

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 7 MARCH 2017

**PLANNING APPEAL DECISION
BARRY DOWNS HOLIDAY PARK, WEST COTSIDE, BARRY, CARNOUSTIE, DD7 7SA**

REPORT BY HEAD OF PLANNING AND PLACE

Abstract:

This report presents the findings of the Reporter appointed by the Scottish Ministers to determine the appeal against the refusal of Angus Council to grant a Certificate of Lawful Use for the existing use of land for temporary and permanent occupation of caravans and park homes at Barry Downs Holiday Park, West Cotside, Barry, Carnoustie, DD7 7SA for Shoreline Management Ltd. The Reporter has allowed the appeal and granted a Certificate of Lawful Use in the terms set out in Appendix 1.

1. RECOMMENDATION

It is recommended that the Committee notes the outcome of the above appeal.

2. INTRODUCTION

- 2.1 On 12 August 2016 Angus Council refused to issue a Certificate of Lawfulness for the Existing Use of Land for Temporary and Permanent Occupation of Caravans and Park Homes (application reference 16/00428/CLU).
- 2.2 The applicant, Shoreline Management Ltd appealed against the refusal and the Reporter's conclusions and decision are presented below.

3. REPORTER'S DECISION

Reasoning

- 3.1 This application for a certificate of lawful use under section 150(1) of the Act has been submitted on the basis that the use has existed at the site since at least 7 June 2006, and is thus now immune to enforcement action.
- 3.2 My site visit confirmed that the current use of the site is for park homes. These are essentially large caravans which are delivered to site in two parts which are then joined together, but which retain chassis and wheels (albeit concealed by brickwork or cladding) such that they would be capable of being moved at a future date. Previously, up to about 2012, the site (or part of the site) was occupied by 'huts' some of which dated back to the 1930s and some of which appear to have shared the characteristics of park homes.
- 3.3 The determining issues in this appeal are whether the present use is materially different from the previous use; whether the use continued without interruption for at least 10 years up to 7 June 2016; and the boundaries of the land over which the continuous use occurred. An appeal for the same site was considered in 2015 (CLUD-120-2001) but was dismissed because the reporter considered that a material change of use had occurred within the 10 years before the application date. In that case, the appellant sought a certificate for residential use of the land within Class 9 consisting of huts and park homes occupied on either (1) a temporary basis for holiday and leisure purposes or (2) a permanent basis as a principal or primary or sole residence by individuals and their families.
- 3.4 The evidence put forward in support of the current application consists of a series of affidavits and photographs, together with invoices relating to the delivery of park homes and the disposal of the former huts. There are two sets of affidavits: one set dating from 2014 which

formed part of the evidence for the previous appeal, and a second set dating from 2016. Key points in the 2014 affidavits are:

- The land was in continuous use for huts, and latterly park homes, for at least 46 years up to 2014;
- Hutterers occupied the huts all year round;
- New park homes were delivered to the site before all the huts were vacated;
- During the demolition of the huts, the new park homes were brought onto the site
- and placed in their current locations;
- During the period 1994-2007 the huts were used for full-time residential occupation;
- There had been no break in residential use of the site from 2007 to 2014.

- 3.5 The 2016 affidavits concern the nature of the huts and details of their construction that were revealed as demolition took place. They state that a substantial proportion (variously estimated as about half, at least half, and up to 85 per cent) of the 'huts' were formed around caravans that still had their chassis and wheels in place, with wooden cladding (and in some cases extensions) around the outside. Other huts were of wooden construction throughout, and did not have wheels. However, it is argued that many, probably a majority, of the 'huts' shared the essential characteristics of park homes in retaining a chassis and wheels, with external cladding, thus establishing a mixed residential/caravan site use, and that their replacement by modern park homes did not involve a material change of use.
- 3.6 The reason given by the council for the refusal of the application for the certificate is that the evidence available to the planning authority does not demonstrate that the use of the land to which the application relates is lawful. The council, while accepting that some of the former huts were based on caravans, points out that others were not. There was therefore a mixed use. Evidence from site visits and photographs shows that the former structures had a degree of permanence beyond that associated with a caravan. Since 2012, with the introduction of park homes, there has been an increase in density, a loss of previously undeveloped areas and a marked change in the appearance of the site, which now looks like a residential caravan site. In the council's view, there has been a material change of use.
- 3.7 Circular 10/2009 (Planning Enforcement), Annex F, states that the relevant test of the evidence is 'the balance of probability', and that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the planning authority has no evidence to contradict or otherwise make the applicant's version of events less than probable, this is not in itself a valid reason to refuse the application. I accept the appellant's evidence contained in the affidavits which show a continuous use of land for purposes including residential caravans going back before 7 June 2006. It appears to me, on the balance of probabilities, that half or more of the former 'huts' were in fact caravans, in that they retained a chassis and wheels and would, subject to removal of cladding and possibly the fitting of new wheels, have been capable of being moved. In that, it appears to me that they shared the essential characteristics of park homes.
- 3.8 I further accept that occupation of at least some of the huts continued up to 2012 when they were progressively replaced by park homes. It is clear, from the photographic evidence and from my site visit, that the character of the site has changed between 2011 and the present time. Some of the park homes (whose status as caravans I accept, in line with the reporter's finding in CLUD-120-2001) have replaced huts which were not caravans, and there appear to be more park homes on the site than there were huts, with the grassed central area having been lost. However, I consider that the use of the land was at least partly, and continues to be, for occupation of caravans and park homes, and that the replacement of huts and intensification of use have not been such as to have amounted to a material change. The council has not put forward evidence that would persuade me to the contrary.
- 3.9 The use must also have continued without interruption during the 10 year period up to the date of the application. The appellant's evidence shows that during 2012, when the changeover to park homes took place, the progressive replacement of the huts (half or more of which were caravans) took place without an interruption in the use of the land. I therefore conclude that, on the balance of probability, the use commenced more than 10 years before the date of the application for the certificate, and has continued since then, without abandonment.
- 3.10 Turning to the boundaries of the planning unit to which the certificate should apply, the appellant has put forward the area cross-hatched in blue on the plan attached to this decision

notice. However, I do not consider that the evidence supports the continuous use of this whole area for occupation of caravans and park homes between 2006 and 2016. The 2007 aerial photograph supplied by the council shows the area occupied by the former huts. This corresponds closely to the Ordnance Survey base of the location plan, where small rectangles indicate the structures on the site. I do not consider that the situation would have changed significantly between June 2006 and the date of the 2007 photograph. The area that was in use for huts (some of which were caravans, though it is not possible to distinguish these) was therefore smaller than the whole site applied for, and was located in the central part and towards the northern boundary.

- 3.11 The 2007 photograph shows a green area between the northern line of huts and the central and southern rows. This appears to have been amenity space closely associated with the huts and used by the residents. However, I have not seen evidence that would lead me to conclude that the grassed areas to the east and west of the area occupied by huts, or the partly treed area to the south, were used in this way other than on an occasional and informal basis. Even if they were used as recreational areas by the residents, their lawful use would be for communal recreation and so they cannot form part of the planning unit on which occupation by park homes would be lawful. The photograph also shows some caravans parked very close together to the south-west of the huts, and some others at the western boundary. I consider it likely that these were temporarily stored at these locations, and that they were not occupied. A 2009 aerial photograph shows similar caravans stored in different positions.
- 3.12 I therefore conclude that the area over which the uninterrupted use of land for occupation of caravans and park homes took place is that shown coloured green in the attached plan. Its northern limit is the site boundary, while to the east there is a clear line dividing it from the grassed area, and to the west a track shown on the plan which formed the western limit of the hutted development. While it is possible to discern on the 2007 photograph a track running along the southern edge of the group of huts, which would have been the natural boundary, it is not clearly shown on the location plan where there is a 'wiggly line'. However, measurements from the photograph (and from the later aerial photograph taken in 2009) show that it ran parallel to the line of huts approximately three-quarters of the way down from the northern to the southern boundaries of the application site. I have therefore drawn the southern boundary of the approved area in this position.
- 3.13 I note that the land, though partly or wholly occupied by caravans, has not benefitted from a caravan site licence. It is therefore arguable that its use for that purpose has not been lawful in the wider sense of the word. However, in determining this appeal I must apply the narrower definition of lawfulness provided in section 150(2) of the Act. I consider that the use applied for is lawful for the purposes of the Act. I also note the appellant's request that if I am minded to grant a certificate for a modified or substituted description, or for part only of the site, I should afford the opportunity to comment on the proposed certificate. I am not obliged to do so, and do not consider that it would serve a useful purpose or lead to a different conclusion since the extent of the land in continuous use appears to me, from photographic evidence, to be clear-cut.
- 3.14 Section 154(3) (a) of the Act requires a certificate to be issued on appeal if the appeal decision maker is satisfied that the authority's reason for refusal is not well-founded. In this case, I have concluded that the evidence shows that on the balance of probabilities, there has been uninterrupted use of the specified part of the site for caravans and park homes for at least 10 years before the application date. Accordingly I find that the authority's reason for refusal is not well-founded, and therefore conclude that a certificate should be granted.

4. DISCUSSION

- 4.1 The terms of the Certificate that has been granted allow part of the site to be used for the temporary and permanent occupation of caravans and park homes. The appellant has a period of 6-weeks in which to challenge that decision.
- 4.2 An area of land that has not been granted a Certificate of Lawful use is currently being used for the siting of caravans and it is understood that a number of those caravans are occupied. That use does not benefit from planning permission and, on the basis of the Reporters decision, does not appear to be lawful.

- 4.3 The continued use of that area of land for the siting of caravans is a breach of planning control but as indicated above the appellant has a period of 6-weeks to challenge the Reporters decision. A further report will be brought back to Committee in relation to this matter once the period for legal challenge has expired and the appellants intentions are known.

5. FINANCIAL IMPLICATIONS

There are no financial implications.

6. OTHER IMPLICATIONS

Risk

There are no risks associated with the recommendations contained in this report.

Human Rights Implications

There are no Human Rights implications.

Equalities Implications

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

**VIVIEN SMITH
HEAD OF PLANNING AND PLACE**

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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DATE: 22 FEBRUARY 2017

APPENDIX 1 : Certificate of Lawful Use

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 150 AND 151
The Town and Country Planning (Development Management Procedure)
(Scotland) Regulations 2008 Regulation 41(6)**

I hereby certify that on 7 June 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured green on the plan attached to this certificate was lawful within the meaning of section 150 of the Town and Country Planning (Scotland) Act 1997, for the following reason:

On the available evidence and the balance of probabilities, the specified area has been in uninterrupted use for occupation of caravans and park homes for at least 10 years prior to the date of application for a certificate.

MICHAEL J P CUNLIFFE
Reporter
Date: 7 February 2017

First Schedule

The use of the land for temporary and permanent occupation of caravans and park homes.

Second Schedule

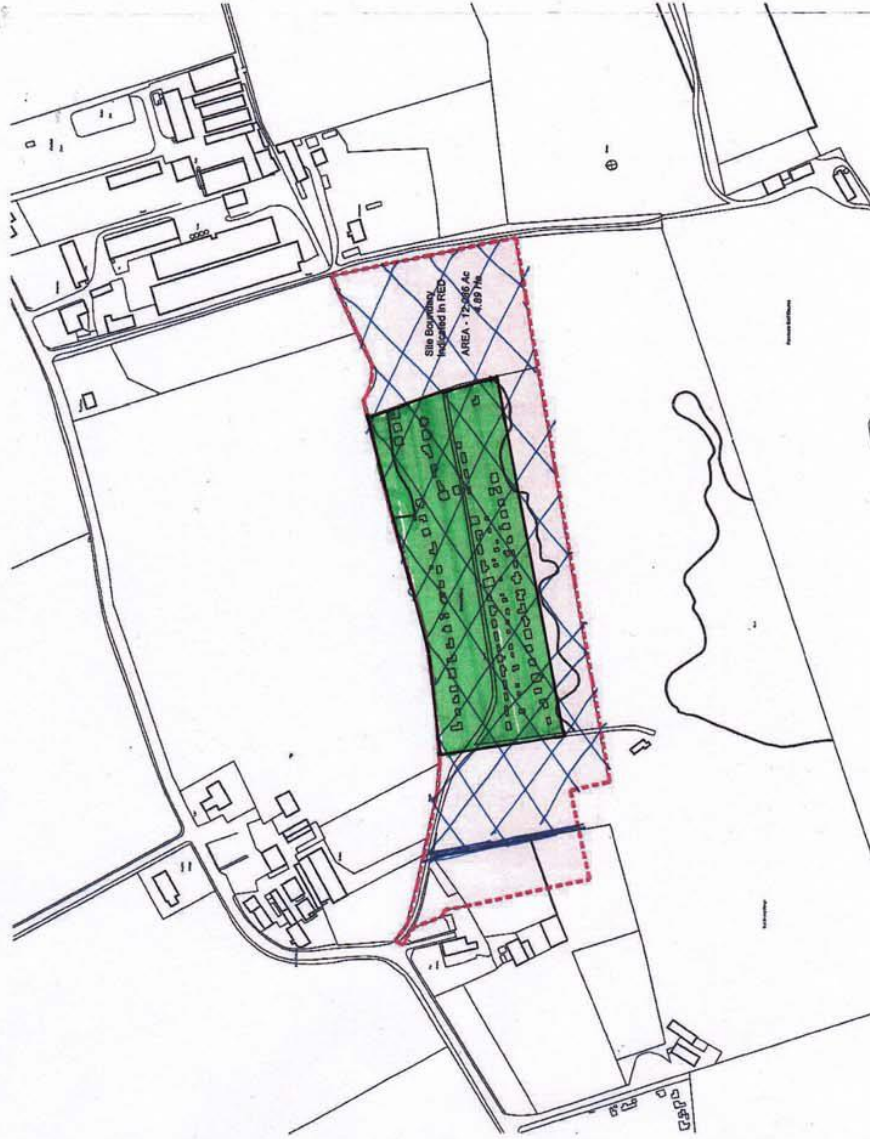
The area of land at Barry Downs Holiday Park, West Cotside, Barry, Carnoustie, DD7 7SA shown edged in black and coloured green on the plan attached to this certificate.

Notes

1. This certificate is issued solely for the purpose of section 150 of the Town and Country Planning (Scotland) Act 1997.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the specified date and, thus, was not liable to enforcement action under section 127 of the 1997 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 151(4) of the 1997 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

Barry Downs, Carnoustie, Angus

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Location Plan