



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2025

Appeal Ref: APP/D0840/X/25/3368749

Kennack Sands Holiday Park, Kennack Sands, Kuggar, Ruan Minor, HELSTON, TR12 7LT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Shaun Matthews against the decision of Cornwall Council.
 - The application ref PA23/04271, dated 23 May 2023, was refused by notice dated 30 November 2023.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 (as amended).
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the use of land for the siting of 55 static caravans in breach of conditions 1 and 6 of application number W2/51/02936/F.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

Application for costs

2. An application for costs has been made by the appellant against Cornwall Council. This is the subject of a separate decision.

Preliminary Matters

3. In an LDC appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities.
4. A site visit is unnecessary as the issues relate to legal matters.
5. The main issue is whether the Council's decision to determine the application for a description of a use not so described by the appellant was well-founded.
6. The application for the LDC was described as "The siting of 55 static caravans in breach of conditions 1 and 6 of application number W2/51/02936/F". After pressing the Council to issue the LDC, the Council unilaterally altered the description to "Certificate of Lawfulness for the existing use of the stationing of 55 static caravans with associated ancillary and incidental land for seasonal holiday purposes".
7. The appeal was originally due to follow the inquiry procedure rules but following a review of appeal documents, the Council conceded on certain matters such that the appeal can be determined through the written representations procedure. This concession related to the Council having amended the description of the application to include the wording "for seasonal holiday purposes only," which is now accepted as not being required.

The application

8. The application applied for relates to compliance with conditions 1 and 6 of planning permission reference W2/51/2936/F but the appeal was described by the appellant as being in respect of “the use of land as a caravan site without compliance with conditions 1, 2, 6 and 9 attached to planning permission reference W2/51/2936/F.” The appellant only became aware that conditions 2 and 9 had also been breached during the course of the application and anticipated that the Council would incorporate these. However including these additional breaches seeks to widen the scope beyond those aspects originally applied for and beyond those matters upon which the Council determined the application, despite the Council’s own change to the description.
9. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the requirements for the submission of an LDC application. Paragraph 5 of Planning Policy Guidance (Ref 17c-005-20140306) states that an application needs to describe precisely what is being applied for. Without sufficient or precise information, a local planning authority may be justified in refusing the certificate. It states that this does not preclude another application later if more information can be produced. I note also that the Council offered a free submission of a further application in an attempt to regularise the position but this approach was rejected by the appellant.
10. However, I can accept additional evidence which was not before the authority before its decision and treat it as a de novo appeal. The purpose of the LDC provisions are to enable an objective decision based on the best facts and evidence available when the decision is taken. Accordingly I am determining the appeal on the basis of the appellant’s description in the appeal application and not the description originally applied for and as referred to in the banner headline above.

The 1951 Planning Permission

11. Planning permission W2/51/2936/F for use of the appeal site as a caravan park was granted on 4 July 1951 subject to nine conditions which limit or restrict the permitted use and are summarised below:

Condition 1 requires caravans and tents to be removed from the site during the winter months, aside from the six that could be stored in a specific location, and the use as a camping ground to cease during those winter months.

Condition 2 requires the caravans that are on the land to be restricted to touring, trailer or motor caravans.

Condition 3 restricts the total number of tents and caravans to 55 at any one time.

Conditions 4 and 5 require a distance of 20 feet between caravans and tents, etc.

Condition 6 limits the number of caravans that could be stored in a specific area of the land during the winter months to six in total.

Condition 7 states that the distances in 4 and 5 do not apply to chemical closets

Condition 8 requires the site to be maintained in a tidy condition.

Condition 9 requires compliance with the approved layout plan.

The Site

12. The appeal site is a triangular area of land of 0.75 hectares. It contains 55 static caravans and associated ancillary development, a toilet block and a swimming pool.

The Certificate

13. On 30 November 2023, an LDC was issued for “ the existing use of the stationing of 55 static caravans with associated ancillary and incidental land for seasonal holiday purposes”. The reasons given were:
- i) The evidence is considered sufficiently precise to demonstrate that on the balance of probability and at the date of submission to the Council, the site has operated without compliance with condition 6 of W2/51/02936/F in excess of 10 years prior to the submission of this application and that this breach is immune from enforcement action, and
 - ii) The evidence is also considered sufficiently precise to demonstrate that, on the balance of probability and at the date of submission to the Council, the site has operated in partial breach of condition 1 of W2/51/02936/F in excess of 10 years prior to the submission of this application and that this partial breach is immune from enforcement action. This breach amounts to the stationing of static caravans on site outside of the specified period within the condition, insufficient evidence has been submitted to demonstrate that said caravans have been occupied outside of the period specified within condition 1 and as such this aspect of the condition still falls within the Council’s control.

Statement of Common Ground

14. The signed SoCG dated August 2025 states that “Aerial photographs and the 1960 caravan site licence, endorsed in 1990, demonstrate that the land has been used for a period in excess of 10 years as a caravan site: without the removal of the caravans in the winter months; the land has been continuously used as a caravan site throughout that requisite period; the caravans have all been static caravans; no storage of any touring (sic) has occurred in the defined area; and, the layout of the site does not accord with the approved plan.”
15. The SoCG indicates that the use of the land as a caravan site without compliance with conditions 1, 2, 6 and 9 is lawful (s191(2)) due to the immunity of those breaches of conditions from enforcement action (s171B(3)).

Reasons

16. The appellant has submitted additional evidence with the appeal including a number of statutory declarations, aerial photographs and a 1960 site licence endorsed in 1990. It appears that the consideration of this led the Council to review its position and concede that their unilateral change in the description was misguided, leading to their acceptance regarding the immunity from enforcement action of conditions 1, 2, 6 and 9.

17. It is insufficient to simply state that a condition has been breached for 10 years. It is necessary for the LDC to state to what extent it had been breached, so as to provide a baseline for considering any further changes that may occur¹.
18. In considering the evidence before me and in the SoCG, I conclude that conditions 1, 2, 6 and 9 have been breached continually for 10 years as follows:

Condition 1 – this condition has been breached in full.

Condition 2 –this condition restricts the site as a use for tents, touring caravans, campers and motor homes but it is evident that static caravans have been on the site for more than 10 years. Nevertheless the condition cannot be expunged completely as the immunity gained is merely the matter constituting a failure to comply with any condition, which becomes lawful. The condition remains in force but an additional right accrues relating to the use of the site for static caravans.

Condition 6 – this condition has been breached in full.

Condition 9 – this condition has been breached in full.

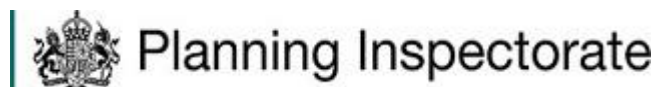
Conclusion

19. For the reasons given above, I conclude on the evidence now available, that the Council's refusal in part to grant a certificate of lawful use or development for the use of land for the stationing of 55 static caravans with associated ancillary and incidental land for seasonal holiday purposes is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

P N Jarratt

INSPECTOR

¹ Ocado Retail Ltd v Islington LBC [2021] EWHC 1509 Admin



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 May 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence is considered sufficiently precise to demonstrate on the balance of probability and at the date of submission to the Council, the site has operated without compliance with conditions 1, 6 and 9 of planning permission reference W2/51/02936/F dated 4 July 1951 in excess of 10 years prior to the submission of the application and these breaches of conditions are immune from enforcement action.

In respect of condition 4 of the above permission, static caravans have been stationed on the site in excess of 10 years prior to the submission of the application and are immune from enforcement action notwithstanding the limitations set out in clauses 1, 2 and 3 of that condition which have not been expunged.

Signed

P N Jarratt

Inspector

Date: 3 November 2025

Reference: APP/D0840/X/25/3368749

First Schedule

The use of land as a caravan site without compliance with conditions 1, 2, 6 and 9 attached to planning permission reference W2/51/2936/F.

Second Schedule

Land at Kennack Sands Holiday Park, HELSTON, TR12 7LT

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 3 November 2025

by P N Jarratt

Land at: Kennack Sands Holiday Park, HELSTON, TR12 7LT

Reference: APP/D0840/X/25/3368749

Scale: Not to Scale

