AVISON YOUNG

EasternSands



Certificate of Existing Lawful Use of land as caravan site for 12 months of the year in breach of condition 1 of extant permission L/6/81/TP

Eastern Sands Caravan Park, 100 Brighton Road, Lancing , BN15 8LW

February 2022

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For and on behalf of Avison Young (UK) Limited

1. Introduction

1.1 Avison Young have been instructed by Thomas Cooper, owner and operator of Eastern Sands Caravan Park to submit a Certificate of Existing Lawful Use of land as caravan site for 12 months of the year in breach of condition 1 of the extant planning permission reference L/6/81/TP. The application site comprises those caravan pitches edged in red on the Site Plan submitted with the application (as shown in figure 3) being caravan pitch nos. 2, 4, 10, 17 and 35. This statement gives an overview of the site location and context; details of relevant planning history; evidence and our interpretation of the law.

Avison Young

1.2 Avison Young creates real economic, social and environmental value as a global real estate advisor, powered by people. As a private company, our clients collaborate with an empowered partner who is invested in their success. Our integrated talent realises the full potential of real estate by using global intelligence platforms that provide clients with insights and advantage. Together, we can create healthy, productive workplaces for employees, cities that are centres for prosperity for their citizens, and built spaces and places that create a net benefit to the economy, the environment and the community.

1.3 Avison Young Leisure is the specialist tourism and leisure advisory arm of Avison Young. Our specialist planning and development team has extensive experience of providing viability, need assessments and development consultancy, planning advice, applications, appeals and expert witness evidence at planning inquiries for development in the tourism, leisure, and retirement sector. Our work inevitably involves us in residential development from the conversion and redevelopment of redundant tourism and leisure assets through to retirement villages and residential home parks. We are retained as national planning advisors to the British Holiday and Home Park Association, the representative body for the caravan parks industry.

2. Site Context & Description

2.1 The Eastern Sands caravan park occupies a beach-front location, directly off the A259 coastal route linking Shoreham-by-Sea to Lancing; both towns of which are within 2 miles of the site. The caravan park comprises 40 single-unit caravans, sited in linear rows and accessed south of the A259.

2.2 The application site comprises those caravan pitches shown in red below.



Figure 1: Aerial image showing approximately the application site (Google earth)

3. Planning History & Site Licence

Planning History

3.1 Our client, Mr Thomas Cooper purchased Eastern Sands Caravan Park from the then owners, Adur District Council on 14th October 2008. Until 2005, the Council also owned the park to the west of the site, however this was sold and subsequently renamed to Beach Park. It is understood that the parks were being used by the Council for both holiday accommodation (west part, now known as Beach Park) and to house social housing tenants (east part, now known as Eastern Sands Caravan Park) and they were considered as one site, known as Golden Sands Caravan site. Since the split and sale of the western part (Beach Park), the two caravan parks remain distinctly independent from one another.

3.2 Adur and Worthing Council's online planning register shows a long planning history for Eastern Sands Caravan Park, but this statement will only discuss and analyse those relevant to the subject case applications.

Reference Number	Description of Development	Decision	Date
L/95/48	Unknown	Approved temporarily	1948 (exact date unknown)
L/45/52	Unknown	Approved temporarily	1952 (exact date unknown)
L/4/58	Unknown	Approved temporarily	1958 (exact date unknown)
L/318/61	Unknown	Approved temporarily	1961 (exact date unknown)
L/49/77	Moving of caravan site	Approved	14.04.77
L/163/80	Permanent use of land for the standing of static holiday caravans and beach huts	Unknown	Unknown
L/6/81/TP	Permanent use of land for the standing of static holiday caravans (for occupation between 1 March & 31 October, & for maintenance repair purposes only between 1 November & 28/29 February for an aggregate of not more than 30 days per caravan)	Approved	10.02.81
L/66/89/TP	Regulation 4 application to continue use of part of land as a caravan site without complying with condition 1 of L/6/81/TP. (to enable 40 units to be occupied residentially throughout the year)	Approved	01.06.89
L/102/89/TP	Regulation 4 application for continued use as a caravan/mobile home site without complying with condition 2 of permission L/6/81/TP (changed layout)	Approved	22.08.89
L/5/01/TP	Continued use of east part of site for residential occupation of up to 40 mobile homes (renewal of L/66/89) (Reg.3)	Approved	28.01.02
L/197/05/TP	Improvements to access (between no's 96 & 102 Brighton Road); provision of turning head and car park (adc Reg.3)	Approved	07.01.06
AWDM/0795/11	Installation of 2 flags on poles and 3 free standing non illuminated sign boards (2 x V boards and 1 single board) on poles (part retrospective)	Approved	06.02.12
AWDM/0994/2	Application for a Lawful Development Certificate for Existing use of land for the all year use of the site as a caravan park.	Withdrawn	24.09.21

Table 1: Planning History for Eastern Sands Caravan Park. Source: Adur and Worthing Council.

3.3 The first traceable permission on the Council's website for the site is application reference **L/49/77**, whereby permission was granted in April 1977 for the 'Moving of caravan site', but there are no documents that substantiate this permission.

3.4 Application reference **L/6/81/TP**, granted in February 1981, is the first known permanent permission of the site for the stationing of static holiday caravans. The permission was granted subject to the following six planning conditions (summarised):

1. Seasonal restriction (1st March – 31st October) although occupation is allowed for an aggregate of no more than 30 days outside of the season for repairs and maintenance.
2. Caravans to adhere to layout as approved under L/318/61 or in accordance with such revisions as subsequently required by the provisions of the Site Licence.
3. No electrical service lines to be erected.
4. No other permitted development buildings allowed without permission.
5. Landscaping scheme required in 3 months of decision.
6. The total number of caravans shall not exceed 154.

3.5 This permission (**L/6/81/TP**) was granted for the wider site known as Golden Sands Caravan Site which, as mentioned above, is currently divided into two separate sites that operate as independent entities: Beach Park Caravan Park and Eastern Sands Caravan Park. As the permission **L/6/81/TP** was granted *before* the split of the two caravan sites, the imposed conditions apply to both sites, as the sites were considered one site. Although there is no available location plan to clarify this, condition 6 (application reference **L/6/81/TP**) refers to a large number of 154 caravans and this could only be spatially accommodated within both sites, therefore confirming the application (**L/6/81/TP**) applied to Golden Sands Caravan Site as a whole.

3.6 The location plan (figure 2 below) of the later permission **L/66/89/TP** (to (temporarily) vary permission **L/6/81/TP**) confirms that this first (1981) permission was for the entire site then known as Golden Sands.

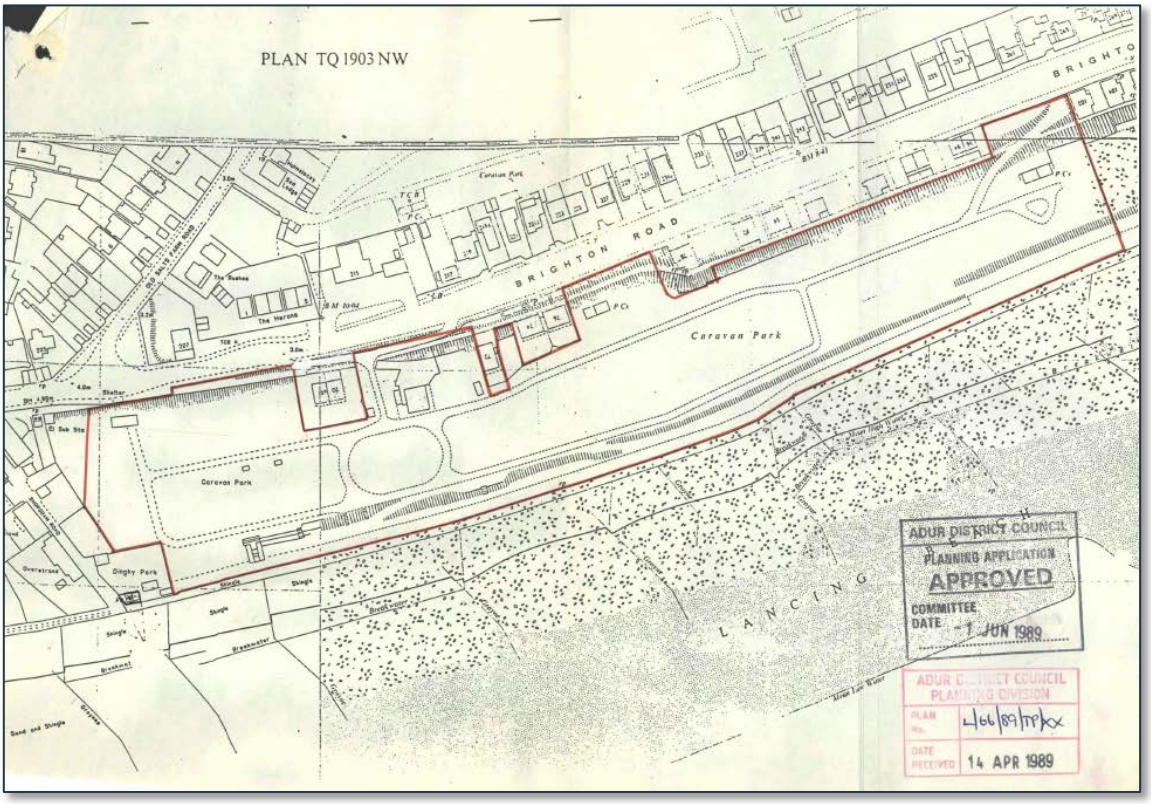


Figure 2: Approved Site Location Plan – L/66/89/TP

3.7 Permission **L/66/89/TP** allowed the Council to continue using part of Golden Sands as a caravan site without complying with condition 1 of **L/6/81/TP**. This was to enable 40 units to be occupied residentially throughout the year. The part of the site this application referred to is the land that now comprises this application site. Condition 1 of this permission required the residential use to cease by 31 May 1999.

3.8 Permission **L/102/89/TP** was then granted for continued use of the site as a caravan/mobile home site without compliance with condition 2 of permission **L/6/81/TP** to enable a change in the layout.

3.9 Despite this, we understand that permissions **L/66/89/TP** and **L/102/89/TP** were both *exclusive* to Adur (now, Adur and Worthing) Council and do not run with the wider use of the land.

3.10 In 2002, a new permission **L/5/01/TP** was granted for the 'Continued use of east part of site for residential occupation of up to 40 mobile homes (renewal of L/66/89) Reg.3'. This permission was granted for the land subject to this application, but this was also exclusive to Adur Council and condition 1 required the use to be discontinued on 31st January 2007.

3.11 Following '*the separation of the residential and holiday sites*' (in 2005) as stated in the officer's report, another permission **(L/197/05/TP)** was granted in 2006 allowing access improvements and the provision of a turning head for the residential site (.i.e. Eastern Sands). This was also exclusive to the

Council but the revised access and new turn head were retained by our client when he purchased the site in 2008.

3.12 From the analysis above, we understand that the residential permissions that the Council granted themselves have fallen away and permission has reverted to **L/6/81/TP** as the extant permission for the use of the caravan site. Therefore, the restrictions imposed by its conditions apply to the application site (as summarised at paragraph 3.4 above).

3.13 In early 2021, our client, Mr Cooper received an undated letter from Mr. Jordan Trimby, the Council's Enforcement Officer. This letter requested the following information:

1. *How many caravans are parked on the Eastern Sands site?*
2. *How often are they used? For example: occasionally, seasonally or perennially?*
3. *If any of the caravans are used on a year-round basis, please verify which ones.*
4. *Please provide us with a plan of the site.*

3.14 Following the receipt of this letter, Mr. Cooper instructed Avison Young to investigate the site's planning history in relation to the questions asked by the Council and respond accordingly.

3.15 Following our planning history analysis, which identified the extant planning permission for the site, it became apparent that the use of the site was in breach of condition 1 of this extant permission (**L/318/61**) as it was being used all year round.

3.16 Therefore, an application for a Lawful Development Certificate for Existing Use of land for the all year use of the site as a caravan park was submitted to Adur and Worthing Councils on 26th May 2021 (application reference: AWDM/0994/21) for the land at Eastern Sands Caravan Park. Following correspondence with the Councils' Solicitor and Development Management Department dated 7th September, the decision was taken to withdraw the application to further clarify the evidence relating to each caravan to establish the individual use for an entire 10-year period and submit an amended application.

3.17 This subsequent submission provides additional evidence and clarifies the existing evidence that addresses the Council's request. The individual units that have been used all year round for at least the last ten years in breach of condition 1 of this extant permission (**L/318/61**) have been identified below. As these caravans have been used in this way for at least 10 years, their continued use in this way is considered lawful and the requested certificate should be issued. This will be evidenced and discussed in the next section of this statement.

Site Licence

3.18 In December 2008, a Site Licence no. ADC/1/2008 (Appendix I) was issued for the use of the land Golden Sands Holiday Park (East), currently known as Eastern Sands Caravan Park as a caravan site. The Site Licence does not include any restrictions on the season the park can operate, or the number of caravans that can be sited on the park. Therefore, the caravans at the park have not been used in breach of any other statutory requirements.

4. Proposal

4.1 This application is submitted for a Certificate of Lawfulness for an Existing Use under section 191 of the Town and Country Planning Act 1990 for the following description of development:

> *Use: Existing use of land as caravan site for 12 months of the year in breach of condition 1 of the extant permission reference L/6/81/TP*
>
> *Land: Land at caravan pitch nos 2, 4, 10, 17 and 35 (the 'specified caravans') at Eastern Sands Caravan Park, 100 Brighton Road, Lancing, BN15 8LW edged in red on the site location plan (drawing no: AY.02C100220.00.RevB)*

4.2 The application is submitted with Site Location Plan - AY.02C100220.00.RevB which shows the number and location of each caravan within the site.



Figure 3: Eastern Sands – Extract of Site Location Plan - AY.02C100220.00.RevB

4.3 The application is submitted on the basis that the use described above, on the land described above, has been carried out in breach of condition 1 of the permission L/6/81/TP for a continuous period of at least 10 years and is, therefore, immune from enforcement action and lawful.

5. Legal Framework

5.1 For a Certificate to be granted under section 191 of the Act[1] for a breach of planning condition, it must be established that:

5.1.1 the time for taking enforcement action has expired; and

5.1.2 It does not constitute a contravention of the requirements of any enforcement notice or breach of condition notice then in force.

5.2 There are no enforcement notices or breach of condition notices currently in force in respect of the caravans and so the second requirement is satisfied.

5.3 Section 171B(3) of the Act provides that no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach. Therefore, if it can be proven that the caravans were occupied in breach of condition 1 of permission L/6/81/TP for a continuous period of at least ten years before the submission of this application, a certificate should be granted.

5.4 The burden of proof is on the applicant but the Planning Practice Guidance on lawful development certificates states that: *'If a local planning authority has no evidence itself, nor any 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.'*

5.5 In addition to this position, the planning law dictates that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted (see F W Gabbitas v SSE and Newham LBC [1985] JPL 630).

5.6 In determining whether an LDC should be issued, the local planning authority must determine whether, on the facts of the case and evidence provided, the relevant matter would, on the balance of probabilities, be lawful by virtue of its length of use.

[1] The Town and Country Planning Act 1990

6. Evidence

6.1 It is the Applicant's (Mr. Thomas Cooper) case that the breach of condition 1 of permission L/6/81/TP is considered lawful by virtue of the specified caravans having been occupied in breach for a continuous period of at least ten years. The following evidence is provided in support of this application to meet the criteria of Section 171B of the Town and Country Planning Act and can be seen in appendices II – XI.

6.2 The appendices provide month-by-month evidence (for the winter months in question to limit the amount of evidence officers need to review) to demonstrate that each of the specified caravans have been occupied in breach of condition 1 of permission L/6/81/TP. The evidence has been organised and presented for each one of the specified caravans, in separate appendices. Before each appendix which includes the evidence for each unit, a table listing the information that will follow has been provided as a separate appendix. Each table provides explanatory comments where evidence is missing or to clarify which period the evidence relates to. The evidence is dated and has been listed in the tables and then presented in the followings appendices in a clear chronological sequence.

6.3 In assessing the probable use of each caravan, evidence of great weight such as bank slips and statements and letting agreements, have been provided. The bank slips and statements show pitch fee payments for the caravans that were/are owned by their occupiers who were/are using them all year round and, rent payments for the rest of the caravans that are owned by Mr Cooper and were/are being rented to their occupiers who use them all year round too. The payments relate to the months January, February, November and December of each year which are the months that the use of the caravans become in breach of condition 1 of **L/6/81/TP**. The gaps that can be identified in the bank slips and statements are covered by entries from the owner's rent book, and particulars of arrears notes, which in most of the cases explain the absence of payment evidence as payment was not made or was delayed.

6.4 The appendices II – XI have been created and the evidence is presented in such a way to address the earlier concerns of the Council. This evidence overview has been used to provide evidence that the caravans have been occupied all year round in breach of condition 1 of permission L/6/81/TP over at least ten years and is analysed below:

Appendix III – Caravan no. 2

6.5 The evidence provided in Appendix III shows that caravan no. 2 has been used during the months in question continuously since November 2010 to present. Evidence for February 2013 could not be

located but this is considered to be a de minimis period. The evidence clearly shows that the caravan was in use during the other winter months of 2012/13 before and after this period, and so it is clear that caravan no. 2 has been in winter use in breach of condition 1 for a continuous period of at least ten years.

Appendix V – Caravan no. 4

6.6 The evidence provided in Appendix V shows that caravan no.4 has been used during the months in question continuously since January 2012 to present. There were no rental payments for the period November 2012 to February 2014 but the rent books of December 2013 and February 2014 confirm that the unit was occupied during this period but that the tenant was not paying their rent which resulted in a debt of 16 months rent in February 2014 providing evidence for November 2012 to February 2014. This is confirmed on the applicant's Statutory Declaration. During December 2014, the tenant who occupied caravan no.4 moved out but still paid and occupied the unit for the duration of the month. This also confirmed on the applicant's Statutory Declaration. It is clear that caravan no. 4 has been in winter use in breach of condition 1 for a continuous period of at least ten years.

Appendix VII – Caravan no. 10

6.7 The evidence provided in Appendix VII shows that caravan no.10 has been used during the months in question continuously since February 2012 to present. There is no available evidence for February 2016 but the unit was in use as confirmed by the applicant on his Statutory Declaration. The missing payment for December 2017 seems to have been made in early 2018. This is confirmed on the applicant's Statutory Declaration. The missing payments for January- February 2021 is explained by the rent book of February 2021 which states that rent is owed for one month and for February 2021. Delayed payment for one of the owed rents was received in March 2021. This is also confirmed on the applicant's Statutory Declaration. . It is clear that caravan no. 10 has been in winter use in breach of condition 1 for a continuous period of at least ten years.

Appendix VIII – Caravan no. 17

6.8 The evidence provided in Appendix VIII shows that caravan no.17 has been used during the months in question continuously since November 2011 to present. No payments were made for November – December 2012 and February 2013, but as explained on the applicant's Statutory Declaration, no. 17 was sold in September 2012 and was occupied by the new owners in November 2012, December 2012 and February 2013. It seems that the evidence of payment for these months has been lost over the years but the use did not stop as the unit remained occupied, as confirmed on the applicant's Statutory

Declaration. It is clear, therefore, that caravan no. 17 has been in winter use in breach of condition 1 for a continuous period of at least ten years.

Appendix XI – Caravan no. 35

6.9 The evidence provided in Appendix XI shows that caravan no.35 has been used during the months in question continuously since at least January 2012. There is a short period for which evidence has not been located (February 2021) but payments were received in the other months of winter 2020/2021. It is clear that caravan no. 35 has been in winter use in breach of condition 1 for a continuous period of at least ten years.

6.10 Further to the above and to summarise the period for which evidence has been presented for each unit the following summary table has been prepared.

Caravan No	Period Covered (inclusive)
2	November 2010 – February 2022
4	January 2012 – February 2022
10	February 2012 – February 2022
17	November 2011 – February 2022
35	January 2012 – February 2022
Evidence Summary Table	

6.11 In addition, the applicant has prepared and signed a Statutory Declaration which can be found in Appendix XII. Mr. Cooper provides information about the purchase and the operation of Eastern Sands since he took it over from the Council (who used it for all year residential use) in 2008, Mr. Cooper explains how the specified caravans have been used all year round, normally evidenced by the paying of either a monthly pitch fee (in the case of caravan owners) or rental payment (in in the case of caravans rented from the applicant) during the winter months in breach of condition 1 of L/6/81/TP. Some of the specified caravans have changed from being owner occupied to being rented and vice versa at various times during this period. This accounts for the change in recorded payments where payments in the range of £200s relate to pitch fees while the rest payments ranging from £400 to £700 relate to rental payments.

6.12 Email correspondence with Peter Barnett, Principal Planning Officer, dated 7th September 2021 (Appendix XIII), highlighted the Council's Development Management Department correspondence with the Council's Environmental Health Department regarding the site history of the application site, which forces a point for response. The email (dated 7th September) states that "agents on behalf of Eastern

Sands were actively marketing units for long-term lets over winter within the last 3 years". This statement provides further validation of the year-round use of the caravans during that period. The phrases "long-term" and "over winter" of this sentence implies use during the winter months November to February, thereby adding to the extensive body of evidence of the specified caravans' use for year-round occupation during the last three years (from 2018). This has been weighted into the balance of the probable use for each of the caravans.

7. Interpretation

7.1 On the basis of the evidence submitted and the overview in section 6, the specified caravans (2, 4, 10, 17, and 35) have been used during the winter months (January, February, November and December), in breach of condition 1 of permission L/6/81/TP for at least 10 years.

7.2 There are occasions when winter month pitch fee or rent payments were not made during the ten-year period but this certainly does not mean that the winter use ceased, in each case, there is still evidence of winter use during that winter. Tenants may still be living there but being pursued for payment arrears. It is very common for a property to require renovation or repair works between tenancies. It may also take a short time to find a new tenant with good references to make sure that they would be making payments on time and would be retaining the property in a good state. These circumstances are of particular relevance to this case, as our client in the past (and as can be seen on the submitted evidence) had to regularly deal with arrears of rent and even involve solicitors for the outstanding payments to be arranged. There is nothing sufficient to cast any doubt on the use of each specified caravan in breach of condition 1 of permission L/6/81/TP over a continuous ten-year period.

7.3 In consideration of the previous application for a certificate, the Council asked for definitive information for each caravan on whether it was being used residentially, for all year holiday use, or for holiday use in accordance with the condition. Unfortunately, there is no clear independent evidence demonstrating residential or holiday use of the specified caravans although we understand that most of these were used as residential accommodation.

7.4 However, it is not necessary to prove whether the caravans were being used for residential or all year round holiday use. This is immaterial because in the case of a breach of condition 1 of permission L/6/81/TP all that is material is whether the caravans were occupied between the months of November and February each year. Condition 1 of permission L/6/81/TP does not differentiate between occupation for holiday purposes or for residential purposes so that occupation for either would amount to a breach. Therefore, providing the caravans had been occupied at any time during the months of November to February for more than 30 days for period of at least 10 years, then the continued breach of condition 1 would be lawful.

7.5 Further, there is no condition preventing residential use, only a condition to prevent the use of the caravans between November and February (inclusive) and subject to being allowed to visit and stay for up 30 days during this period. Therefore, this application simply seeks to demonstrate for which caravans there is currently clear evidence that confirms they have been used in breach of condition 1 for more than ten years and are therefore immune from enforcement.

7.6 In its entirety, the evidence submitted clearly shows that on the balance of probabilities the specified caravans at the park have been in occupation for more than 30 days during the winter months of November, December, January and February, each year, for at least ten years. **This breaches condition 1 of extant permission L/6/81/TP**. Combined with the fact that the entire caravan park can lawfully operate the rest of the months (March to October) under the extant permission, the submitted evidence for the periods November to February confirms the use of the specified caravans in breach of condition 1 for more than ten years. The evidence is sufficiently precise and unambiguous, therefore warranting the grant of a Certificate of Lawfulness.