

4 **Relevant legislation and guidance:**

Town and Country Planning Act 1990

Town and Country Planning (Use Classes) Order 1987 (as amended)

Planning Practice Guidance, 2014

5 **Statutory and Non Statutory Consultations**

Legal - no concerns raised

6 **Community Involvement**

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 5

Comment	Officer Comment
dear sir , i wish to object to the planning application for the above on several grounds. i have lived in haven road since September 1975 and this site has only been open for 8 months a year closing on 31st October and re -opening 1st march since that time. item 15 on the planning application states that the site cannot be seen from any public road, footpath, bridleway or public land but is bordered on all 4 sides by public road, footpath and public land from which the caravans can clearly be seen from Nutbourne road, haven road and Eastoke avenue. there is a sign on the gate stating ring site manager between 10am and 4pm for access to	

site as the gates are chained and padlocked after 4pm the sign says closed. appendix c item 20 states that they are to maintain boundaries in good condition but the boundary fence in haven road is in poor condition with severely overgrown grass and weeds they say this grass is not theirs on which there appears to be an abandoned vehicle [land rover discovery]. item 14 states no noise between 11pm and 7am but last year there was loud music up to 2am on some occasions. during the summer on several occasions vehicles and cyclists have exited the site without due care to vehicles or pedestrians on haven road.	
I am rather puzzled by this application. I have lived in my property for more than 30 years and during that time the caravan site has always been closed from about the end of October to the beginning of March. On receipt of your letter about this application, I walked down to the site entrance to check this was still the case. The entrance gate had a CLOSED notice on it and was securely padlocked as is always the case at this time of year. In addition, and contrary to the information on the planning application forms, the whole site is bounded by public roads. They may be privately owned but they all have public access and have never been restricted. I have no adverse comments to make about the current use and management of the caravan site. However, I have always valued the peace and quiet and reduction in traffic over the winter months when the site is closed, and I strongly prefer that matters remain this way.	

Comment : Regard cannot be given to any objections to this application made on planning grounds. The determination of this application turns on the facts of the case

and their interpretation in the light of relevant planning law and judicial authority.

7 Planning Considerations

7.1 If the Council, as 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 matters 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 Council must also be satisfied that the applicant has not deliberately concealed the change of use/development.

7.2 Government guidance states that the onus of proof is based firmly on the applicant and a certificate of lawfulness may be refused on the basis that insufficient evidence has been included along with the application. Critically, the relevant test of the evidence is the 'balance of probability' and not the more onerous criminal burden of proof 'beyond reasonable doubt'. If the Council do not have any evidence to contradict the applicant, or make the applicant's version of events less probable, there should be no reason to refuse the application. The applicant's evidence should, however, be sufficiently precise and unambiguous to justify a grant of a certificate of lawfulness.

7.3 The application is submitted with the following evidence:

Planning/legal statement

Appendix A

Location and site plan

Plan showing sections of estate which benefit from planning permissions

Appendix B

Copy of Caravan Site Licence dated 15th June 1961

Appendix C

Copy of planning permission HWU/1467 permitted on 18th July 1951

Appendix D

Copy of planning permission HWU/3257 permitted on 11th March 1955

Appendix E

Copy of planning permission HWU/3527/3 - permitted 9th February 1961

Appendix F

Copy of email from Havant Borough Council regarding planning history search

Appendix G

Section 17 of the Caravan Sites and Control of Development Act 1960.

7.4 The application concerns the proposed use as stated in the application is the use of site as a caravan site for occupation throughout the year for either holiday or residential purposes.

7.5 The case of *I'm Your Man* established the principle that if a limitation is to be imposed

on a permission granted pursuant to an application, it has to be done by condition. The planning permissions, as outlined in section 2, include no condition restricting the particular type of caravan permitted or any controls regarding seasonal use. The I'm Your Man principle is only relevant where a use remains and there is no alleged change of use. It is considered that a material change of use has not occurred on this site and that it has been used for a caravan site, since 1957, which was permitted under application HWU1467, and subsequent applications extending the caravan site. As has been outlined the previous planning permissions do not include any conditions regarding the types of caravans permitted or control over seasonal use.

- 7.6 With regard to the 56 caravans, outlined in section 2 and identified in blue on plan BU/ECE/2, which does not benefit from any specific planning permission. Section 17 of the Caravan Sites and Control of Development Act (1960) is also relevant, with regard to the 56 caravans, outlined in the planning history section, which do not benefit from formal planning permission. This part of the Act was repealed by the Statute Law (Repeals) Act 1993 but remains relevant insofar as it relates to the situation in 1960. This relates to any application for a site licence in respect of an existing site, other than a site which had at the date of the application the benefit of a permission for the use of the land as a caravan site. It required (sec.17(2)) the local authority to whom the site licence application was made to transmit the application to the local planning authority which could then grant planning permission for the use of the site as a caravan site.
- 7.7 However, if (sec.17(3)) within six months of the application being made, the Local Planning Authority had not either (a) granted planning permission for the use of the land as a caravan site (sec.17(3)(a)) or (b) served an enforcement notice requiring the use of the land as a caravan site to be discontinued (sec.17(3)(b)) then permission for the use of the land as a caravan site without any condition or limitation was deemed to have been granted. As such it is considered that the area as outlined in blue on plan BU/ECE/2, comprising 56 caravans, benefits from deemed permission without any condition or limitation.

8 Conclusion

It is considered that on the particular facts of this case that the previous planning permissions for a sui generis caravan park use comprising 152 caravans, which are not limited by condition to any particular type of caravan, nor to a seasonal use.

With regard to the remaining 56 caravans, it is considered that deemed permission exists by virtue of a Caravan Site Licence being granted for a total of 208 caravans in 1961. Whilst these caravans do not currently benefit from planning permission, no enforcement action has taken place in the site, then under section 17(3) permission for the use of the land as a caravan site without any condition or limitation was deemed to have been granted. As such, it is recommended that a certificate of lawful use be issued for 208 caravans, with no conditions or limitations .

9 RECOMMENDATION:

That the Head of Planning be authorised to GRANT A CERTIFICATE OF LAWFUL USE for application APP/17/01316

Havant Borough Council, as Local Planning Authority, certifies that on 8 May 2018 the use described in the First Schedule to this certificate in respect of land described in the Second

Schedule and as shown edged red on the plan attached to this certificate was lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

It appears to the Local Planning Authority on the balance of probability that the uses described in the First and Second Schedules and plan attached to this Certificate, Use of site as a caravan site for **208** caravans throughout the year for either holiday or residential purposes

The Authority has considered evidence and information submitted by the applicant and the planning history of the site.

FIRST SCHEDULE:

This Certificate relates to the following use:

(i) Use of site as a caravan site for 208 caravans throughout the year for either holiday or residential purposes

In association with (i) above, the use in the area edged red on the submitted Drawing - Plan No.BU/ECE/1, 1:1250 location and Plan No.BU/ECE/2 - showing sections of Estate to which planning permissions apply and is considered to have been demonstrated over the existing use of the site

SECOND SCHEDULE:

For the purposes of the first schedule (i) above, this certificate relates to the land edged red on the submitted Drawing - Plan No.BU/ECE/1, 1:1250 location and Plan No.BU/ECE/2 at M23 Haven Road, Hayling Island, PO11 9RX