

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case Officer recommendation:	CT	09.03.2023
Planning Manager / Team Leader authorisation:	JJ	10/03/2023
Planning Technician final checks and despatch:	ER	10/03/2023

Application: 22/01809/LUEX **Town / Parish:** Clacton Non Parished

Applicant: Chester Chalets Ltd

Address: Silver Dawn Touring Park Jaywick Lane Clacton On Sea

Development: Lawful Use Certificate for existing use as a caravan park in breach of condition 1 on approved application ENE/CLA/55/61 and conditions 2 and 3 of approved application TEN/1389/85.

1. **Town / Parish Council** Non-parished.

2. **Consultation Responses**

Environmental Health Consulted 10/11/2022. Comments not received.

3. **Planning History**

(see chronological site history further into this report).

22/01809/LUEX	Lawful Use Certificate for existing use as a caravan park in breach of condition 1 on approved application ENE/CLA/55/61 and conditions 2 and 3 of approved application TEN/1389/85.	Current
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4. **Relevant Policies / Government Guidance**

Town & Country Planning Act 1990 (as amended)
Planning and Compensation Act 1991 (as amended)
Town and Country Planning (Development Management Procedure) (England) Order 2015
National Planning Practice Guidance

5. **Officer Appraisal**

Site Description

The site known as Silver Dawn Touring Park (Chester Park) lies on the west side of Jaywick Lane to the rear of dwellings facing onto Jaywick Lane and comprises a level site of approximately 2.02 ha which operates as a caravan site within the statutory definition comprising a grassed area for

the permanent siting of static caravans (the southern area), a further grassed area for the stationing of touring caravans (the northern area), internal roads, car parking area, clubhouse with bar and reception, toilets, communal swimming pool, manager's dwelling and a machinery store. Agricultural land lies to the immediate west, whilst new housing lies to both the north and south. Vehicular access to the site is gained from Jaywick Lane via two established access points set approximately 60m apart.

It is stated in the application submission that the site has always appeared to operate as a single site entity, notwithstanding the two aforementioned areas of site operation (i.e. the northern area and southern area).

The Development applied for

This application is for a Lawful Development Certificate for an Existing Use (LUEX) for the existing use of land at Silver Dawn Touring Park, Jaywick Lane, Clacton On Sea, CO16 8BB as a caravan park in breach of Condition 1 imposed under planning permission ENE/CLA/55/61 (seasonal occupation restriction) and Conditions 2 and 3 imposed under planning permission TEN/1389/85 (maximum number of caravans and seasonal occupation restriction).

The relevant planning conditions referred to in the applicant's evidence for consideration are as follows:

ENE/CLA/55/61 -

Condition 1:

'This permission shall only authorise the occupation of any of the caravans from 1st March to 30th September in each year and the caravans shall not be occupied outside of this period'.

TEN/1389/85 -

Condition 2:

'Not more than 30 touring caravans shall be stationed on the site at any one time'.

Condition 3:

'No caravan shall be stationed on the site between 31 October in any one year and 1 March in the succeeding year'.

Legislative Framework

Planning Practice Guidance explains that the statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act 1990, and that lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. The Planning and Compensation Act 1991 (section 171B) sets out the time limits within which local planning authorities can take planning enforcement action against breaches of planning control. In most cases, development becomes immune from enforcement action if no action is taken:

- within 4 years of substantial completion for a breach of planning control consisting of operational development;
- within 4 years for an unauthorised change of use to a single dwellinghouse;
- within 10 years for any other breach of planning control (essentially other changes of use and breaches of planning conditions (four years in the case of breaches of planning conditions relating to a dwelling)).

In certain circumstances, the above time-limits do not prevent enforcement action after the relevant dates:

- where earlier enforcement action has been taken within the relevant time limit (section 171B(4)(b) of the Town and Country Planning Act 1990);
- where there has been a deliberate concealment of a breach of planning control, local planning authorities can seek a 'planning enforcement order' to allow them to take action after the time limits in section 171B have expired - where a person has deliberately concealed a breach of planning control, the courts have found that the time limits in section 171B are not engaged until the breach has been discovered.

Sections 191 and 192 of the Town and Country Planning Act 1990 provides for anyone (not just a person with a legal interest in the land) to apply to the local planning authority for a lawful development certificate. A certificate is a statutory document certifying:

- in the case of an application under Section 191, the lawfulness, for planning purposes, of existing operations on, or the use of land, or some activity being carried out in breach of a planning condition; or
- in the case of an application under Section 192, the lawfulness of proposed operations on, or the use of land.

Applications for Lawful Development Certificates should include the following information:

- whether the application relates to:
 - I. a use
 - II. a building operation
 - III. a condition not complied with
- the date that the use (or breach of condition) started, or the date on which the building was substantially complete;
- any use class the applicant considers to be applicable;
- the reasons the applicant thinks they are entitled to a Lawful Development Certificate
- any other relevant information;
- a plan identifying the land, and;
- a certificate as to the applicant's interest (ownership, tenancy etc) in the land and any interest of any other person.

It is up to the person applying for a Lawful Development Certificate for an existing use to show the proper evidence. This could include:

- proof that any building was 'substantially complete' more than four years before the date of the application; and/or
- proof that any use (or breach of condition) has been carried out continuously for a period of 10 years (four years in the case of a dwelling).

With regard to the current LUEX application as submitted (22/01809/LUEX), the main issues arising from the above are as follows;

- the planning history of the site;
- the wording of Condition 1 of planning permission ENE/CLA/55/61
- the wording of Conditions 2 and 3 of TEN/1389/85
- what would constitute a breach of the condition
- available evidence
- assessment of evidence

The evidential submission

The case is made by the applicant that the three conditions which are the subject of this lawful use claim have all been breached for at least ten years from the date of application as required by s171b of the Town and Country Planning Act after which a condition is considered to be immune from enforcement action. It is further argued that it is most likely that the conditions have as a matter of fact been breached for substantially longer than the ten year qualifying period ('the 10

year rule') whereby the cited conditions relate to the operation of the site as a whole and that the breach of planning control has taken place across the whole site to which the relevant permissions relate (the northern area – touring caravans and southern area – static caravans). As such, it is concluded that a certificate of lawfulness should be issued as sought.

It is stated that the site has operated as a caravan site since at least the late 1940's and has recently been purchased whereby this purchase represents the first change in ownership outside of the previous family and their company since the 1960's. It is further stated that since this change in ownership that the existing planning conditions pertaining to the 'operative' permissions have been highlighted whereupon it is asserted that the conditions have not been complied with for a substantial portion of the site's operating history.

Available Evidence

The available evidence is made up of Council held documentation for this static and touring caravan site, a statutory declaration of the former site manager which sets out the manner in which the site has operated throughout his extensive and detailed knowledge of the site and a series of aerial photographs providing a time series of events at the site showing caravans being stationed/stored.

The site has a detailed planning history with the site being known in the 1940's, 50's and 60's variously as 'Chester Camp', 'Chester Camping Site' and 'Chester Caravan Camp' until the 1970's/80's when it became known as 'Silver Dawn Summer Park'. However, it is apparent that there appears to have been few planning applications submitted once the site had become established, although the site history suggests that the operative permissions on the site for the purposes of the current LUEX application (ENE/CLA/55/61 and TEN/1389/85) are those as referenced in the chronological history section as set out in the applicant's evidential submission below.

It is asserted that the site always appears to have been a single planning unit and that the different names associated with the site down the years is expected to have been the consequence of the management of the site rather than suggesting that the two distinct areas of the site (northern area/southern area) were merged together. It is further stated that the entire site functions as a caravan site within the statutory definition. The Council does not dispute either of these assertions.

The LUEX application is accompanied by the following evidence:

- Application form
- Planning Supporting Statement (Eiser Planning & Development Consultancy Services) with accompanying appendices, namely;

Appendix A: Copy of planning permission ENE/CLA/212/49 dated 4 August 1949 relating to "Use of additional land as camping site in accordance with Plan No. 9575 deposited with the Council" at Chester Camp, Jaywick Lane, Clacton On Sea;

Appendix B: Copy of planning permission ENE/CLA/2/51 dated 6 April 1951 relating to "Extension of caravan camping site" at Chester Camp, Jaywick Lane, Clacton on Sea;

Appendix C: Copy of planning permission ENE/CLA/195/54 dated 6 August 1954 relating to "Extension to Chester Camp" at Jaywick Lane, Clacton on Sea;

Appendix D: Copy of refusal notice ENE/CLA/64/57 dated 3 May 1957 relating to "Recreational Area (Outline Application)" at Land adjoining Chester Camping Site, Jaywick Lane, Clacton on Sea. Appeal dismissed;

Appendix E: Copy of planning permission ENE/CLA/57/58 dated 4 April 1958 relating to "Extension to Chester Caravan Camp" at Jaywick Lane, Clacton on Sea;

Appendix F: Copy of planning permission ENE/CLA/55/61 dated 29 March 1961 relating to "Continued use of that part of the existing Chester Camping Site shown edged blue on the attached plan" at Chester Caravan Park, Jaywick Lane, Clacton on Sea;

Appendix G: Copy of plan showing area for temporary siting of five residential caravans on part northern area of site for application G-NE/CLA/382/66 refused on 12 January/1967 at Chester Camp, Jaywick Lane, Clacton on Sea.

Appendix H: Copy of letter from Clacton Urban District Council to the site owner dated 1 August 1968 stating that a number of caravans are sited within the area adjacent to the camp for which planning permission was refused in June 1965 and that further planning permission was refused on 1 January 1967 for the temporary siting of five residential caravans.

Appendix I: Copy of planning permission TEN/1389/85 dated 5 March 1986 for use of land for 30 touring caravans at Land adjoining Silver Dawn Summer Park, Jaywick Lane, Clacton.

(Other appendix documents referred to):

- Covering letter from Tendring District Council to site owner (Ian Bartlett) dated 26 March 1979 returning caravan site licence as amended with effect from 1 March 1979.
- Caravan site licence dated 9 May 1988 in respect of Silver Dawn Holiday Park, Jaywick Lane, Clacton.
- Caravan site licence dated 22 December 1992 in respect of Silver Dawn Holiday Park, Jaywick Lane, Clacton.
- Letter from TDC to the site owner dated 8 July 1986 requesting application for a site licence in respect of the new touring siter at Silver Dawn Summer Park, Jaywick Lane, Clacton stating that the site owner must contact the Council if he wished the number of touring caravans to be increased from 30 to 38 caravans, adding that the site has planning permission for 30 tourers and is using the site and that it is essential that the site owner applies without delay for a site licence to cover the existing permitted use of the site.

The planning supporting statement itself refers to the following Google Earth aerial images of the site:

- Image dated 09/05/2020 showing what appears to be 38 touring units sited on the land with at least 7 empty pitches
- Image dated 01/09/2018 showing what appears to be 38 touring units sited on the land with at least 4 empty pitches
- Image dated 01/08/2018 showing what appears to be 44 touring units sited on the land with at least 2 empty pitches
- Image dated 24/09/2017 showing what appears to be 46 touring units sited on the land with at least 3 empty pitches
- Image of 2012 showing what appears to be 45 touring units sited on the land and at least 3 empty pitches
- Image of 2009 showing what appears to be 43 touring units sited on the land and at least 5 empty pitches
- Image of 10/09/2006 showing what appears to be 43 touring units sited on the land and at least 3 pitches.

In terms of the chronological history of the site, it is stated for Appendix F that relevant planning permission ENE/CLA/55/61 refers to the occupation of static caravans as opposed to the stationing of caravans whereby it is normal when controlling static caravans which remain on site all year round that planning conditions would refer to *occupation* whereas it is normal when controlling touring caravans which are more readily moved that planning conditions would refer to *stationing* or *siting*.

A site licence was issued by the Council for the site on 27th July 1961 under the Caravan Sites and Control of Development Act 1960 whereby this site licence issue appears to have been consistent with the almost simultaneous grant of planning permission ENE/CLA/55/61 on 29 March 1961. The applicant asserts that it is a reasonable assumption that the site owner/operator at that time would have been aware of their site licence conditions because of the requirement to display them at the site and the criminal sanctions that a breach of the licence conditions can bring whereas it is possible that a site owner/operator would not necessarily have been so aware of the planning permission restrictions that control a site. It is stated for Appendix I for relevant planning permission TEN/1389/85 that this permission was granted for what is understood to now represent the caravan touring area of the site (the northern area).

- Statutory Declaration of Ian Bartlett of The Bungalow, Chester Holiday Park, Jaywick Lane, Clacton on Sea, CO16 8BB with Exhibit 'A' plan (the Plan referred to) sworn in front of Fisher Jones Greenwood, Solicitors.

The submitted declaration states the following in terms of Mr Bartlett's account of events at the site:

- Mr Bartlett's parents purchased the site in 1965 and operated the site since 1966;
- Mr Bartlett lives on the site and his main employment since 1983 has been as manager of Silver Dawn and Director of the company which operates the site;
- The static caravans remain on site all year round and are owned by the occupiers for holiday purposes who come and go;
- For as long as Mr Bartlett can recall, the static caravan part of the park has been open from 1st March until the end of October and that residents will use the park at weekends in October;
- The static caravans are also used in the half term school holidays, which are normally in October;
- The majority of static caravans will be used for at least one weekend during October in each year;
- The touring caravans are a mixture of short stay and long stay pitches whereby customer demand for long stay seasonal pitches has grown over the years and now represents around 80% of the pitches compared to closer to 60% of the pitches ten years ago;
- The seasonal pitches are not located in a specific part of the site, but are spread about across the whole area [on the land hatched in blue]. The seasonal pitch is a pitch on the site rather than a specific plot number;
- The park has offered winter storage throughout the year where customers leave their caravans on the pitch throughout the winter where this service has been offered for over 20 years, although the service has become more popular and established over the last 10 years;
- For the last 10 years, there have been approximately 20 winter storage units [on the land hatched in blue]. There are not a set number of pitches in the touring area with caravans being sited around the boundary of the site and within a central area;
- Mr Bartlett understands that there was originally a limit on the planning permission [Condition 2 of TEN/1389/85] that there should be no more than 30 caravans in this area, but that the actual capacity of the site has been for between 45-50 touring units, albeit that over the years the size of the touring caravans have become larger and more units have awnings which take up additional space.
- There are regularly more than 30 touring units on the site and this has been consistent in each season throughout Mr Bartlett's knowledge of the site.

Consideration of Evidence

The site is described on the Site Location Plan accompanying the submitted LUEX application as 'Chester and Silver Dawn Caravan and Touring Park', whilst it was noted upon the officer inspection for the current application that a new sign exists at the entrance to the site saying, 'Welcome to Parkview Group – Silver Dawn'.

The Council's site visit confirmed that the site is currently in use as both a static caravan site (southern area of site as hatched green on the submitted statutory declaration by Ian Bartlett) and as a touring caravan area (northern area of site as hatched blue on same document referred to). At the time of the visit, 56 static caravans were seen on the southern area of the site, whilst 30 tourers were seen on the northern area of the site.

It is the applicant's stated position that the static caravans which stand on the southern area of the site are occupied until the end of October each year in breach of Condition 1 of planning permission ENE/CLA/55/61 which requires such occupation to cease by 30th September in each year. It is the applicant's further stated position that the number of touring caravans which are sited on the northern area of the site is a number consistently exceeding thirty in breach of Condition 2 of subsequent grant of planning permission TEN/1389/85 which restricts the number of caravans to be sited on this area to 30 caravans, whilst it is further asserted that the site operator

has allowed the winter storage of touring caravans in breach of Condition 3 of planning permission TEN/1389/85.

In terms of legislative requirements, the relevant time period for immunity from enforcement action as set out in Section 171b of the 1990 Town and Country Planning Act in relation to a breach of a planning condition is 10 years. The 10 year immunity time period need not be the last 10 years since the date of application for a LUEX certificate to be granted, although in the case of the current application after an examination of the evidence it would appear that there are no grounds to suggest that the breach of the relevant planning conditions have not been consistent for the last 10 years or for much longer. The relevant test for lawful use applications is the 'balance of probability' and this threshold can be expressed as being 'more likely than not'. It is not necessary that the evidence presented to support such a claim is independently verified, although in the case of the current application a statutory declaration has been submitted by the previous site manager (Ian Bartlett) who declares that he has been acquainted with the site in that role since 1983, a period of some 40 years.

A breach of condition is an absolute occurrence whereby the decision by the LPA as to whether a breach is causing harm or it would be expedient to take enforcement action is a matter for its discretion. Whether or not the condition has been breached is a matter of fact.

In the case of the 1961 permission (ENE/CA/55/61), the condition is specific that the occupation of the caravans may not be occupied within the prescribed time period for the reasons stated. It is the case that such occupation of the caravans need not occur every day of the prescribed period for a breach of control to occur, namely a breach of the condition through occupation in the month of October say would represent a breach of the condition in the same manner as the occupation in every month of the year throughout the winter season. In this respect, the restriction on the stationing of touring caravans in the winter months as set out in the 1986 permission is comparable to the seasonal occupation condition of the 1961 permission.

The identification of the breach of the condition concerning the number of caravans is also an absolute occurrence, namely that there are either more than thirty caravans on the site or there are not. Enforcement action may be taken in respect of an existing breach or an historic breach and it is not therefore necessary that there were more than thirty caravans on the day when enforcement action had been taken (i.e. representing only a snapshot in time).

The seasonal occupancy condition of the 1961 permission

Condition 1 of planning permission ENE/CLA/55/61 states as follows:

"This permission shall only authorise the occupation of any of the caravans from 1st March to 30th September in each year and the caravans shall not be occupied outside this period".

A site licence was issued for this site in 1961, although it is stated that the copy of this document is missing. A copy of the 1979 licence has been located (see Appendix J) which describes itself as an amendment to the earlier condition. Condition 3 of the conditions schedule for the licence reads as follows:

"Any caravans stationed on the land shall only be used for human habitation from the 1st day of March until the 31st October in each year (both dates inclusive)."

The covering letter from Tendring District Council of the 26th March 1979 reads:

"I return herewith your caravan site licence which has been amended, with effect from 1st March 1979 by (i) varying the condition regarding firefighting appliances (ii) adding a new condition regarding electrical installations and (iii) converting areas and distances to nearest metric equivalents. Your original documents are returned herewith having been duly cancelled."

It is stated that this covering letter does not suggest that the time period condition was amended in 1979 and therefore it is reasonable to interpret from this that the site licence of 1961 contained the same time condition as was imposed in 1979. It is asserted in evidence that whether in 1961 or

1979 the site licence first provided for the breach of the planning condition through the provision of occupation in October is not critical to the relevant ten year period in this case. It should be noted that the site licence is consistent in its time condition today having been amended in 1992 (see Appendix K) to provide as follows:

- (a) From 1 March to 31 October (inclusive)
- (b) Any weekend commencing at noon Friday and ending at midnight on Sunday.
- (c) Any Christmas holiday period commencing at noon on 24 December ending at noon on 3 January.

It is not clear why the site licence was issued in terms which are at odds with the relevant planning permission, although it is also known from the produced chronological site history that in 1977 planning permission was granted for the use of a caravan for the sale of hot food whereby this use was granted until the end of October which again is at odds with the requirement of the 1961 planning permission condition not to permit caravan occupation from the end of September onwards. It could therefore be said that the understanding of the site's operation was that it was open until the end of October every year. It is suggested by the applicant in evidence that in such a situation of a breach of planning control that there are some circumstances where there could be an element of subterfuge by the site owner, although it is asserted in this case that this does not suggest that there was any awareness by the site owner that a breach of planning control was taking place as it is stated that it would be difficult to imagine that any site owner would advertise the operation of a site in a breach of a condition in such overt terms.

There is strong evidence submitted for the current LUX application as to an account of operations occurring at the site over the years in the form of the statutory declaration made by the previous site manager, Ian Bartlett, which describes seasonal operations at the site until the end of October in each year. This description of events is consistent with both the caravan site licence and the 1977 planning permission as previously referenced.

In 1986 when planning permission was granted for the touring area (TEN/1389/85), the time period provided for the touring site was until the end of October. It therefore seems irrational to expect that the static caravans on the southern area of the site would be closed from the end of September yet touring caravans would be present on the site on the northern area until the end of October. It would also not be likely that a site operator would wish to open the clubhouse, manage the reception and the swimming pool for some customers (i.e. the static homes), but not other customers. It is stated in the statutory declaration of Mr Bartlett that Silver Dawn has provided for family holidays and that the Autumn half term is a popular time period for such holidays whereby this would be in October whereby it is asserted in the main evidence that it would be expected that this would be a significant event for which the premises would remain open.

It is the Council's considered view after taking into account what appears to be a reasonably held assumption of the likely course of events occurring at the site which may very well have been an annual occurrence that the statutory declaration of Mr Bartlett provides clear and unambiguous supportive evidence that Condition 1 of ENE/CLA/55/61 has been breached through the occupation of caravans in the month of October and is consistent with the evidence of the site licence and the planning history of the time periods imposed on other permissions. As put forward in the main planning supporting statement, whether or not the breach of the condition was a conscious act is not determinative as to whether there has been a breach as a matter of fact whereby it is contended that it is more likely than not in this case that there was no knowledge by the site owner that they were committing a breach of planning control.

The Council is therefore satisfied that the balance of probability threshold is met and appears exceeded for the requirement of the test for S171B of the Act where it is reasonable to conclude from the evidence that it would have been less likely that the site owner would have purposely followed a planning condition prohibiting occupation in October despite the longer time period of the site licence and the rest of the site's permissions, including the 1977 permission.

Therefore, the Council considers from the available evidence that this breach of planning control has occurred for at least ten years and in all probability since the site first operated in 1961 as the evidence suggests.

The 1986 permission and the number of caravans

Condition 2 of TEN/1389/85 states as follows:

‘Not more than 30 touring caravans shall be stationed on the site at any one time’.

The site licence for the site issued in 1988 (see Appendix L) provides for forty caravans to be permitted on the site. The Council wrote to the site owner’s representatives concerning this issue in 1986 (See Appendix M) stating:

“Further to my letters of 12 March and 20 June, I have still not received an application for a site licence in respect of the new touring site at the above. If you wish the number of tourers to be increased from 30 to 38, you must contact the Planning Department at Weeley Council Offices. However, your client at present has planning permission for 30 tourers and is using the site. It is therefore essential that you apply without delay for a site licence to cover the existing permitted use of the site.”

This correspondence is relevant to this condition breach insofar as it would appear that the site owner was intending to increase the touring caravan numbers on the northern area of the site in the first summer of use since the grant of the 1986 planning permission from 30 to 38 units.

The aerial photographs which have been submitted in evidence for the current LUEX application appear to show that the capacity of the site consistently exceeds the limit of thirty, but that also there are in excess of thirty caravans on the site on the dates taken whereby the photographs show that on those occasions that photographs are available (see entries above) that the numerical condition required by Condition 2 has been breached. Whilst it is accepted that such events are a snapshot in time, the time series which has been provided would indicate a regular pattern of events occurring on the ground over the years.

The aerial photographs also show in addition to the number of caravans on the site clear pitches or markings on the ground where grass has not grown. Whilst somewhat circumstantial, it could be argued as the applicant does that grass would be expected to survive short and infrequent siting of a caravan, so completely bare patches suggest that a caravan would have been on the pitch for a significant period prior to leaving when the photograph was taken. This, the applicant contends is also consistent with the popularity of the caravan site and the number of units described in the statutory declaration of the previous owner.

It is clear to the Council from this evidence that the site had a capacity for more than thirty caravans, whilst a site licence would not have been issued for a number of caravans which could not be safely accommodated on the site. It is asserted by the applicant that the site owner would not have had any practical reason to limit themselves to a limit of thirty caravans when doing so would have in reality led to turning away a significant proportion of income and argue that it would when considering the balance of probability test have been unlikely that a site owner with space and a site licence for forty caravans have adhered to a limit of thirty caravans as restricted by Condition 2 of TEN/1389/85. It is further asserted that it is more likely than not that the site owner would have operated to the site licence conditions. Both of these assumptions would appear plausible to the Council in the absence of any of its own evidence to the contrary.

The statutory declaration submitted by Mr Bartlett is clear that the condition has been breached for in excess of ten years whereby it is not known if the condition was ever followed for any significant period of time, only that the site manager at a very early stage after the grant of TEN/1389/85 had what appears to have been an indicated desire to allow more than the permitted thirty units in breach of Condition 2 of this permission.

The 1986 permission and the seasonal stationing condition

Condition 2 of TEN/1389/85 states as follows:

‘No caravan shall be stationed on the site between 31 October in any one year and 1 March in the succeeding year’.

The seasonal stationing condition requires the removal of the caravans from the site as stipulated above. The evidence provided by Mr Bartlett, the previous site manager in the form of the statutory declaration provides a plausible explanation for the change in business practice to allow winter storage of touring caravans. It is asserted by the applicant that the site manager would have had no use of the site in the winter months and that even a small additional income through the winter pitch or storage fee would have been an additional income. It is further asserted that by offering the winter storage that the customers would be more likely to remain on the site rather than leaving to go to another site that was able to offer year round siting.

The Council accepts that many touring caravan owners now utilise dedicated storage sites or seek to leave the caravan on a seasonal pitch even if this caravan site is then used as a base for further journeys in longer holiday periods. This desire for caravan owners to have the caravans stored at a site complements the desire of the site owners for the predictability and certainty of income which follows from seasonal pitch fees. The explanation provided by the site owner in this case for the change in business practice and as a consequence the reason why the planning condition was not followed seems entirely plausible to the Council. On this basis and from the other evidence submitted, the Council considers that Condition 2 of TEN/1389/85 has been breached for a period of at least ten years and is no longer enforceable.

Conclusions:

It is clear to the Council from the submitted evidence, namely the statutory declaration made by Ian Bartlett, the submitted planning supporting statement and the various appendices referred to in the statement that the three planning conditions which are the subject of this LUEX application have all been breached for at least ten years and that the breaches are immune from enforcement action under s171b of the Act whereby the LPA does not have any evidence of its own to make this position less than plausible where the evidence suggests that it is most likely that the conditions have been breached for substantially longer than the ten year period as the applicant asserts. Furthermore, all of the conditions relate to the operation of the site as a whole and the breach of control has taken place across the whole site to which the permission relates.

6. Recommendation

Grant Lawful Use Certificate.

7. Reasons

Sufficient evidence has been submitted with the application which is sufficiently clear and unambiguous to demonstrate that, on the balance of probabilities, Condition 1 imposed on grant of planning permission ENE/CLA/55/61 and Conditions 2 and 3 imposed on subsequent grant of planning permission TEN/1389/85 relating to Silver Dawn Touring Park, Jaywick Lane, Clacton On Sea, CO16 8BB have all been breached for a period in excess of ten years and that enforcement action can no longer be taken as provided for by S171b of the Town & Country Planning Act 1990 (as amended).

8. Informatives

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
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Are there any third parties to be informed of the decision? If so, please specify:	YES	NO