AVISON YOUNG

Planning Statement

Application to Adur District Council:

Certificate of Existing Lawful Use of land pursuant to Section 191 of the Town and Country Planning Act 1990 for the use as a caravan site for 12 months of the year in breach of condition 1 of extant permission L/6/81/TP

Applicant: Mr. Thomas Cooper

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

August 2024

Contents

1. Introduction 3
2. Site Description 4
3. Planning History & Site Licence 5
4. Proposal 10
5. Legal Framework 11
6. Evidence 12
7. Interpretation 15

Appendices

Appendix I Decision notice ref: AWDM/0264/22
Appendix II Site Licence no. ADC/1/2008
Appendix III Evidence List for Caravan No. 1
Appendix IV Evidence for Caravan No. 1 - CONFIDENTIAL
Appendix V Evidence List for Caravan No. 32
Appendix VI Evidence for Caravan No. 32 - CONFIDENTIAL
Appendix VII Evidence List for Caravan No. 34
Appendix VIII Evidence for Caravan No. 34 - CONFIDENTIAL
Appendix IX Evidence List for Caravan No. 37
Appendix X Evidence for Caravan No. 37 - CONFIDENTIAL
Appendix XI Evidence List for Caravan No. 38
Appendix XII Evidence for Caravan No. 38 - CONFIDENTIAL
Appendix XIII Statutory Declaration Signed by Mr. T. Cooper - CONFIDENTIAL

Report title: Eastern Sands
Report date: August 2024

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 4.1) being caravan pitch nos. 1, 32, 34, 37, and 38. 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 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 in **Figure 2.1** below.



Figure 2.1: The application site

3. Planning History & Site Licence

Planning History

3.1 The applicant and 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. The planning history attached to the wider site is shown below at **Table 1.**

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	14.04.1977
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	10.02.1981
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	01.06.1989
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	22.08.1989
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	28.01.2002
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	07.01.2006
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	06.02.2012
AWDM/0994/21	Application for a Lawful Development Certificate for Existing use of land for the all year use of the site as a caravan park.	Withdrawn	24.09.2021
AWDM/0264/22	Application for a Lawful Development Certificate for Existing use of caravan pitch nos. 2, 4, 10, 17 and 35 as a caravan site for 12 months of the year.	Approved	20.04.2022

Table 1: Planning History for Eastern Sands Caravan Park

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 for 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 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 3.1** 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.

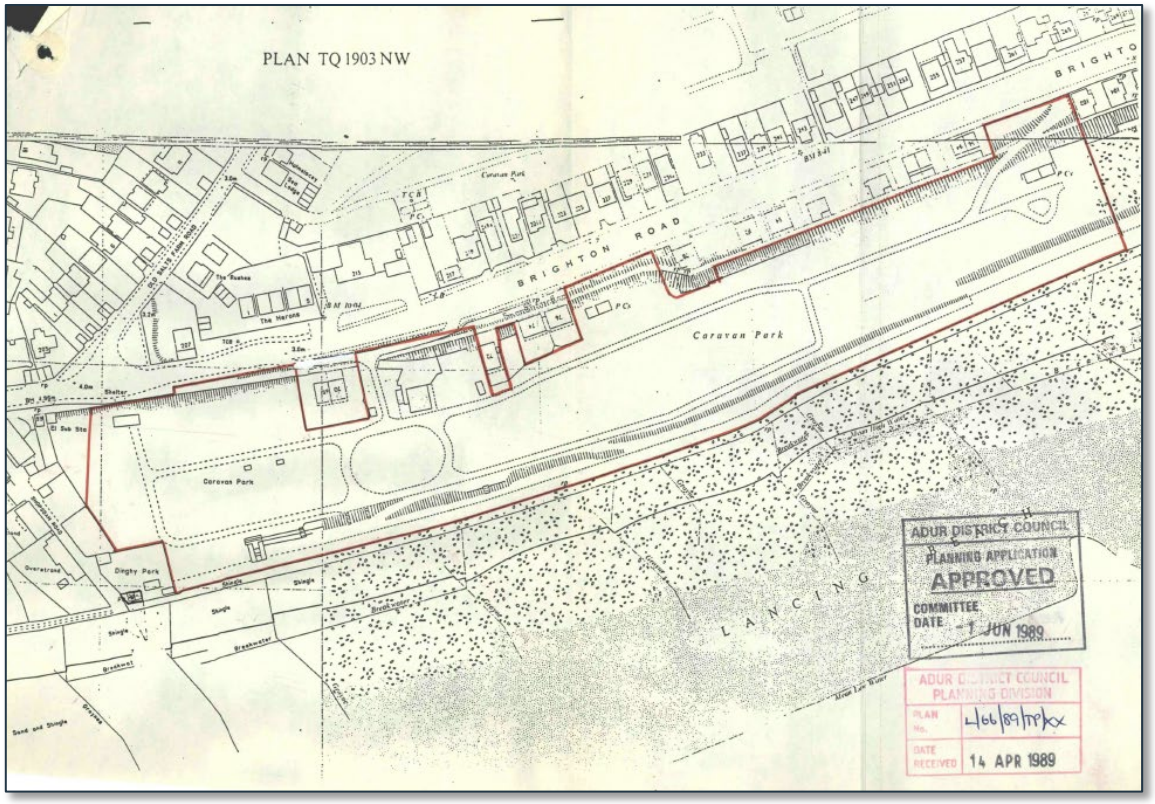

Figure 3.1: Approved Site Location Plan – L/66/89/TP

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 (**ref: L/6/81/TP**) 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 2021, 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 A subsequent application was then submitted and approved (ref: **AWDM/0264/22**) for a Certificate of Lawfulness for Existing Use for the use of caravan pitches nos. 2, 4, 10, 17 and 35 as a caravan site for 12 months of the year in breach of condition 1 of planning permission ref: L/6/81. The decision notice is provided in **Appendix I**.

3.18 The evidence submitted for the Certificate of Lawfulness application in 2022 provided a month-by-month breakdown (for the months of the breach in question), such as bank statements, bank slips and letting agreements, demonstrating that each of the specified caravans had been occupied in breach of condition 1 of permission **L/6/81/TP**.

3.19 This subsequent submission provides additional evidence that further units have been used in breach with the extant planning permission. Individual units that have been used all year round for at least the last ten years in breach of condition 1 of extant permission **L/8/81/TP** 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 by virtue of the passage of time and the requested certificate should be issued. This will be evidenced and discussed in the next section of this statement.

Site Licence

3.20 In December 2008, a Site Licence no. ADC/1/2008 (**Appendix II**) 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 The application is submitted for a Certificate of Lawfulness for an Existing Use of land pursuant to Section 191 of the Town and Country Planning Act 1990 for the following description of development:

Certificate Description: Use of land as a caravan site for 12 months of the year in breach of the extant permission reference L/6/81/TP

Certificate Land: Land at caravan pitch nos. 1, 32, 34, 37, and 38 (the 'specified caravans') at Eastern Sands Caravan Park, 100 Brighton Road, Lancing, BN15 8LW, edged in red on the site location plan (drawing reference: Site Location Plan 02C400402 Rev B).

4.2 The accompanying Site Location Plan (drawing reference: Site Location Plan 02C400402 Rev B) (extract shown at **Figure 4.1**), distinguishes the application site. The Site is thus characterised by five units, where individual red line boundaries around each unit number identifies for which, the Certificate relates. The unit numbers are: 1, 32, 34, 37 and 38.

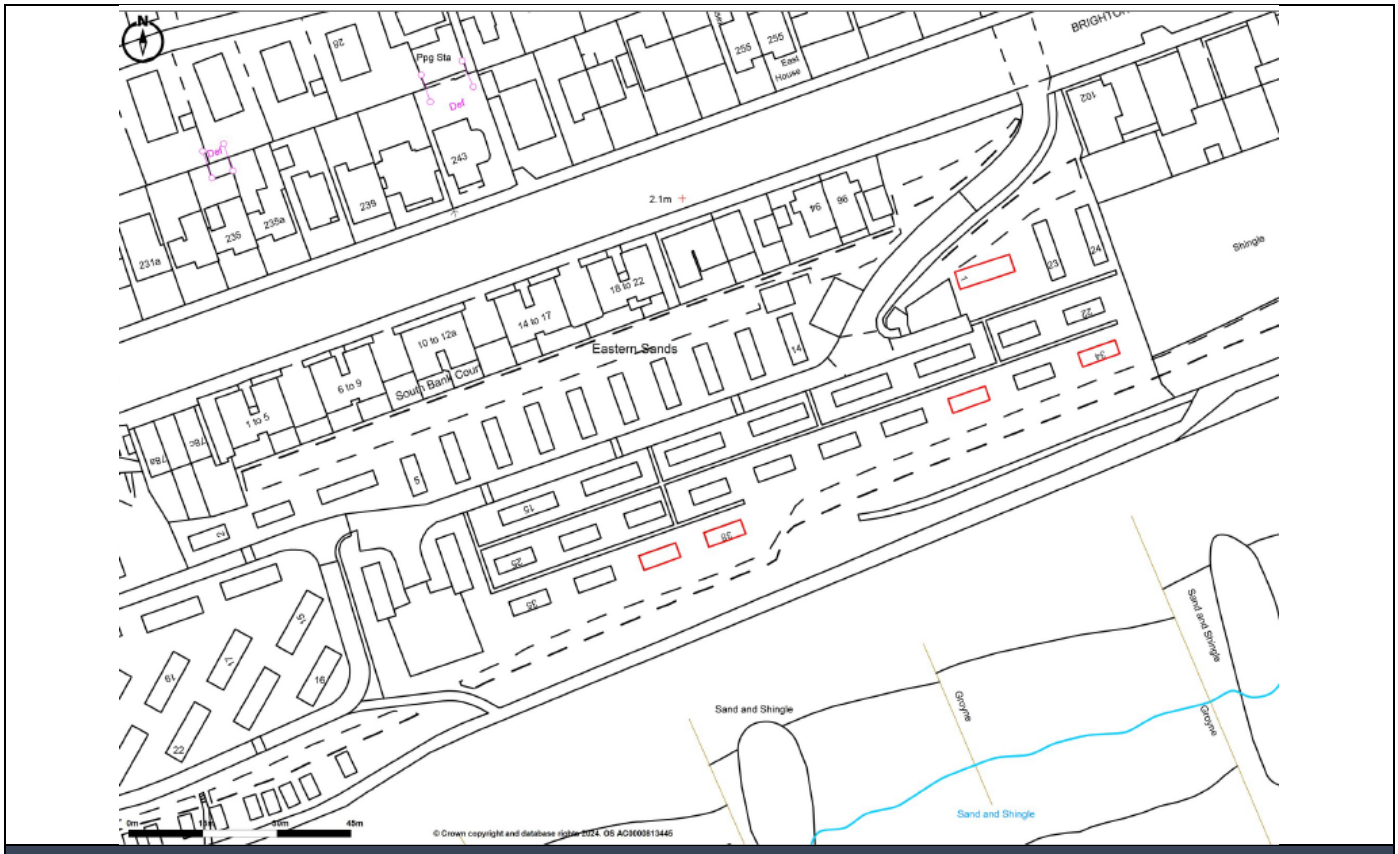

Figure 4.1: Extract of submitted site location plan

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 Section 191(1) of the Act permits that, if any person wishes to ascertain whether any existing use of any buildings or other land would be lawful, they may make an application to the local planning authority specifying the land and describing the use in question.

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

- The time for taking enforcement action has expired; and
- It does not constitute a contravention of the requirements of any enforcement notice or breach of condition notice then in force.

5.3 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.

5.4 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.

5.5 The onus and burden of proof for an operation or use falls on the applicant. It is for the applicant to establish that the development proposed would not, on the date of submission, require planning permission or is immune from enforcement action. The relevant test being that such development is lawful on the balance of probability, which dictates that, if on judgement of evidence provided, an operation or use is more likely than not, a Certificate should be issued. Evidence provided should be sufficiently precise, robust, and unambiguous to demonstrate that the development is more likely than not be lawful.

5.6 Planning law has established (through the case of *FW Gabbitas v SSE and Newham LBC [1985] JPL 530*) that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the planning authority does not hold evidence of their own to contradict or otherwise make the applicant's version of events less probable, there is no reason not to issue a Certificate.

5.7 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.

5.8 Section 191(4) of the Act continues to state that if the local planning authority are provided with sufficient information that satisfies them that the use of operations as described in the application would be lawful if instituted or begun at the time of the application, they shall issue a Certificate to that effect; and in any other case they shall refuse the application.

[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 residentially 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 III – XII**.

6.2 The appendices provide month-by-month evidence (for the months restricted by the extant planning permission) to demonstrate that each of the specified caravans have been occupied in breach of condition 1 of permission **L/6/81/TP** for a period in excess of 10 years. The evidence has been organised and presented for each one of the specified caravans, in separate appendices. Before each appendix, a table is provided that lists the information that will follow for each 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 following appendices in a clear chronological sequence.

6.3 In demonstrating use of each caravan, evidence of great weight such as contemporaneous 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.. The payments relate to the months January, February, November and December of each year which are the months that the use of the caravans operate 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 Further to the above and to summarise the period for which evidence has been presented for each unit the following summary table (**Table 6.1**) has been prepared.

Caravan No	Period Covered (inclusive)
1	December 2013 – March 2024
32	November 2013 – Feb 2024
34	November 2012 – March 2024
37	October 2013 – March 2024
38	November 2012 – March 2024

Table 6.1 – Summary of the evidence periods covered for each caravan pitch.

6.5 The **Appendices III – XII** have been created and the evidence is presented in such a way to demonstrate the breach of condition beyond any doubt. The following overview is presented 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:

Caravan no. 1

6.6 **Appendix III** provides the evidence list that details the submitted evidence and dates for pitch no.1. The actual evidence is then provided in **Appendix IV**, which shows that caravan no. 1 has been used during the months outside the lawful planning permission continuously since December 2013 to the present day – a period exceeding 10 years. A Licence Agreement for a Caravan Holiday Home signed 12 September 2013 confirms annual pitch fees, and evidence in the form of bank slips, bank statements and notebook entries dating from December 2013 confirms regular payments from the caravan occupier to Thomas Cooper up to March 2024. This demonstrates that caravan no. 1 has been in use and in breach of condition 1 of permission ref: **L/6/81/TP** for a continuous period of at least ten years.

Caravan no. 32

6.7 **Appendix V** provides the evidence list that details the submitted evidence and dates for pitch no.32. The actual evidence is then provided in **Appendix VI**, which shows that caravan no. 32 has been used during the months outside the lawful planning permission continuously since November 2013 to Feb 2024 – a period exceeding 10 years. A Short-Term Holiday Agreement dated 30 November 2013 confirms intent of occupation for 3 months (30 November 2013 – 2 March 2014). Evidence in the form of bank slips, bank statements and notebook entries dating from January 2014 confirms regular occupation actually occurred up to February 2024, whereby the tenant moved out due to outstanding rent payments. This demonstrates that caravan pitch no. 32 has been in use in breach of condition 1 of permission ref: **L/6/81/TP** for a continuous period of at least ten years.

Caravan no. 34

6.8 **Appendix VII** provides the evidence list that details the submitted evidence and dates for pitch no.34. The actual evidence is then provided in **Appendix VIII**, which shows that caravan no. 34 has been used during the months outside the lawful planning permission continuously since November 2012 to the present day – a period exceeding 10 years. Evidence in the form of bank slips, bank statements and notebook entries dating from November 2012 confirms regular payments from the occupier up to March 2024. This demonstrates that caravan pitch no. 34 has been in use in breach of condition 1 of planning permission ref: **L/6/81/TP** for a continuous period of at least ten years.

Caravan no. 37

6.9 **Appendix IX** provides the evidence list that details the submitted evidence and dates for pitch no.37. The actual evidence is then provided in **Appendix X**, which shows that caravan no. 37 has been used during the months outside the lawful planning permission continuously since October 2013 to the present day – a period exceeding 10 years. A notebook entry dated 4 October 2013 indicates the occupier moved in on 4 October 2013, and regular payments are confirmed since then up to March 2024. As explained in the Statutory Declaration signed by the applicant – Mr. Tom Cooper – at **Appendix XIII**, some evidence there are some gaps in evidence due to repair works or tenants missing payments for specific months. The statutory declaration is attached strong evidential weight that reinforces Caravan 37 has been continuously occupied since October 2013. Overall, it is considered that caravan no. 37 has been in use in breach of condition 1 of permission ref: **L/6/81/TP** for a continuous period of at least ten years.

Caravan no. 38

6.10 **Appendix XI** provides the evidence list that details the submitted evidence and dates for pitch no.38. The actual evidence is then provided in **Appendix XII**, which shows that caravan no. 38 has been used during the months outside the lawful planning permission continuously since November 2012 to the present day – a period exceeding 10 years. The evidence commences with a bank slip confirming payment relating to the unit in November 2012. A mixture of bank slips, bank statements and notebook entries are then presented to establish the continuous use of the unit until February 2024. Thus, it is considered that caravan no. 38 has been in use in breach of condition 1 of permission ref: **L/6/81/TP** for a continuous period of at least ten years.

7. Interpretation

7.1 The evidence submitted, as presented in section 6 and the accompanying appendices, demonstrates that the caravan pitches nos. 1, 32, 34, 37, and 38 have been used for continuous residential occupation during the months January, February, November and December, which is in direct breach of condition 1 of permission **L/6/81/TP**. This use has been continuous for a period of at least 10 years.

7.2 There are occasions when the 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 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**, the material feature is whether the caravans were occupied between the months of November and February for more than 30 days 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, the continued breach of condition 1 would be lawful.

7.4 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 that for certain caravans, there is clear evidence that confirms they have been used in breach of condition 1 for more than ten years and are therefore immune from enforcement.

7.5 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.

Appendix I

Decision notice ref: AWDM/0264/22

Appendix II

Site Licence no. ADC/1/2008

Appendix III

Evidence List for Caravan No. 1

Appendix IV

Evidence for Caravan No. 1 - CONFIDENTIAL

Appendix V

Evidence List for Caravan No. 32

Appendix VI

Evidence for Caravan No. 32 - CONFIDENTIAL

Appendix VII

Evidence List for Caravan No. 34

Appendix VIII

Evidence for Caravan No. 34 - CONFIDENTIAL

Appendix IX

Evidence List for Caravan No. 37

Appendix X

Evidence for Caravan No. 37 - CONFIDENTIAL

Appendix XI

Evidence List for Caravan No. 38

Appendix XII

Evidence for Caravan No. 38 - CONFIDENTIAL

Appendix XIII

Statutory Declaration Signed by Mr. T. Cooper - CONFIDENTIAL

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