

DELEGATED ASSESSMENT

Application no: PA/2024/1181

Proposal: Application for a Lawful Development Certificate for confirmation that the site benefits from the 1991 Planning Permission Ref 7/113/1991 dated 3rd December 1991 for 'remove condition 2 of planning permission BA/3/72B and 7/RBT/16/80 to allow all year round residential use of the existing caravan site'

Location: Humber Bridge Country Hotel, Westfield Lakes, Barton Upon Humber, DN18 5RG

Applicant: Elegant Lifestyle Parks Limited

Officer: Jennifer Ashworth

LEGISLATION

An application for a Lawful Development Certificate for existing use or development under Section 191 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991) is not a 'planning application' in the normal sense. An assessment of the proposal against policies within the development plan and consideration of the 'planning merits' of the proposal are not relevant.

There are 3 types of lawful development certificate that may be applied for under section 191 and section 192 of the Town and Country Planning Act 1990 (as amended) and section 26H of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended):

- section 191 – whether an existing use of buildings, land, operational development or activity in breach of a planning condition is lawful
- section 192 – whether a proposed use of buildings, land or operations intended to be carried out would be lawful
- section 26H – whether proposed works for the alteration or extension of a listed building would be lawful

Section 191(1) 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 would be 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 or operations in question.

Section 191 (4) of the Act requires local planning authorities to issue a certificate where they are satisfied of the lawfulness at the time of the application of the use described in the application.

Section 171 (B) of the Act has the effect that where there has been a breach of planning control consisting of a change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Section 55(1) of the Act clarifies that the meaning of development includes the making of any material change in the use of any buildings or other land.

The advice in the Planning Practice Guidance on lawful development certificates, based loosely on [*F W Gabbitas v Secretary of State for the Environment and Newham LBC [1985]*]

JPL 630], makes it clear that the onus of proving the lawfulness of an existing use rests with the applicant. The relevant legal test of the evidence is 'on the balance of probability'. An applicant's own evidence does not need to be corroborated by independent evidence to be accepted. Where the Council has no evidence of its own, or from others, to contradict or make less than probable the applicant's version of events, there is no good reason to refuse the application provided that the applicant's evidence is sufficiently precise and unambiguous to pass the 'balance of probability' test.

In considering the evidence, the relevant test to be applied in this case is whether, on the balance of probability, the use of the land to which the application relates still benefits from the 1991 planning permission and that this use therefore remains lawful.

The application falls to be considered against the Town and Country Planning Act 1990 (as amended) and The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). Regard is also had to The Town and Country Planning (General Permitted Development) Order 2015 (as amended) and relevant case law in this respect.

The National Planning Policy Framework (NPPF) is silent on Section 191 applications however there is guidance contained within the Planning Practice Guidance (PPG).

CONSULTATIONS

There is no statutory requirement to consult on applications under Section 191 of the Act.

PUBLICITY – Publicity is not required as the application forms a Lawful Development Certificate and the matter in question is one of lawfulness versus policy assessment.

This application has been advertised via the weekly list on the council's website.

The Lincolnshire Wildlife Trust have registered a formal objection. This relates to the redevelopment of the site with regards to ecological impacts and disturbance concerns, in addition to the lack of a Habitat Regulations Assessment for the Humber Estuary and its multiple conservation designations. The Wildlife Trust goes on to confirm that the Eastern Field has been used for alternative commercial operations for a prolonged period, and that several of the applicants' assertions over site usage is incorrect. Evidence is presented in relation to the commercial publishing business. The Trust's interpretation is that the final 2 remaining residential static caravans were last photographed onsite on the 31st December 2003 adjacent to the lake on the Southern boundary of the Eastern field. Subsequent imagery from 2007 – 2022 confirms their removal. The Trust is of the opinion that these white modular buildings were likely additional commercial space and were not independent residential caravans as asserted by the applicant.

PLANNING HISTORY

There is a wide-ranging and lengthy planning history for the application site and the wider site including the former Reeds Hotel, the most relevant of which is considered to be as follows:

Application No.	Proposal	Outcome
BA/3/72/B	7 residential chalets and siting of 76 caravans for 5 years	Permitted
7/RBT/16/80	Permission to retain an existing caravan site without complying with condition 2 on planning permission 7/87/76	
7/1975/0770	Change the use of land to a site for 154 no holiday caravans and to erect 3 no toilet blocks.	Permitted
7/87/76	Renewal of BA/3/72/B for 3 years	Permitted

7/1976/0087	The renewal of planning permission BA/3/72/b relating to the erection of 7 residential chalets and the siting of 76 caravans for a temporary period.	Permitted
7/828/76	Renewal of Planning Permission BA/81/73 in respect of the erection of 5 chalets	Permitted
7/71/79	Renewal of 7/87/76	Permitted
BA/156/72	Erect chalets and construct drainage to sewer	Permitted
7/1979/0071	The use of land for purposes of caravans and chalets without complying with condition no 2 on the permission dated 26th March 1976 reference no 7/87/76 relating to all year round occupation of the caravans and chalets for a further temporary period to the 31st March 1980	Permitted
7/1980/0051	Permanently occupy a residential caravan.	Permitted
7/1980/0052	Permanently occupy a residential caravan.	Permitted
7/1980/0053	Permanently occupy a residential caravan.	Permitted
7/1980/0054	Permanently occupy a residential caravan.	Permitted
7/1984/0089	Change of use of disused chalet to shop/snack bar.	Permitted
7/1987/0872	The retention of 5 mobile homes for residential purposes.	Permitted
7/1991/0113	Permission to remove condition 2 of planning permission BA/3/72B and 7/BT/16/80 to Allow all year-round residential use of the existing caravan site. (Site area includes the lakes)	Permitted
7/1993/0381	Retain the change of use of hotel annex to house in multiple occupation comprising 6 bedrooms with communal facilities.	Permitted
PA/1996/1621	Erect extension and carry out alterations to provide new restaurant and lounge annexes and refurbish bar lounge areas and w c s.	Permitted
PA/1997/0118	Erect a two-storey building of timber construction comprising of 18 bedrooms and 4 classrooms.	Permitted
PA/1998/0266	Planning permission to erect a classroom.	Permitted
PA/1998/0374	Planning permission to vary condition 3 of planning permission no. 7/387/95 to allow increased storage of caravans from ten to twenty.	Permitted
PA/1998/1287	Planning permission to retain a portacabin office, retain 6 lamp standards on a car park and retain low-level lights on a new access road.	Permitted
PA/1998/1288	Planning permission to retain a link between the lodge and the former cottages	Permitted
PA/1998/1490	Planning permission to erect a temporary marquee for a three-year period to be used as a function suite and a permanent, single-storey link building to provide ancillary toilet, bar, and storage facilities	Permitted
PA/1998/1491	Planning permission to erect a guest lodge for the Odyssey Foundation and associated car park	Permitted
PA/1999/0339	Planning permission to retain the siting of a portable office unit and retain an electricity generating station and to re-site a mobile home	Permitted
PA/1999/1175	Planning permission to retain an office block	Permitted
PA/1999/1098	Planning permission for a nursery	Permitted

PA/1999/1177	Planning permission to retain a temporary building to be used as a coffee lounge	Permitted
PA/1999/1184	Planning permission to continue to use dwellings as treatment rooms	Permitted
PA/1999/1197	Planning Permission to retain a steel container for the storage of chairs etc	Permitted
PA/1999/1199	Planning Permission to erect a bottle store/rest room and retain a link between the same and existing mar-quee	Permitted
PA/2000/0973	Planning permission to erect a hotel extension	Permitted
PA/2001/0213	Application for certificate of lawfulness for the proposed relocation of a marquee to be used as a function room	Refused
PA/2001/1029	Planning permission to re-site existing marquee and erect a toilet block to north elevation	Permitted
PA/2002/0356	Consent to retain a static internally illuminated sign	Permitted
PA/2003/0262	Planning permission for temporary siting of 4 no steel jack leg containers and erection of 3m high fence	Permitted
PA/2003/1628	Planning permission to erect a single-storey dining room and link corridors	Permitted
PA/2004/0481	Planning permission to remove condition 3 of 2003/1628 relating to the months when construction can take place	Permitted
PA/2006/1579	Consent to retain one static externally illuminated free-standing sign	Refused
PA/2007/0451	Consent to retain non-illuminated freestanding sign.	Refused
PA/2016/0029	Planning permission for new main entrance with associated internal works and car park works	Permitted
PA/2020/1618	Planning permission for replacement log cabin on existing concrete base	Permitted
PA/2021/813	Planning Permission to erect 19 lodges, new access road and associated hard standing	Withdrawn

ASSESSMENT

A lawful Development Certificate is being sought pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended) to establish the lawfulness of an existing use of a caravan site which allows all year-round residential use (7/113/91).

The Site

The application relates to parts of the former Humber Bridge Country Hotel (also previously known as Reeds Hotel) site at Westfield Lakes on the south bank of the Humber, to the west of the Humber Bridge. The wider site is accessed by a single-track driveway from Far Ings Road, passing between two of the local lakes which form part of the Far Ings Nature Reserve. A second access previously existed however this has now been regenerated and is understood to form part of the Nature Reserve.

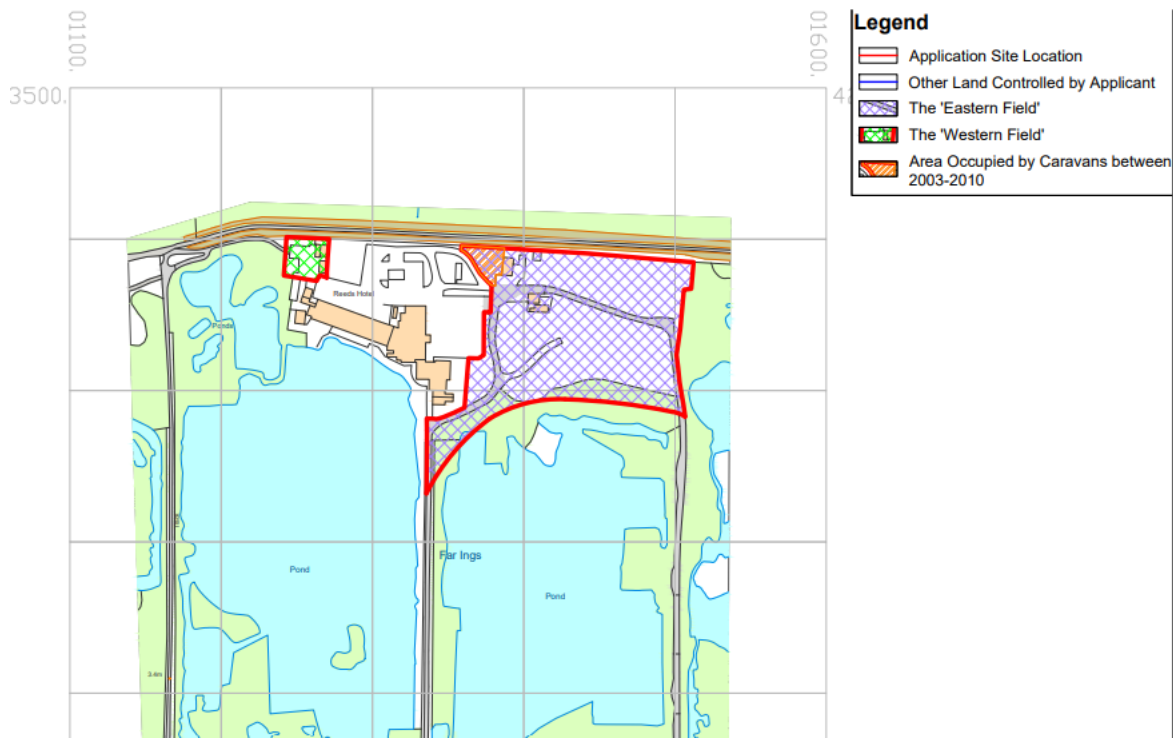
The wider site encompasses the remains of a hotel, badly damaged by fire, and areas of parking and landscaped grounds, albeit that these are not well kept given the state of the hotel. The grounds are punctuated by hardstandings, understood to have been created for the purpose of siting mobile homes/caravans. There is currently evidence of fly-tipping and piles of felled/burned trees across the site.

The application specifically relates to three discrete parcels of land (as shown on the supporting Site Location Plan). The largest of these is to the east of the hotel buildings and comprises largely open grassland with the main access passing through. This area is annotated on the location plan as the 'Eastern Field'. There are several hardstandings scattered across the

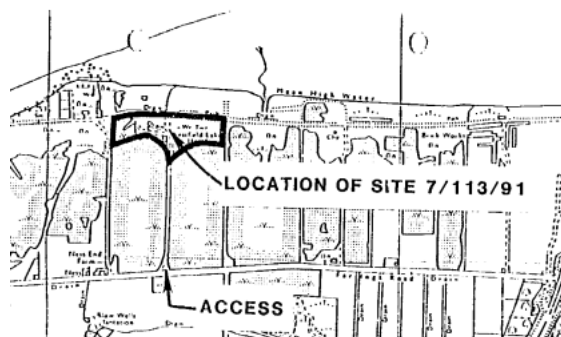
parcel. The fire damaged remains of a former office building and other waste material are present in this area.

The second parcel, an area hatched orange on the location plan, which is indicated to be an 'Area occupied by caravans between 2003-2010' ("the Orange Land"). This parcel formerly housed a 'chalet' building used as a publisher's office. This has now been destroyed by fire.

Finally, a third discrete parcel, referred to as the 'Western Field' is a small area of land in the northwest corner of the wider site. This parcel is largely surfaced with concrete hardstanding, with some areas starting to become overgrown, and houses the remains of fire-damaged structures and other waste material. This area is accessed through the main car park at the front of the former hotel. Extract of the plan is below:



The 7/113/1991 Planning Permission covers the whole site including the hotel and surrounding land, extract below:



The Development / Matters in Agreement

The application seeks a certificate of lawful existing use for confirmation that the site benefits from the 1991 Planning Permission Ref 7/113/1991 dated 3rd December 1991 for planning permission 'to remove condition 2 of planning permission BA/3/72B and 7/RET/16/80 to allow

all year round residential use of the existing caravan site' at Westfield Lakes, Far Ings Road, Barton-upon-Humber. This permission also re-established the lawfulness of the caravan site use, however with the removal of the condition to restrict year round use.

Notwithstanding the wording of the description on the decision notice, the 1991 permission was a new planning permission governing the site.

A letter from the Head of Planning in 2015 confirms that the 1991 permission was implemented. This is not disputed.

It is agreed between both parties (applicant and the LPA) that a separate planning unit was created on the orange land around 2004 as a publisher's office.

The Applicants Case

The Applicant's case is that the 1991 Permission was implemented; there has been no material change of use of the land subject of this application since the 1991 permission was granted; and for that reason, the 1991 permission continues to subsist on those parcels of land.

In support of the application, the Applicant relies upon the following:

- Supporting Statement by Laister Planning with various appendices.
- The presence of a Caravan Site License granted in 2000
- Counsel's Opinion regarding the planning history
- Information arising from an EIR request (and subsequent review)
- A statutory declaration made by Christopher Sedgwick
- A statutory declaration made by Michael John Lee
- Photographs from David Lee Photography
- Council tax records
- Various aerial photographs
- Information arising from a separate EIR request relating to the flooding of the hotel in 2013.
- Email confirmation from Ms Kitson (Guess in Wedding Photograph)

The Supporting Statement ('The Statement') states that the reason for the application being made is that the Council's letter dated 12th June 2023 which alleges "*The evidence shows that on the balance of probability after 2003, there was a material change in the use of the eastern area of the site in that it came to be used in association with the hotel as its garden/grounds and such use was inconsistent with the caravan use. As such the application for a site license was refused on the basis that the applicant had not yet demonstrated to the satisfaction of the Council that the site still has the benefit of the 1991 planning permission for use as a caravan site (as required by Section 3(3) of the Caravan Sites and Control of Development Act 1960).*

Counsel opinion was sought at the time by the council and the following points were raised:

- a) As the hotel uses expanded from around 1991, the area for caravan use became constrained largely to the east of the Site. There is no subsisting right to use other areas around the hotel and to the north and west for caravans because permissions for inconsistent uses were granted and implemented.
- b) The issue therefore remaining is only as to whether permission subsists for the part of the site to the east which is the area in which caravans are now proposed.
- c) As to that area, according to our records, all caravan use ceased by about 2003.
- d) The then owner indicated an intention to abandon the caravan use in the context of disputes about the licence required.

- e) The evidence appears to show that for a prolonged period from about 2003 to the flood in 2013, the eastern area was used as part of the hotel use and effectively became part of the hotel planning unit/curtilage.
- f) Aerial photographs and images of wedding uses on the eastern area (all available on public websites), along with maintenance of that area as part of the grounds of the hotel all indicate that there has been such a change of use. The fact the caravan hard standings were not removed does not demonstrate that the change of use had not occurred.

The supporting evidence confirms that the residential caravan site continued alongside the hotel in 1996. Council Tax records show at least 11no. caravans were permanently occupied for residential purposes in 1996. The final caravan subject to council tax stopped in 2010 with the final caravan being removed from site in 2016. The applicant argues that both the hotel use and the caravan use continued and relied on the same shared access and sewerage system.

The PPG makes clear that the applicant is responsible for providing sufficient information to support an application. The onus is on the applicant to demonstrate that the existing development is lawful for the purposes of development control/planning.

In this instance the information provided is confirmed in the supporting signed Statutory Declarations by Mr John Lee and Mr Christopher Sedgwick. The land has not been the subject of any enforcement action by the Local Planning Authority.

Assessment of Evidence

Whether a material change of use has occurred is a matter of fact and degree. An assessment of the lawfulness of a development and/or use must also be considered on the “balance of probability” based on the evidence provided. If the use has altered or ceased, there is no right to revert to the previous use absent an enforcement notice. The only relevance of 10 years is that, if that breach has subsisted for that period, it becomes lawful. Just because a use is not lawful does not mean that there has been no material change of use.

The questions to be asked in undertaking this assessment are:

1. Was the 1991 Permission Implemented in accordance with the permission?
2. What is the planning Unit?
3. Has a material change of use, whether lawful or not, taken place on the site?
4. On which part of the site does the permission subsist?
5. When / has the use ceased on the site?
6. Has the eastern or western part of site become consumed by the hotel use and as such the whole site is now within a single planning unit as a hotel?
7. Has the site been abandoned (and has the planning use been abandoned)?

Q1: Was the 1991 Permission Implemented?

A letter from the Head of Planning in 2015 confirms that the 1991 permission was implemented. There were no pre-commencement-style conditions attached to the 1991 Permission, as none of these prohibited some development that was authorised by the permission from taking place prior to the discharge of the conditions. As such, the permission could be implemented at any time. On the balance of probability, given the correspondence from the planning department at the time, it is accepted that the 1991 permission was implemented and the use/development established and lawful. This is not in dispute.

Q2: What is the Planning Unit?

The site comprised a mix of hotel and caravan uses. Evidence provided suggests that both the hotel use and the caravan site co-existed since 1970's if not before this time, as far back

as 1960's. The Council Tax evidence confirms since 1993, there has been at least some permanent residential occupation the site. There has been no enforcement cases linked to this site to suggest that the two uses could not co-exist together. In 2000, the Council granted a Caravan Site Licence, which evidences further that the two uses co-existed. Permission, Ref PA/2000/0973, for "to erect a hotel extension" supporting plans show the retention of at least eight caravan bases following the expansion of the hotel to incorporate the conference venue. This can be taken as evidence to show that the two uses co-existed at that time. At no time, as far as can be seen have any restrictions been in place to prevent the two uses co-existing on the site, nor to limit any of the uses. Based on this assessment it is considered that the 'site' comprised one planning unit that covered the eastern field, western field, the central (orange) parcel and the hotel and grounds.

Whilst there was a change in ownership there is no clear evidence to suggest the planning unit was physically separated to create separate planning units on the wider site.

In 1996, the title of the Site including the lakes was split into 3 areas but the Original Hotel Site, the Western Area and the Original Caravan Park appear to have remained in common ownership at first. It appears that the former owners ("the Blackhursts") sold the hotel to Mr Hazeldene at about this time and he was thereafter the applicant for most if not all of the relevant permissions. The rest of the land appears to have been sold to him later. Actual dates are unknown.

The evidence submitted suggests that the site continued to operate as a mixed use site for both a hotel and caravan site with the unlawful change of a lodge on site to a commercial use. It is accepted by both parties that the separate planning unit, a publisher's office, commenced on the Orange Land in around 2004. The change in use is material as the unit is no longer used for residential or holiday occupational purposes. A material change of use has occurred in relation to the Lodge itself by way of physical and functional separation to the wider site. It is therefore considered that if the CLEUD is allowed the lodge should be excluded from the Certificate Issued. It should be noted that the change of use of this single lodge to a commercial use would not prevent the rest of the site from operating as a residential caravan site under the 1991 permission.

There is evidence to suggest that two of the four remaining caravans on site, subject to council tax after 2003, were on the orange land and that these were occupied independently from the Lodge (publisher's office). In assessing the balance of probability there is no other evidence which indicates otherwise.

Whilst there are no longer any caravans on site, the bases are still in situ and the applicant confirms that they could be re-stationed and connected to the foul sewerage system on site.

Q3: Has a material change of use, whether lawful or not, taken place on the site?

Counsel Advice, received in March and May 2023, in respect of an application for a Caravan Site licence and understanding whether the site still has planning permission, suggests that aerial photographs and images of wedding uses on the eastern area (all available on public websites), along with maintenance of that area as part of the grounds of the hotel all indicate that there has been a change of use. The advice continues to note that the fact the caravan hard standings were not removed does not demonstrate that the change of use had not occurred.

The applicant has challenged the reference to aerial photographs and wedding uses on the eastern area. The applicant has confirmed that the photograph being referred to by counsel was not taken on the eastern field. In assessing the balance of probability, the photograph being referred to is likely to have been taken within the hotel grounds. The additional comparison of photographs and evidence provided by the applicant as well as email confirmation from one of the guests, who is within the wedding photograph referred to earlier, that the wedding photo was taken within the hotel grounds and not within the eastern field is sufficient to suggest it was not taken in the Eastern Field and that the eastern field was not

being used for weddings. No caravan bases are evident in any of the photographs provided and the relative position of the Humber Bridge as well as location of boundary treatments suggest that the photograph is not taken within the eastern field. On the balance of probability it is considered that photographic evidence demonstrates that wedding photography was taken within the grounds of the hotel and not the eastern field.

Whether using the caravan site grounds for wedding photographs constitutes a material change of use is a matter for discussion. Many locations across the country are used for wedding photographs by photographers. This on its own does not change the use of the land. Irrespective of this, the limited use of land for photographs does not on its own result in the permanent change in use of the land. The 1991 permission clearly shows a mixed-use planning unit. In considering the balance of probability in relation to wedding photographs taken at the site it is considered that it is highly likely the photos are taken within the hotel's immediate grounds and not within the eastern field as previously suggested.

It is considered that Counsel's advice (in relation to the Licensing application for the site) that the maintenance of the area as part of the wider grounds of the hotel indicate that there has been a change of use is unfounded. It is evident that the caravan site grounds have been maintained, this is not disputed, however, the level of maintenance amounts to the cutting of grass and keeping the site tidy. There are no known significant changes to the landscaping of the site that would point to the maintenance of the grounds relating to a change of use. For example not addition of seating, walkways or more ornamental planting has been introduced that might be expected in the landscaped grounds of a hotel.

There is no evidence to support claims made by previous officers or counsel that the grounds have been maintained as part of the hotel and not as part of the caravan / wider mixed use. The evidence presented by the applicant suggest that the grounds have been maintained throughout the life of the mixed-use planning unit being created. There is nothing to suggest that the grounds have been maintained solely for the hotel use nor have physical enclosures or paraphernalia been created which would show a physical or visual connection with the hotel or an extension to its grounds.

Apart from the change to Appletree Lodge, there are no other changes that can be identified in the aerial photographs or other evidence available. It is considered that any incidental use of the land by the occupants of Appletree Lodge or by the hotel (if indeed this did occur) appears to be de minimis; and did not alter the character of the use of the land.

Q4: Which part of the site does the permission subsist?

A material change of use has occurred in relation to the Appletree Lodge Chalet itself as use as a commercial business. It is clear then that the caravan site use no longer subsists on this parcel of land.

The wider uses however remain unchanged and the permission subsists within the remainder of the site. The use of the part of the site for the business does not impact on the ability of the remainder of the permission to be implemented (having regard to Hillside). As a result, there has been no change to the physical layout of the site that would prevent the rest of the permission being carried out in accordance with the approval and the two uses can coexist together on the site, as has occurred over the years.

Q5: When did the last residential caravan use cease on the site?

The evidence before me suggests the following:

- 1991 permission (allowing year-round residential use of up to 70 caravans/chalets/mobile homes) was implemented
- 17 no caravans registered for Council Tax in 1993

- Applicant confirms Council Tax records show at least 11 no caravans were permanently occupied for residential purposes in 1996.
- A caravan site licence was issued on 22nd August 2000 with reliance on the 1991 planning permission. It is not considered that, because the Council has issued a CSL, this automatically means that the 1991 Permission can be relied upon.
- 4 Caravans on site were residential occupied and subject to council tax after 2003. Evidence suggests two caravans were on the orange land (Eastern Field) and two were on the Western Field.
- The final caravan subject to Council Tax stopped in 2010
- Flood in 2013
- Pre-dating the caravan site uses, and continuing throughout the period of caravan activities, a large building on the site was in use as a hotel.
- An application for a new caravan site licence was made on 23rd August 2021 but has still not been determined.
- Fire in July 2023 - Appletree Lodge destroyed / Hotel badly damaged

Whilst there are no longer caravans on the site the infrastructure is still in place. The final residential caravan unit ceased in 2010 (council tax evidence). There is no evidence to suggest that an alternative use was taking place on the eastern or western field. On the balance of probability, the caravan element was dormant, but the infrastructure was still in place to site caravans in the future. The Council Tax evidence is useful in so far as it confirms the site was being used for its intended use for a period. Council Tax is a good indicator of evidence of year-round residential occupancy of a unit. The Council Tax evidence does confirm that the last residential caravan unit ceased on the site in 2010, however, this does not confirm that the 'planning use as a residential caravan site' ceased. The two are different.

The evidence also shows that there are the remains of a hotel which the applicant intends to rebuild following receipt of insurance monies.

Q6: Has the eastern or western part of site become consumed by the hotel use and as such is the whole site is now within a single planning unit as a hotel?

Based on the above assessment it is not considered that the eastern or western part of the site has been consumed by the hotel planning unit. It is considered that a mixed-use unit is present on the site. The infrastructure remains in place for the caravan element of the site. There is insufficient evidence to confirm that the eastern and western fields have been used continuously for 10 years by other activities / uses relating to the hotel use only or another use other than a caravan / mixed use site.

In relation to the western field supporting evidence confirms that there were storage buildings as well as two caravans on this land. On the balance of probability this land was being used as a single planning unit serving both the hotel use and the caravan use.

Aerial photographs confirm the location of storage buildings and caravans on the western field. Evidence in the form of council tax is provided which demonstrate that this site has also been used for caravans, as well as storage units for use by the hotel, thus confirming the mixed-use status of the whole site.

What the evidence does appear to show is that there is a connection between the hotel use and the caravan use which suggests that the site is one mixed use planning unit. The 1991 permission does not include the demolition of the hotel and that is clearly referenced as being in place on the supporting plans. It is, however, fair to say that the location of the caravans should be consistent with those approved layout plans unless otherwise agreed in writing by the Local Planning Authority.

The only area of land which has changed use, unlawfully, is Appletree Lodge which was destroyed in the fire in July 2023.

A Statutory declaration provided by David Lee confirms that during his time photographing the site he has not seen any hotel event activities formally or otherwise on the Eastern Field. Whilst the previous case officer sought to reference a single wedding photograph as being taken on the Eastern Field, this single photograph alone is not sufficient evidence to confirm that the Eastern Field had been consumed by the hotel use. The applicant has since provided evidence to demonstrate that this particular photograph was indeed taken within the grounds close to the hotel, behind the conference centre and this has been confirmed in writing by a member of that wedding party. Taking account of the evidence provided the balance of probability is that the wedding photography was taken within the grounds closest to the hotel and not within the eastern field. Notwithstanding this, a single photograph, if it had been taken within the eastern field, would not amount to a material change of use.

As discussed above the maintenance of the area as part of the wider grounds of the hotel was suggested to indicate that there has been a change of use. However, in assessing the evidence this matter is not evidenced and remains unfounded. The evidence presented by the applicant suggest that the grounds have been maintained throughout the life of the mixed-use planning unit being created. There is nothing to suggest that the grounds have been maintained solely for the hotel use nor have physical enclosures or paraphernalia been created which would show a physical or visual connection with the hotel or an extension to its grounds. It is accepted that the hotel element of the wider mixed use would require the surrounding landscape to be maintained and tidy, but there is no evidence to suggest that this maintenance was for the hotel guests to use the land as part of the hotel use. This being said, there is clearly a close relationship between the two uses and there is no reason there can not be interaction between the hotel use and the caravan use, however, the maintenance / landscaping of land on its own does not confirm a change in use in planning terms. The infrastructure of the caravan site still remains in place.

There is little further evidence to suggest that the eastern or western field had been changed use to a 'hotel' use in planning terms.

Q7: Has the site been abandoned?

The matter of abandonment is one which has been considered many times within the Courts. It relies heavily on the facts and the Courts have established 4 key factors for determining abandonment: the physical condition of any buildings; the period of non-use; whether there has been any other intervening uses; and the owner's intentions.

Also relevant to consider in such cases is whether the land/property is capable of accommodating its former use. In this case, given the remaining infrastructure on the site, this would be the case in this instance.

The fact that the previous use was lawful (as established above) is relevant given that an unlawful use could not be lawfully resumed. It is also relevant that the applicants have not sought to investigate alternative uses, and that the intention(s) of the landowner remains to reinstate the former lawful use.

For the purposes of this assessment it is not considered, on the balance of probability, that the site has been abandoned. The applicant is clear that the access, foul sewerage and foundation pads on which to site the caravans are still in place. It must be noted that the Statutory Declaration provided by Christopher Sedgewick does not confirm when the drainage system referred to was constructed but it does indicate that there is an existing drainage system on site and that this system remains broadly intact and subject to some maintenance and repair work can be restored to fully functioning system. Planning Application BA/156/72 for the erection of chalets and construct drainage to sewer was granted permission in 1972. This suggests the date when the infrastructure was first connected to the foul sewer for the caravan use on the site.


The grounds are also regularly maintained. Whilst it is clear there are currently no caravans or mobile homes on the site, the infrastructure remains on site and the applicant seeks to

continue this use. On balance of probability the caravan site has not been consumed by the hotel element of the wider mixed use. As with any mixed-use site there will be an element of overlap. The general character of the site has not altered. The definable character remains, whilst caravans have been moved off the site the general character of the caravan site and infrastructure remains. It is understood in case law that a second primary use in a mixed-use site may be restarted so long as it was not absorbed to the extent of exclusion by the remaining primary use. It is not considered that a material change of use has occurred on the caravan area of the site (other than the single Lodge to a commercial use).

It is clear that the applicant has intentions to restore the hotel following the recent fire and are waiting for insurance matters to be resolved. No other use has taken place on the hotel part of the site.

Conclusion

It is considered that with the evidence provided it is sufficient to demonstrate that the site benefits from the 1991 Planning Permission Ref 7/113/1991 dated 3rd December 1991 for 'remove condition 2 of planning permission BA/3/72B and 7/RBT/16/80 to allow all year round residential use of the existing caravan site'.

It is agreed by both parties that a material change of use has occurred in relation to Appletree Lodge itself by way of physical and functional separation to the wider site. It is therefore considered that if the CLEUD is allowed the lodge should be excluded from the Certificate Issued. 

A Certificate of Lawfulness is recommended to be granted by the Local Authority.

RECOMMENDATION: Grant Lawful Development Certificate.