

Monday, 19 December 2022

## **Planning Statement**

**The Cottage Caravan, Black How, Cumbria, Seascale, CA20 1LQ**

**A Certificate of Lawful Existing Use or Development (CLEUD) for the use of the land as a Caravan Site.**

### [Requirements to Grant the Certificate](#)

The evidence supplied by an application for a Certificate of Lawfulness of Development (existing) must be sufficiently precise and unambiguous, on the balance of probabilities, to demonstrate that the land outlined in the accompanying location plan was in breach for 10 years following the first breach, and the use has not been abandoned since that period. As such, in order to determine whether it is immune from enforcement action, the 10-year limitation period needs to be applied pursuant to Section 171B (3) of the Planning and Compensation Act 1991.

### [Section 191](#)

Section 191 of the Town and Country Planning Act (as amended by S10(1) of the Planning and Compensation Act 1991) states:

If any person wishes to ascertain whether

- a) any existing use of buildings or other land is lawful,
- b) any operations which have been carried out in, on, over or under land are lawful, or
- c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

For the purposes of the Act 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.

If the local planning authority are provided with the 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, they shall issue a certificate to that effect. In any other case they shall refuse the application.

Paragraph: 006 Reference ID: 17c-006-20140306 of the NPPG states "the applicant is responsible for providing sufficient information to support an application, although a local planning authority always

needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass 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 counterevidence".

This certificate of lawfulness application is seeking to demonstrate the land was used as a caravan site for a continuous period of at least 10 years from July 1997, and that this use has not been abandoned since the use crystallised.

### Section 171b

Section 171b of the Town and Country Planning Act 1990 states that:

*(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.*

This planning statement accompanies documentary evidence, which shows that from the beginning of the date of the breach (July 1997), the site has been in continuous use as a Caravan Site for more than 10 years, and as such has gained immunity from enforcement action. As such, a CLEUD should be granted without delay.

### Caravan Sites and Control of Development Act 1960

#### 1. (4)

In this Part of this Act the expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

The case presented here clearly demonstrates that the caravan, and associated land has been in use since July 1997 for human habitation.

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##### Interpretation of Part I.

In this Part of this Act, unless the context otherwise requires, "caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—

- (a) any railway rolling stock, which is for the time being on rails forming part of a railway system, or
- (b) any tent;

### Planning History:

The site has a long and complex planning history. Application 4/91/0550/0 (Granted 21/06/1991) permitted the siting of a caravan at The Cottage and had four conditions attached. These conditions were as follows:

1. The development hereby permitted shall be commenced within FIVE years from the date hereof.
2. This permission shall expire on 3rd August 1996. The caravan shall be removed from the site on or before this date and the land restored to its former condition.
3. The caravan shall be occupied only on a short term lettings basis with no individual or family occupying the caravan for a period in excess of 6 weeks in any one calendar year.
4. No caravans on the site shall be occupied between 15th November in any one year and 1st March in the succeeding year.

The caravan was moved from the location permitted under Application 4/91/0550/0 and was placed in its current position following the grant of permission 4/96/0519/4 (which was superseded by application 4/97/0772/0), for the erection of a detached bungalow. Condition three of this application required the removal of all existing caravans from the site. As such, the caravan was moved to its current location in July 1997, where it and the surrounding land have remained in use as a Caravan Site for the purposes of human habitation, in conjunction with the surrounding land.

### Use of the Site

The caravan has been in situ and has been rented out since July 1997. The caravan was let out on a short-term basis to Sellafeld engineering contractors, working locally at the nuclear facility. Payment was settled week by week, and certain individuals sometimes stayed more than six weeks, depending on their specific requirements.

The caravan was rented out on a weekly basis between 1997 to 2019. Between 1997 and 2013, the caravan was occupied by engineering contractors for around 42 weeks per year. Unfortunately, with the passing of the applicant's husband in 2012, business declined, though as the included final account statements and confirmation from their solicitor (JM8) show, the caravan remained available for rent and the use of the land as a caravan site was never abandoned.

A copy of the applicant's final account statements dated between 2015 and 2020 are included within the submission documentation (JM6). The business taxation rating is also included (JM7), showing the previous rateable value which ran from 1<sup>st</sup> April 2010. The Planning Enforcement team have also independently confirmed that the business taxation rating has been active since at least 2004.

Also included within the application documents (JM8) is an email from the applicant's accountant confirming the yearly income for the caravan lettings. This shows the earnings from the caravan site between 1998 and 2003, and then the earnings between 2001-2015. Unfortunately, there is a gap in the records at the time when the accountancy firm started to keep digital copies (between 2003 and 2011). The applicant has confirmed within their statutory declaration that the lettings continued during this period.

As such, it is clear on the balance of probability that the land has been used as a caravan site more than 10 years and gained immunity from enforcement action in July 2007. Since that point, the site has stayed in use as a caravan site for human habitation without abandonment or suspension.

Following the applicant's retirement in 2020, the caravan remained on site while a buyer was sought. The caravan was again occupied in April 2021 when a potential buyer for the site moved into the caravan, until it was vacated in July 2022. Since it was vacated, the caravan has again been made available for family visits while a new buyer was sought. The sale of the site has now been agreed, and a CLEUD is being sought to ensure that the use of the land as a caravan site remains lawful. It is not considered that the use of the site has been abandoned or altered, and the site remains in use as a caravan site.

## Evidence

### Statutory Declaration from Applicant

A statutory declaration accompanies this CLEUD. This declaration outlines the date that the caravan was first located on the site in breach of planning control in July 1997, the fact that it has remained in situ and has been continuously used for the purposes of human habitation and as such, it is considered that the Change of Use reaches the relevant time limit threshold of section 171(B) of the Town and Country Planning Act 1990, being 10 years for the change of use of land.

### Aerial and Other Photography

Though aerial photography unfortunately does not go back to July 1997, dated aerial photographs from Google Earth show the caravan in situ on the site since at least January 2003, with the surrounding land neatly maintained. The accompanying signed statutory declaration from the applicant states that the caravan was first located on the site in July 1997, and remained in situ until today. The photograph dates can be seen at the bottom of the image, and show the caravan in question remaining on site, and a number of other caravans moving onto and off the site. These images are a clear indicator that the caravan has been in situ for a period of longer than 10 years, and that the use of the land as a caravan site has become immune from enforcement action under Section 171b of the Town and Country Planning Act 1990. The caravan which is currently on site has been marked on the below photographs with a red outline.

Aerial Photograph from 1/1/2003:



Aerial Photograph from 5/10/2008:



*Aerial Photograph from 30/6/2018:*



*Imagery from an unknown date in 2022:*



In addition to the above, the below photograph from 2004 shows the applicant's grandson on the driveway, with the caravan shown in the background in its current position (outlined in red). This image has also been included unaltered within the application documents, to accompany the signed Statutory Declaration.

Photograph from 2004



## Conclusion

It is considered that the submitted evidence constitutes clear, precise, and unambiguous evidence to support this CLEUD application. It is considered that from the evidence submitted, on the balance of probability, the caravan has been in situ and the land used as a caravan site for more than 10 years (since the original breach in July 1997), and the use has not been abandoned since it was crystallised in July 2007, following 10 years of the site being let out approximately 42 weeks per year. It should be noted that there is no legal requirement to apply for a certificate of lawfulness to establish the change in use after the 10 year time limit passes, it crystallises by fact in law after 10 years.

It should also be noted that where CLEUD applications are concerned, the purpose behind consulting third parties is solely to see whether they may have information which might support the application; unlike planning permission, views expressed on the planning merits of the case are irrelevant.

Case law has established that the applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted. If the LPA has no evidence itself, nor 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 CLEUD on the balance of probability. Planning Practice Guidance as issued by DCLG reiterates that this is the approach to be taken by Local Planning Authorities when determining CLEUD applications.

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.

It is considered that the information provided in this statement together with the accompanying application documents contribute sufficient evidence to enable Copeland Borough Council to make a complete and accurate assessment against current planning legislation.

It is considered that the Council can be satisfied that “on the balance of probability,” the use is lawful and as such, that the Certificate can be issued accordingly.

Yours sincerely,

Owen Hoare MRTPI