
Appeal Decision

Site visit made on 5 September 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 January 2017

Appeal Ref: APP/R3325/X/16/3148201

Land at Higher Farm, Podimore, Yeovil, Somerset BA22 8JQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal in part to grant a certificate of lawful use or development (LDC). References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.
 - The appeal is made by Mr Brian Coram against the decision of South Somerset District Council.
 - The LDC was granted on 9 June 2015 under application Ref 15/01223/COL, dated 5 March 2015.
 - The application was made under section 191 of the Town and Country Planning Act 1990 as amended.
 - The use of the land for which the LDC has been granted is clay pigeon shooting.
 - The matter in dispute is the wording of the First Schedule, which states that:
'The sui generis use of the land for clay pigeon shooting on up to a maximum of 22 Sundays each year between the hours of 10:30 and 14:00 only for the purposes of practice, private lessons, open shooting sessions and for the holding of up to 6 Major Events (as further defined hereunder) in breach of condition no 2 attaching to planning permission reference 00/02600/COU dated 26 November 2002 ('the Development'). (For the purposes of this Certificate a Major Event is a regional or national competition or other event attracting in excess of 50% more participants than normal and up to a maximum of 100 'Guns' per event).'
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Decision

1. The appeal is allowed in part and the LDC granted on 9 June 2015 under application Ref 15/01223/COL is modified as follows:

'First Schedule

The sui generis use of the land for clay pigeon shooting on up to a maximum of 22 Sundays each year between the hours of 10:30 and 15:30 only for the purposes of practice, private lessons, open shooting sessions and for the holding of competitions with up to a maximum of 100 'Guns' per event in breach of condition no 2 attached to planning permission reference 00/02600/COU dated 26 November 2002 ('the Development').

Background and Preliminary Matters

2. Planning permission was granted in November 2002 under Ref 00/02600/COU for the use of the land for clay pigeon shooting. The Council confirms that Condition 2 of that permission states:
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'Shooting shall take place only on Wednesdays between the hours of 9:00 and 19:00 with a maximum duration of 6 hours'.

3. I understand that residents made complaints to the Council between the end of 2013 and 2015 regarding the extent of the use and its compliance with Condition 2 of permission Ref 00/02600/COU. This resulted in the subsequent LDC application.
4. Based on the evidence presented by the appellant, the Council concluded that a continuous breach of Condition 2 attached to Planning Permission reference 00/02600/COU had continued on Sundays for more than 10 years prior to the date of the application and, as such, no enforcement action could be taken in respect of the breach. It found no evidence that the limitations imposed by the condition in relation to Wednesdays had been exceeded nor that the use on any other days for various times had been continuous over a 10 year period.
5. In granting the LDC, the Council specified in the First Schedule the use of the land on up to a maximum of 22 **Sundays** each year between the hours of 10:30 and **14:00** only for the purposes of practice, private lessons, open shooting sessions and for the holding of up to **6 Major Events** [*my emphasis*]. It further restricted the number of guns at such major events to a maximum of 100.
6. The appellant contends that the hours of operation have been misunderstood by the Council, and therefore misapplied. He also considers that there are no grounds for a 'Major Event' to be defined for the purposes of the LDC and that the maximum number of guns specified by the Council for such major events is, in any event, inaccurate.
7. To this end, the appellant has suggested an amendment to the wording of the First Schedule as follows:

'The sui generis use of the land for clay pigeon shooting on up to a maximum of 22 Sundays each year between the hours of 10:30 and 15:30 only for the purposes of:

 - (a) *Practice and private sessions, and*
 - (b) *Open shooting sessions to include competitions in breach of condition 2 attaching to planning permission reference 00/02600/COU dated 26 November 2002 ('the Development')'.*
8. I have received objections from interested parties which relate primarily to the effect of the suggested amendments on their living conditions. However, the planning merits of the existing use subject of the LDC are not relevant, and they are not therefore an issue for me to consider in the context of an appeal made under s195 of the Act.
9. The onus of proof in an LDC application rests with the appellant, the relevant test of the evidence being the balance of probability.

Main Issue

10. Against the background that I have described, the main issue is the extent of the *sui generis* use of the land for clay pigeon shooting in breach of a planning condition subject to which planning permission was granted.

Reasons

11. Under section 171B(3) of the 1990 Act (as amended), no enforcement action may be taken after 10 years from the date of any breach of condition. Any unauthorised breach must continue substantially uninterrupted to acquire immunity from enforcement action.
12. It is clear that in determining the LDC application, the Council considered there to be sufficient evidence to establish that the land had been used for clay pigeon shooting on up to a maximum of 22 Sundays each year between the hours of 10:30 and 14:00. It therefore identified the extent of the use in the First Schedule of the LDC accordingly.
13. However, in support of the appellant's claim that the Council has misunderstood and thus misapplied the hours of operation, I have been provided with clarification in relation to the '*Schedule of Clay Pigeon Shooting Events*' that were recorded with the Clay Pigeon Shooting Association (CPSA) and submitted in support of the LDC application. The appellant asserts that it has been clarified with the CPSA that the column in the schedule relating to 'End Time' refers not to the time for clay pigeon shooting activities to cease, but the end time for a participant or 'gun' to have registered his arrival at the premises to participate and shoot clays.
14. To this end, I have had sight of extracts from the publications '*Clay Shooting*' dated March 2010, Summer 2010 and July 2011 together with '*Pull*' dated June 2010, November-December 2011, October 2012 and January-February 2013 advertising clay pigeon shooting events, including those at Podimore with Sunday shooting times of between 10:30am and 16:00. In particular, the advertisement from the 2013 edition of '*Pull*' specifies '*Entries 10:30am - 14:00pm*'.
15. I have also been provided with evidence from the CPSA's National Development Manager, Mr Richard Worthington who, in an email dated 23 February 2016, describes the accepted convention that the advertised 'finish' time refers to the time by when the last gun entries shall have been made and not the time when shooting stops. Mr Worthington adds that the norm for shooting is to finish approximately 2 hours after the given end time for what he describes as a 100 bird registered shoot.
16. This convention is re-iterated in an email from Mr Faulds MBE, dated 28 March 2016, who states that it is widely recognised that at a competition entry times are given, for example 10:00 – 14:00. If a card is purchased at 14:00 (last entry time) that person would be given 20 minutes grace before starting a competition. Therefore a 'stop shooting time' would be much later than the 'last entry' time.
17. Separate representations from interested parties who have used Podimore Shooting Ground confirm their understanding of the advertised times to relate to entry times, and not to finish times, in accordance with the Industry Standard and what they consider to be common to the majority of shooting grounds.
18. Based on the evidence before me, and given that there is no substantive evidence to the contrary, it seems to me that the advertised end times and those shown in the Schedule of Events were, in fact, the times of the last gun

entries rather than the times by which the shooting would cease. Although interested parties have referred to an extension in the operating hours and intensity of use in recent years, I have not been provided with any exact days, dates and times. Whilst the additional pieces of evidence clarifying this point are from 2016, it is probable that the practice of advertising the last entry times would have been so prior to this year. There is no reason to believe this practice has changed.

19. Thus, in specifying the hours of operation in the First Schedule as between 10:30 and 14:00, the LDC does not accurately reflect the times that, on the balance of probability, the shooting has occurred on a Sunday for a continuous period of 10 years, so as to be immune from enforcement action. I thus consider it appropriate to modify the First Schedule of the LDC accordingly in this regard.
20. Turning to the matter of the 'Major Events' and the associated restriction on the number of such events and 'guns' per event as specified in the First Schedule. The Council states that its definition of a major event was based on that used by the Chartered Institute of Environmental Health in its publication '*Clay Target Shooting – Guidance on the Control of Noise*' 2003.
21. In taking this position on 'Major Events', the Council concluded that the evidence amounted to no more than six per year attracting in excess of 50% more participants than normal and up to a maximum of 100 'Guns' per event over a continuous ten year period.
22. In my opinion, an assessment of '*50% more participants than normal*' for the purposes of a limitation in the First Schedule is arbitrary since there cannot be a fixed number of participants per event which would enable an accurate assessment of whether the number of guns (or entrants) was higher than 'normal'.
23. I also note that the limit on the number of guns in the Schedule restricts that in relation to major events only. Put another way, as currently worded, the restriction does not apply to practice, private lessons or open shooting sessions.
24. Nevertheless in order to define a 'Major Event' for the purposes of the Schedule, prior to issuing the LDC the Council asked the appellant to confirm how many of the events listed in the spreadsheet of CPSA events attached to the Statutory Declaration of Kevin Newton were major events i.e. a regional, national or international competition. The response provided by the appellant on 1 May 2015 was a handwritten list containing 66 events which took place between April 2004 and September 2014.
25. Be that as it may, the appellant has subsequently stated that the limitation on 'Major Events' and the number of guns does not take account of the FSP and ESP events as regional, national or international competitions. To this end, I have been provided with a further copy of the CPSA data relating to the FSP and ESP fixtures from 1997 to 2016¹.

¹ I note that the period of fixtures covered by the spreadsheet has been extended to 2016, i.e. beyond that shown in the previous spreadsheet and the date the LDC application was made. I have therefore disregarded the figures which post-date 5 March 2015.

26. If I were to consider the ESP and FSP events as falling within the definition of 'Major Events', the figures shown in the table '*Analysis of Major Clay Pigeon Shooting Events June 2016*' provided by the appellant would amount to a greater number of national and regional competitions covering the period of 2004-2015. They would most certainly exceed the six per annum specified by the Council.
27. Notwithstanding the appellant's list of major events provided to the Council in advance of the issuing of the LDC, it seems to me that both the FSP and ESP fixtures can constitute regional or national competitions. I cannot therefore see how they can legitimately be excluded. It therefore follows that based on the submitted evidence it has been demonstrated, on the balance of probability, that these competitions have been occurring regularly for a continuous period of 10 years in numbers exceeding the 6no specified by the Council.
28. The appellant alleges that the Council has arrived at the number of guns specified simply by dividing the total number of guns by the number of events to arrive at an average of 94.5 guns per event (rounded up to 100). There is no evidence before me that the Council applied an alternative methodology.
29. In any event, I note from the lists of FSP fixtures that a small proportion of the Fixtures from 2004-2015 attracted more than 100 guns per event. However, this appears to be on an *ad hoc* basis. Whilst the number of guns in the corresponding ESP events was greater during the same period, such instances are sporadic and occur with more regularity in more recent years. This correlates with the residents' complaints that the use has intensified since 2013.
30. The appellant tells me in his grounds of appeal that the number of participants for England selection are in the order of 180-200 with GB selection up to 160 guns. He also contends that regional county events attract up to 160 guns and normal competitions between 50-100 guns. I do not dispute that this may be the case in some instances.
31. Nevertheless, based on the evidence before me, I do not consider that such competitions have occurred and attracted this number of guns on a sufficiently regular basis to establish a lawful position over a continuous 10 year period. Rather, I am led to the conclusion that the Council has, at least, some evidential basis for finding up to a maximum of 100 guns per 'event' or competition.
32. An LDC is not granted on the basis of how many guns the Shooting Ground can attract or has attracted on an *ad hoc* basis, but whether the evidence points to that level of use having been established over a continuous 10 year period. The wording suggested by the appellant would provide no restriction on the number of guns at competitions.
33. In this context and based on the submitted evidence, I do not find that it has been demonstrated that, on the balance of probability, the level of use amounting to that proposed by the appellant's alternative 'First Schedule' wording has subsisted continuously for a period of 10 years or more prior to the date of the LDC application.

Conclusion

34. For the reasons I have given, the Council's decision to specify in the First Schedule the extent of the use for which it has granted the LDC was, overall, well founded, but with an amendment to the shooting times and the removal of the reference to 'Major Events' and its substitution with 'the holding of competitions with up to a maximum of 100 Guns per event', so as to reflect that which has been occurring for a continuous period in excess of 10 years prior to the date of the application.

Melissa Hall

Inspector