Directorate for Planning and Environmental Appeals

T: 01324 696400 F: 01324 696444
E: dpea@scotland.gsi.gov.uk

The Scottish Government

RECORDED DELIVERY

Alastair McKie
Anderson Strathern LLP
1 Rutland Court
Edinburgh
EH3 8EY

Your ref: AJMC\AJMC\WEL0046.2\MZM
Our ref: P/ENA/130/49
28 December 2007

Dear Sir,

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 130 AND SCHEDULE 4
ENFORCEMENT NOTICE APPEAL BY CRESSWELL ALAN WELCH: COWAL CARAVAN PARK, VICTORIA ROAD, HUNTERS QUAY, DUNOON, PA23 8JY

1. I refer to your client's appeal against the Enforcement Notice issued by Argyll and Bute Council (the Council) on 1 March, 2007, which alleges a breach of planning control, namely the carrying out of development without the benefit of express planning permission relative to an unauthorised re-development of a caravan site, known as Cowal Caravan Park, Victoria Road, Hunters Quay, Dunoon, PA23 8JY. I have been appointed to determine the appeal, and I held a public local inquiry in Dunoon on 30 October 2007, in the course of which I made an accompanied inspection of the appeal site and the surrounding area. I have now had the opportunity to consider all the evidence I heard and the submissions I received. I have decided to dismiss the appeal for the reasons contained in this letter.

2. The appeal site is located within a built up area within Hunters Quay. The site extends to 0.41ha or thereby and is bounded on two sides by Victoria Road, and on the remaining sides abuts residential properties. The site falls gently from west to east. When I visited the site a new internal road system had been constructed with appropriate lighting, and plinths laid for all the proposed vans. About half of the units installed appeared to be occupied and four remained to be installed. The surrounding area is entirely residential.

3. The Enforcement Notice requires the complete reinstatement of the caravan park to its former condition, that is to say prior to redevelopment works commencing on site within one month of the Notice's taking effect. The nature and description of the former condition are not further specified in any way within the Notice. The Notice was served only on Welchs Homes at 75 White Lund Road, Morecambe. It was however agreed at the opening of the inquiry that your client was the proper person upon whom the Notice should have been served, but that any misdescription relating to him as the landowner was of no consequence.

4. I should ignore the submissions in that regard. While at the site inspection a number of individual properties appeared to have had an independent interest created in them, none of such interests has been served with copies of the Notice.

5. The Council considered it expedient to issue the Notice having regard to the provisions of the development plan and other material considerations. The Notice bears the following two reasons for issue:-

> "(i) Development works on site are unauthorised. Without the submission of a planning application or full details of the proposed redevelopment including details of the structures to be erected on the site the planning authority is unable to make a full and proper assessment of this redevelopment.
>
> "(ii) The redevelopment of the caravan park is likely to have an adverse impact on the existing levels of amenity afforded to the neighbouring properties, particularly those located to the east and south of the caravan site. The properties at 41 and 43 George Street and 5 and 6 Cammesreinach Crescent are likely to suffer diminished levels of privacy through overlooking from structures to be pitched upon the raised concrete plinths within the eastern corner of the site. This is contrary to provisions of Cowal Local Plan 1993 policy POL COM 5 'Bad Neighbour Development' and Argyll and Bute Modified Finalised Draft Local Plan 2006 policies LP ENV 1 'Development Impact on the General Environment' and LP BAD 1 'Bad Neighbour Development'…" [which are then recited in full].

6. The appeal is made on grounds (a), (c), (f) and (g) contained in section 130(1) of the Town and Country Planning (Scotland) Act 1997. The primary ground of appeal is (c) that the matters alleged in the enforcement Notice do not constitute a breach of planning control because what has occurred is permitted development in terms of Class 17 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ("the GPDO"). If that argument is not accepted, the appeal falls to be considered under ground (a) that permission should be granted for what is alleged in the Notice, ground (f) that the steps required by the Notice are excessive and lesser steps would overcome the objections, and finally on ground (e) that the time for compliance is too short.

SUMMARY OF CASE FOR THE COUNCIL

7. The Council explains that it became aware that redevelopment had commenced some time about 15 June 2006. It recognises that in 1961 permission for the formation of a caravan site on the land to which the Notice relates was granted, and accepts that no conditions were attached relating to the numbers of pitches or the type of occupancy. Shortly before the works to which the Notice relates began, the site ownership changed.

8. With reference to the ground of appeal that the redevelopment is permitted development within Class 17 of the GDPO, the Council acknowledges that Class 17 affords to owners of caravan sites certain permitted development rights, but points out what is permitted must be within the terms and conditions of an associated caravan site licence. When the works about which the Notice is concerned took place, the appellant had not had transferred to him an appropriate site licence, and thus cannot claim the benefit of Class 17. The previous site licence (ref c/1/2004/A) was issued in 2004 to Ian Peter Barr and Fredericka Carlene Barr; it was a personal one; and it was not transferred within the meaning of section 10 of the Caravan Sites and Control of Development Act 1960 at the time when the works at issue were undertaken. No other site licence had been granted at the material time.

9. In any event, the Council also maintains that the works at issue go well beyond what a site licence would contemplate in requiring hardstanding for caravans etc. The Council considers that the appropriate test at the relevant time is whether what has been undertaken amounts to operational development within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997 and suggests that the regrading of the land, the formation of hard surfaces and the construction of retaining structures etc constitute operational development as so defined. The Council is not persuaded that the structures erected or yet to be erected on site fall within the definition of a caravan under section 13(1) of the Caravan Act 1968. It is the Council's view that the structures lack the essential ingredient of mobility because of the many permanent features including the retaining structures, the permanent fixture to the ground, the finish with base course brickwork and the connexions to main services. In this regard the Council makes reference to *Carter –v– the Secretary of State for the Environment* in support of the proposition that a structure which consisted of more than two prefabricated panels brought on site by a lorry, then bolted together and dragged onto a concrete base by a mechanical digger was not a caravan; and that in order to qualify as a caravan, the structure had to be designed for human habitation and capable of being moved by a single motor vehicle. In the Council's view, the structures at issue in this appeal cannot readily be moved without being dismantled.

10. The Council maintains that the structures that have been installed within the site are permanent buildings falling short of the requisite building regulations and served by an access road that falls substantially short of the adoptable standard. To meet the relevant regulations would require complete reconstruction of what is on site. Hence the requirements of the Notice are not considered excessive.

11. Planning permission should not be granted because, although neither in the adopted nor in the emerging local plan are there specific policies pertaining to the redevelopment of caravan sites, nonetheless the pitches 6 to 12 would overlook the neighbouring properties of 41 and 43 George Street and 1 to 7 Cammesreinach Crescent to an unacceptable degree, a concern which is amplified by the changes in ground levels involved.

12. With reference to the time for compliance, the Council suggests that if the structures are as moveable as the appellant suggests one month is sufficient to dismantle the site.

SUMMARY OF CASE FOR THE APPELLANT

13. On behalf of your clients, you state that the structures in question are caravans within the meaning of section 29 (1) of the Caravan Sites and Control of Development Act 1960 and section 13 (1) of the Caravan Sites Act 1968. You explain that they are twin-unit caravans. By virtue of the 1960 Act a caravan is "any structure designed or adapted for human habitation that is capable of being moved from one place to another". The 1968 Act deals with twin-unit caravans and provides that such structures shall not be treated as not being (or not having been) a caravan within the meaning thereof by reason only that they cannot lawfully be moved on a highway when assembled. You point out that the Council's evidence went no further than to suggest that transport of the units on the appeal site "would be difficult to achieve given the many permanent features these structures boast". In your view, difficulty is not the test and the Council in effect concedes the point by expressing it in the way quoted. You distinguish the *Carter* case to which the Council refers on the basis that it related to a caravan assembled from four separate units and was furthermore an English case. The statutory definition requires no more than that the structure should be "capable" of being moved by road from one place to another and there was no evidence to suggest that such transport was not "capable" in relation to the units in question.

14. You explain that the caravans are not fixed permanently to the ground, but that they were merely placed on the concrete plinths, with their wheels and towing substructure still *in situ* – you point out that in certain cases they were visible on the site visit. Although connected to services, they could be readily disconnected; and you draw my attention to your production A23 from a reputable supplier confirming that the twin units, once assembled, are capable of being moved by road. The services are required to be available to meet the terms of the site licence.

15. The appeal in terms of ground (c) relies upon Class 17 of the GPDO, which provides that development be permitted if required by the conditions of a site licence for the time being in force under the 1960 Act. You explain that on 13 January 2006, a transfer application was made on behalf of your client and claim that until that was processed by issue of the site licence dated 6 January 2007, your client was entitled to the benefit of the previous site licence, issued in 2004, since it had never been revoked. That 2004 licence contemplates a reduction in the number of caravans to be placed on the site to 14. The ground re-profiling undertaken was necessary to create an engineered land form to accommodate the new layout, and all the works undertaken were required to meet the terms of the site licence.

16. The appeal under ground (a) need only be considered if the preceding submissions do not succeed; but in that event you suggest that the development undertaken could not on any reasonable view be considered a bad neighbour development within the meaning of either policy POL COM 5 of the adopted local plan or policy LP BAD 1 of the emerging replacement local plan. These policies are irrelevant for the issues in this appeal.

17. The emerging local plan provides little guidance beyond a list of non-specific planning criteria against which any development proposal should be assessed and so far as relevant to the issues canvassed in this appeal relate to the impact on amenity and landscape protection or enhancement. The works involved in the alleged breach have brought about an improvement as compared with the previous situation.

CONCLUSIONS

18. I shall deal first with the ground of appeal (c) that the matters alleged in the Enforcement Notice do not constitute a breach of planning control because what has occurred is permitted development in terms of Class 17 of the GPDO. Class 17 permits development required by the conditions of a site licence for the time being in force under the 1960 Act. It is conceded that the works at issue here were undertaken by or on behalf of your client at a time before he obtained a caravan site licence in his own name; and the only possible site licence which might be considered to be in force at the material time is that in the name of Ian Peter Barr and Fredericka Carlene Barr, dated 18 August 2004, (production A7). On its face, that licence bears that is applicable only to the parties named in it (i.e. Mr and Miss Barr), which, if that is a lawful imposition, appears to me to preclude your client's claiming any benefit of it, even if it did require (as opposed to authorise) works of the kind your client has undertaken.

19. My attention was also drawn to section 10 of the Caravan Sites and Control of Development Act 1960, which makes provision for the transfer of site licences of this kind when the holder of a site licence in respect of any land ceases to be the occupier of the land to which it relates. In terms of that section the demitting owner may, provided the consent of the relevant local authority is obtained, transfer the licence to the person who becomes the occupier of the land. There is no express application for the local authority's consent to such

a transfer, either by the demitting owner or on behalf of your client, far less a Council resolution to that effect. I proceed therefore on the basis that there was no such transfer.

20. Production A11, dated 4 August 2006 (i.e. after the works had been substantially undertaken), appears to be the first formal attempt to regularise the licence situation, although there is some earlier correspondence with the Council more concerned with the planning permission extant and whether the works undertaken can be considered to be within the terms of that now elderly consent. In any event, that letter requests not a transfer but a revised site licence (a sequence of events which does not appear to me to fall within what the section allows) to be in the name of Welchs Parks. For reasons that were not fully explained, the Council's response to that request is to put in place a procedure resulting in the issue of a fresh licence, rather than to issue consent to the transfer in terms of section 10 and endorse the 2004 licence appropriately. This may be because it was common ground by then that, whatever might have been intended in 2004 to fulfil the licence issued to Mr and Miss Barr, it was no longer to be so; and a quite different design solution had by then been substantially implemented by your client. The licence conditions attached to the two consents do not eventually materially differ, although the information provided to the Council clearly supported mutually exclusive layouts etc. In any event, that the two proposals for the site are completely different appears to me to warrant the conclusion that whatever the 2004 licence "required" it is not the works your client has commissioned. Furthermore, and again for reasons not fully explained, the Council does not issue the fresh licence until January 2007, perhaps because certain information was required as to your client's proposals, which was not timeously forthcoming, or because the Council did not accord it greater priority.

21. Based on all this information, I conclude that your client does not have a valid site licence in terms of which Class 17 could be invoked on his behalf until well after the time at which the works were admittedly undertaken. Class 17 authorises development required by a site licence for the time being in force, and it follows from a plain reading of the relevant provisions that it does not authorise anything retrospectively, even if no significance is attached to my view that what your client seeks to do is not required by the terms of the site licence. On any view, therefore, I consider the works not to be permitted by Class 17, and the appeal on ground (c) accordingly fails.

22. I therefore turn to ground of appeal (a) that planning permission should be granted for the development described in the Notice. I consider that the appeal under ground (a) and the deemed application for planning permission under section 133(7) are co-incident. In relation to these, section 133(4) of the Act requires that, in the determination of the appeal, I should have regard to the provisions of the development plan, so far as material to the subject matter of the Enforcement Notice, and to any other material considerations. In addition, section 25 requires my determination to be in accordance with the provisions of the development plan unless material considerations indicate otherwise.

23. The development plan comprises the Argyll and Bute Structure Plan, approved in 2002, read together with the Cowal Local Plan 1993, adopted in 1995. A replacement local plan is at an advanced stage, the relative public inquiry into objections having been part held at the date when I heard evidence. It is common ground between the parties that there are no express or specific policies relating to the development of caravan sites in the structure plan or in any part of the extant or emerging local plan. It is also agreed that the only provisions of the development plan that need be considered are those identified by the Council in the Enforcement Notice containing the Council's reasons for taking enforcement action (see paragraph 4 above). Material considerations include the terms of the planning permission for the use of the appeal site as a caravan site, dated 4 May 1961; the provisions

of the relevant caravan site licence(s) and any consequential requirement for works; the nature and extent of the operations involved in reprofiling or regrading of the site; and the impact on the adjoining properties, especially 41 and 43 George Street and 5 and 6 Cammesreinach Crescent, in terms of privacy and the potential for overlooking by virtue of the reprofiling or regrading of the land for the dual unit concrete plinths and the roadworks associated with the changed layout.

24. Policy COM 5 in the extant local plan provides that potential bad neighbour developments should be resisted if they are likely adversely to affect the amenity of neighbouring properties and land. I do not consider this an entirely apt provision on the facts before me, because bad neighbour uses are defined in the supporting text to make clear that these are the traditional public health issues of noise, light, smell, smoke and dust and the like. None of these arises in the present case, and I do not consider the inference that I was invited to draw that the extant local plan's list of bad neighbour uses remains open for expansion to be legitimate in the absence of any exposition as to a well-established Council practice to that effect. There was no such evidence before me and I accordingly reject policy COM 5 as applicable to the issues before me. I conclude, therefore, that there is no apparent conflict with the provisions of the extant development plan, and I turn to consider the material considerations.

25. The first of these comprises the provisions of the emerging local plan, namely policies LP BAD 1 and LP ENV 1. The emerging local plan is at an advanced stage, and I was not told that the relevant provisions were the subject of objection. I therefore accord them substantial weight. Policy LP BAD 1, if it were to be adopted in its current terms, would fall to be treated in the same way (and for the similar reasons) to policy COM 5 in the extant local plan.

26. Policy LP ENV 1 deals with a wide variety of matters, only two of which are potentially relevant to the issues before me (B and C). Insofar as relevant, it is in the following terms:

> "…When considering development proposals, the following general considerations will be taken into account, namely:
> …
> (B) Likely impacts, including cumulative impacts, on amenity, access to the countryside and the environment as a whole…
> (C) All development should protect, restore, or where possible enhance the established character and local distinctiveness of the landscape in terms of its location, scale, form and design…"

However, I consider it relevant also to have regard to the supporting text, for that clarifies that the Council would wish "to encourage development while at the same time protecting the natural, human and built environment, recognising the benefits development can bring locally and to the community as a whole". Sustainable economic development is to be promoted, regeneration encouraged and supported, and change is to be managed.

27. I do not find the precise terms of the emerging policy to be particularly helpful, however, because it is a general policy which, if adopted in its current terms, will, as far as (B) is concerned, do no more than indicate that the likely impact of a development on amenity, access to the countryside and the environment as a whole should be taken into account. That is not much of an advance on what should be normal practice as no special criteria or reference points are identified. (C) seems to have a clear focus on the landscape context and to approach protection, restoration and possible enhancement of the established character and local distinctiveness purely in landscape terms. The unauthorised re-development of the caravan site, at least in principle and so far as described in the

Enforcement Notice, does not appear to me to conflict with the underlying objective of protecting the natural, human and built environment. Your client's intention is to regenerate the caravan site that has long existed in the locale. I heard nothing to suggest that what your client seeks to do amounts to other than sustainable economic development. The only remaining question arising in connection with the provisions of the emerging development plan appears to me, therefore, to be whether the operations involved in adjusting the ground levels in order to accommodate the new caravans and their roads and paths are such as to conflict with the objective of protecting, restoring and possibly enhancing the established character and local distinctiveness in landscape terms. In my assessment, there would be little impact in landscape terms on the established character and local distinctiveness in the locale by virtue of these operations. I conclude, therefore, that on the whole, your client's proposals generally accord with the emerging policy framework.

28. I take the remaining material considerations I identify in paragraph 22 above together. The current planning consent, dating from 1961is unconditional and so, without question, the use of the site as a caravan park is permitted. The Council conceded in the course of the inquiry that the site could be redeveloped from time to time within the scope of that consent. The plans which were referred to in the relative decision notice appear to be no longer available; but it was conceded that while the 1961 consent did not restrict the layout neither did it in terms permit the engineering operations involved in reprofiling or regrading the land. Thus the regrading is unauthorised unless it falls within the scope of works permitted by Class 17 because they are required by a caravan site licence for the time being in force. In essence, it is the consequence of the regrading which gives rise to concern about overlooking and reduction in privacy of the adjacent properties.

29. I do not accept that the regrading is "required" by the terms of the caravan site licence your client has now obtained, such that he could now effect, by a further redevelopment, what he wishes in this regard, for the licence provisions go no further than require hard standing of a suitable material (preferably concrete) extending over the whole area occupied by the individual caravans in question projecting at least 0.9m outwards from the entrance(s). As far as the roads and footpaths are concerned, they should be designed to provide adequate access for fire appliances, and secure that no caravan is standing more than 50m from the roadway. Where the approach to the caravan is across ground that may become difficult or dangerous to negotiate in wet weather, each standing is to be connected to a carriageway by a footpath with a hard surface. Your client seeks to go much further than meet such minimum standards; but that is a commercial decision he has taken rather than a consequence of the Council's decision on licence conditions. He cannot invoke Class 17 to authorise the commercial decision to adopt higher standards than the minimum required by the terms of the licence he holds.

30. It is your client's decision that such hardstandings should be perfectly level and not in accord with the original ground levels. I accept that level hardstandings may be desirable and usual in modern caravan parks, but they are not strictly necessary in terms of the licence. Before your client took possession of the land, the caravans were differently laid out, located along the slope of the ground, permitting the wheels to be level without alteration of the ground levels. It is in theory possible for such a solution to be adopted today. It is right and proper, therefore, to take into account the potential impact of the regrading on the adjoining properties. In this connection, I discount that the actual window layout does not in fact give rise to significant overlooking occurring. The potential for a different window configuration arises without the need for further planning permission. I accept that the actual change in levels is reasonably modest - the evidence that at no point did it exceed ± 600mm was not challenged. However, the combination of the reprofiling and

the installation of the plinths give rise to a reasonable apprehension of a loss of privacy in the properties mentioned and, in that regard, I conclude that what has occurred is prejudicial to the residential amenity of the adjoining properties.

31. The caravans which give rise to the issue I identify as significant are those located on plots 6 to 12 (inclusive), that is to say just under half of the total intended, and nothing in the evidence before me suggests that in other respects what your client seeks to achieve is unacceptable. I have accordingly considered whether it would be appropriate to grant planning permission subject to the deletion of these particular plots, or by imposition of a condition requiring further excavation as a condition of proceeding. I have come to the conclusion that such a significant proportion of the caravan site is involved that the only appropriate course of action is to dismiss the appeal on ground (a) in its entirety, although I would observe that doing so does not preclude a different layout or design solution being proposed and approved by the planning authority. I have considered whether the advantage of the decrease in number of units outweighs the disadvantages inherent in the other changes. However, I note that it was accepted in the course of the evidence that while the total number is reduced from a maximum of 32 to a maximum of 14, the 14, being twin units, are significantly greater in size than those previously located on the site, and so I have come to the conclusion that the reduction in number is not sufficient. The appeal on ground (a) therefore fails, and the deemed planning application refused.

32. Accordingly, I turn to ground of appeal (f). Little evidence was laid before me as to the steps that ought to be taken if I came to consider this ground, and nothing specific was suggested beyond inviting the "imposition of suitable conditions relating to the orientation of the caravans to avoid having rooms overlooking neighbouring property or by the installation of further physical screening or screen panting at the boundaries". I do not consider that the matter is quite so simple, having regard to the density of development covering the site. There is in my view, insufficient room for appropriate landscaping to be introduced without radically adjusting the layout, and I conclude that this ground of appeal also fails.

33. I next turn to ground of appeal (g). Nothing was said in evidence to justify the short period of time allowed in the Notice. Indeed, the only evidence tendered by the Council was to the effect that the period was identified contrary to officer recommendation, together with the observation that, standing that on behalf of the appellant considerable importance was attached to the fact that to qualify as "caravans" within the statutory definition they had to remain readily movable, it should not be a major task to remove the caravans. There is some force in that assertion, and I note that it was not challenged on behalf of your client, although without the benefit of any evidence to support your request, you ask for a minimum period of six months. The Council I also note indicated that it would be sympathetic to a request for an extension of time in appropriate circumstances in relation to those caravans which are occupied by individuals. There is, however, no evidence before me to suggest that any special practical difficulty would be encountered, and in all the circumstances, I allow the appeal on this ground by substituting for the period of one month specified in the Notice a period of three months.

34. I have taken account of all the other matters raised but find none that outweighs the considerations on which my decision is based. In exercise of the powers delegated to me, I therefore dismiss your client's appeal, direct that the Enforcement Notice issued on 1 March 2007 be upheld, subject to the variation of the terms of the Notice whereby the time for compliance is extended from 1 month to 3 months, and refuse to grant planning permission for the development to which the Notice relates. I also vary the notice by inserting your client's name in place of Welchs Homes.

35. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

36. Subject to any such application to the Court of Session, this Enforcement Notice takes effect on the date of this letter, which constitutes the determination of the appeal for the purpose of section 131(3) of the Act.

37. A copy of this letter is being sent to Argyll and Bute Council.

Yours faithfully,

This is the version issued to parties on 28 December 2007.

R F Loughridge
Reporter