



Appeal Decision

Site visit made on 23 October 2017

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 16 January 2018

Appeal Ref: APP/P1133/X/17/3180033

Land to the west of Devon Valley Holiday Village, Ringmore Road, Stokeinteignhead, Devon TQ12 4RS

- 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 to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Howard Williams against the decision of Teignbridge District Council.
 - The application Ref 16/03369/CLDE, dated 21 December 2016, was refused by notice dated 26 April 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is two existing holiday chalets and use of land for ancillary and incidental garden purposes.
-

Decision

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

Procedural matters

2. An application for costs was made by Mr Williams against the Council. That application is the subject of a separate Decision Letter of even date.
3. In or around 2016, the appellant constructed extensions to the two chalets that are the subject of this appeal, in the belief that such works constituted Permitted Development under the terms of the Town and Country Planning (General Permitted Development) Order 2015. The Council has suspended any potential action in respect of those works, and other works to the entrance to the site, pending the outcome of this appeal. In the interests of clarity, I note here that those works were not included in the LDC application and have no bearing on my determination of this appeal.
4. The application form described the use for which the LDC was sought as "Two holiday chalets (Class C3)", and was accompanied by a plan outlining in red the land in which the appellant has an interest (effectively, the field within which the chalets are sited), with a smaller, fenced-off area around the chalets outlined in black. In the course of determining the application, the Council sought clarification as to the extent, and use, of the land included in the application. The appellant explained that the intention was to include in the application the fenced-off area of land around the chalets (shown edged in red on Plan 1 Rev 1), as having been used for ancillary and incidental garden purposes. It was suggested by the appellant, and agreed by the Council, that

the description of the use for which the LDC was sought be amended to "Two existing holiday chalets and use of land for ancillary and incidental garden purposes". My determination of this appeal proceeds on that basis.

Main issue

5. Where an LDC for an existing use is sought, the onus is on the appellant to demonstrate that on the date of the application for the LDC, that use was lawful. Under s191(2) of the 1990 Act, the use would have been lawful if (a) no enforcement action could have been taken against it, and (b) it would not have constituted a contravention of any of the requirements of any enforcement notice then in force. There is no indication that, at the date of the application for the LDC, the use would have been in contravention of any enforcement notice then in force. The issue to be determined in this appeal, then, is whether the use would have been lawful on the application date as no enforcement action against it could then have been taken.

Analysis

The origins of the chalets

6. The evidence of the appellant is that the chalets were built as holiday chalets, and have been used for that purpose and no other, since the early part of the Twentieth Century. A statutory declaration made by Mr Lewis Bloor, whose family bought the adjoining property in the 1920s and have used it as their main family home ever since, sets out his understanding that the chalets were built for use as holiday chalets and have been used as such since the 1920s.
7. Mr Bloor explains that the "Application Land" (identified as the field in which the chalets are sited) was previously owned by members of the French family, and that for as long as he can remember, the chalets and this land were used for holiday purposes, with touring caravans and tents visible on the field and people staying in the chalets. He states that in summer the site was regularly used by organised groups of adults and children; the Sidmouth Sea Scouts, and groups from Forde Parke School. He recalls that generally the adults would stay in the chalets, and the children would be under canvas in the field.
8. The Council does not dispute this evidence. In a letter to the appellant's late wife (Mrs C Williams) dated 10 March 2005, following correspondence prompted by a complaint about the use of the chalets, the Council's Senior Enforcement Officer stated "The matter has now been investigated, as it appears that the structures have been in place at the site prior to 1947. As such their use as occasional holiday accommodation would be established".
9. In response to the Council's consultation on the LDC application, the Parish Council commented that "the use of these sheds have always been for animals". However, no evidence was provided to explain or support that observation, and it does not appear to be a view shared by the Council.
10. Weighing all of this together, I am satisfied that on the balance of probabilities, the two chalets were in use as holiday chalets prior to, and on, 1 July 1948¹. This establishes their lawful use as holiday chalets on the Appointed Day.

¹ From the introduction of comprehensive planning control under the Town and Country Planning Act 1947, which came into force on 1 July 1948 ("the Appointed Day"), there flows the lawful right to continue any use which was the normal use of the land before the Appointed Day and which subsisted on the Appointed Day.

11. There is no argument that this use has subsequently been lost or abandoned. Rather, the difference between the parties concerns the extent to which the surrounding land was used for purposes incidental to the use of the chalets, and the nature of the accommodation provided.

The use of the land

12. The Council takes the view that the field in which the chalets are sited should properly be described as in agricultural use; it acknowledges that a smaller area much closer to the chalets may perhaps have been used for other purposes, but considers that insufficient evidence or information has been provided to determine the extent of that area.
13. The appellant explains in the "Additional Submission", made in the course of the LDC application, that the LDC is not sought in respect of the whole field (somewhat confusingly described as the "Application Land" in all three of the statutory declarations that were submitted in support of the application), but rather the smaller, fenced-off area around the chalets.
14. The fence around this area appears to have been erected by the appellant in or around 2002, but there is no indication that its location is derived from, or approximates, any subdivision of the field which subsisted when the chalets were constructed. As discussed above, the evidence of Mr Bloor is that touring caravans and tents were visible on "the field", and that when organised groups visited in the summer, the adults would generally stay in chalets with the children under canvas in "the field". However, that need not have precluded the use of the field – including that part of it now fenced off by the appellant – for agriculture at other times of the year.
15. In my judgment, it is likely that from the date that the chalets were first brought into use, some of the land immediately adjoining them was used for purposes incidental to that use, while they were occupied. However, there is insufficient evidence to conclude that on the balance of probabilities, the whole of the land edged in red on Plan 1 Rev 1 (or any identifiable lesser area) was given over to that use prior to, and on, 1 July 1948. It is not therefore possible to establish, by reference to its known use on the Appointed Day, that this area of land has a lawful existing use for "ancillary and incidental garden purposes".
16. However, that is not the end of the matter. The evidence of the appellant is that he and his family have used the fenced area, for purposes ancillary to their use of the chalets, ever since they purchased the chalets in 2002. In his letter to the Council dated 2 February 2016 the appellant described the use as for recreational and leisure purposes "in the same way that any residential grassed area might be used (ball games, frizzy, barbecues etc)." The appellant's statutory declaration explains that since 2002 the chalets and the land around them have been regularly used by his family and friends for short breaks, social occasions and barbecues.
17. The Council does not appear to dispute the appellant's description of his use of this area of land, and I have not been provided with any evidence that contradicts it. I therefore accept that the use of the fenced area for garden purposes, ancillary to the use of the chalets, has been regular and continuous since 2002.

18. In my judgment, the act of sub-dividing the field by fencing off this area around the chalets, and commencing its use solely for purposes ancillary to the use of the chalets, amounted to a new chapter in the planning history of the land. It resulted in the creation of a new planning unit consisting of the fenced-off area together with the two chalets, and involved a material change of use of the fenced-off part of the field, thus constituting development that required a grant of planning permission. No such grant was sought or made.
19. S.171B(3) of the 1990 Act provides that where, as here, there has been a breach of planning control which does not relate to one of the specific matters set out in subsections (1) or (2), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. That being the case, no enforcement action could have been taken by the Council against the use of the fenced area for purposes ancillary to the use of the chalets on the date that the LDC application was made, some 14 years after the breach occurred. By operation of s191(2) of the 1990 Act, then, that use is lawful.

The nature of the accommodation provided by the chalets

20. The Council's reason for refusing to grant the LDC is stated in its Refusal Notice as "The existing structures do not constitute dwelling house(s). They do not contain the facilities and services necessary for to constitute dwellinghouse(s), nor do they have the appearance of a dwellinghouse(s)." The Refusal Notice describes the use for which the LDC was sought as "The use of two existing structures as dwellinghouse(s) and use of land for ancillary and incidental garden purposes".
21. It is not clear why, having agreed with the appellant an amended description of the use for which the LDC was sought, the Council then changed that description to refer to dwellinghouses rather than holiday chalets. This may have been prompted by arguments made on behalf of the appellant that the use of the chalets as holiday accommodation falls within Class C3 of Part 3, Schedule 1 to the Town and Country Planning (Use Classes) Order 1987. Class C3 covers "use as a dwellinghouse (whether or not as a sole or main residence)." There is no contention that the chalets are or have been occupied as dwellings; rather, the appellant's case is that while they have only ever been used for holiday purposes, they are *capable* of use as dwellinghouses.
22. There is no statutory definition of the term "dwellinghouse" for planning purposes, but the *Gravesham* case² established that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. The *Grendon* case³ established that it is necessary to consider whether the building is used as a dwelling and has the attributes of a house, and endorsed the earlier judgment in the *Backer* case⁴ which held that "camping out" does not amount to a use of a building as a dwellinghouse.
23. There is very little evidence as to the facilities originally provided by the chalets that are the subject of this appeal. The statutory declarations made by Mr Williams and Mr Atkinson deal (understandably) with the use made of the

² *Gravesham Borough Council v Secretary of State for the Environment and Michael O'Brien* [1982] 47 P&CR 142 JPL 306

³ *Grendon v FSS & Cotswold DC* [2006] EWHC 1711 (Admin)

⁴ *Backer v Secretary of State for the Environment* [1983] JPL 167

chalets since the appellant purchased them in February 2002, and do not shed any light on the facilities they contained prior to that. The statutory declaration made by Mr Bloor sets out his remembrance that the chalets have always been in holiday use, but does not include any information about the interior of the chalets or the facilities they contained.

24. The appellant points out that the building under consideration in the *Gravesham* case was (like the buildings that are the subject of this appeal) constructed specifically for use as a holiday chalet. It was a modest building which had no WC or bathroom, but was nevertheless held to have the facilities required for day to day existence. However, it is important to bear in mind that whether or not a building constitutes a dwellinghouse will be a question of fact and degree, judged on the circumstances of that particular building: just because some types of holiday accommodation may reasonably be considered dwellinghouses, it does not follow that all may.
25. In *Gravesham*, other considerations that were weighed in the balance included the fact that the chalet was built of brick and had a pitched, tiled roof; the existence of a living room with a fireplace, and a separate kitchen. The chalets in the current appeal are of timber construction, and each consists of a single room. There is no evidence that during the period from their construction in the 1920s to their purchase by the appellant in 2002 they contained anything in the way of cooking or washing facilities. They are not connected to mains electricity, gas or water supplies now, so it seems unlikely (and nor is there any suggestion) that they have been in the past.
26. The parties have drawn my attention to a number of appeal decisions⁵ in which Inspectors have assessed whether various buildings are dwellinghouses. As explained above, those judgments will have been made as a matter of fact and degree, with each case considered on its own specific merits. None of the previous appeal decisions cited involve circumstances identical to those at issue here, so while of interest, they are of little assistance.
27. The appellant has also drawn my attention to the Court of Appeal's judgments in the 1998 *Moore*⁶ case, which held that there is no requirement for a building to be used as a permanent home before it can be described as a dwellinghouse, and the 2012 *Moore* case⁷, which held that whether or not a holiday home falls within Use Class C3 will be a matter of fact and degree in each case. I note that the 2012 *Moore* judgment also held that the Inspector in that case was right to take into consideration the factor that the large groups who occupied the property came together largely as a result of their shared interests, rather than occupying it as "single households" (per Class C3 of the Use Class Order 1987).
28. The statutory declaration made by Mr Bloor recollects that the chalets were regularly used by organised groups of adults and children, from Sidmouth Sea Scouts and from Forde Park School. In my judgment, such groups could not reasonably be said to have been occupying the chalets as "single households", although I accept that other smaller groups may have done so at other times.

⁵ Refs APP/Y3615/X/11/2161823; APP/P9502/X/2158016; APP/R3325/X/12/2190138; APP/D0840/X/13/2206041; APP/T3725/X/16/3147317; APP/J3720/X/14/2226174 and APP/W1850/X/14/2216731

⁶ *Moore v SSE & New Forest DC* (1999) 77 P.&C.R. 114

⁷ *Moore v SSCLG* [2012] EWCA Civ 1202

29. Taking all of this into account, I find that there is insufficient evidence to conclude, on the balance of probabilities, that from the date of their construction in the 1920s up to their purchase by the appellant in 2002 the chalets afforded to those who used them the facilities required for day-to-day private domestic existence. The limited evidence available indicates that the use made of the chalets was more akin to "camping out" than to use as a dwellinghouse. I therefore conclude that while the lawful use of the chalets on the Appointed Day has been established as holiday chalets, as a matter of fact and degree the chalets did not constitute dwellinghouses, and their use could not be described as falling within Use Class C3.
30. The next question is whether, when the chalets were purchased by the appellant in 2002 or at any point thereafter, their use changed so as to fall within Class C3.
31. The statutory declaration made by Mr Williams records that since their purchase in 2002 "...the Chalets have at all times been equipped and furnished for holiday home use, apart from brief periods during which improvement and maintenance works have been carried out". It does not, however, provide any information as to the extent and nature of that equipment and furniture. Similarly, the statutory declaration made by Mr Atkinson records that during the appellant's ownership the chalets have always been equipped, furnished and ready for holiday home use, but does not describe the equipment or furniture. The declaration recalls that in the early years the appellant carried out some cosmetic updating, including relining the chalets, but provides no further detail than that.
32. A letter to the Council written by Mrs Williams and dated 14 January 2005 (Exhibit HW3) advises that "We have over the last 3 years been restoring the chalets and much has needed replacing and repairing", and goes on to say "The chalets continue to be used for weekends and holidays throughout the year. There are basic cooking facilities, bed settees and a chemical toilet. We also store boat and windsurfing equipment in the chalets."
33. The statutory declaration made by Mr Williams explains that "Since 2002 my immediate family, together with wider family and friends, have made regular use of the Chalets for holidays, short breaks and social occasions." This is confirmed in the statutory declarations of Mr Bloor, who notes that "...the Chalets have been used regularly by the Applicant and his friends and family to host barbecues, weekends and longer stays regularly" and Mr Atkinson, who states that "...the Applicant and his family have stayed in the Chalets quite regularly, either by themselves or with other family, such as the Applicant's parents-in-law, and other friends."
34. I consider this type of holiday use to be more akin with occupation by people living together as a family, or single family, as envisaged by Use Class C3, than was the former holiday use by large organised groups. However, I consider that the very limited range of facilities described by Mrs Williams, while adequate for "camping out" purposes, falls short of those reasonably required for day-to-day private domestic existence.
35. The statement of case submitted with the appeal appended interior photographs, and an inventory of the facilities and equipment provided in each chalet. These accord with what I saw at my site visit, and include kitchen cabinets, a stove, bulk and potable water storage containers, a chemical toilet

concealed behind a modified chest of drawers, an inverter providing mains voltage electrics, a bed or sofa bed, and various other items of furniture and equipment. However, as noted above, none of this is referred to in any of the statutory declarations that have been submitted, and no other evidence has been provided as to the date on which this equipment and furniture was installed.

36. The evidence of the Council is that when the site was inspected on 1 February 2016 by Mr Josi, one of its Enforcement Officers, the eastern chalet contained a double-ringed small gas portable hob, a small fold-down table, a sofa, a pair of water skis and various tools and equipment. The Council contends that at the date of that inspection, it did not appear that the units were habitable or would have been habitable. In the comments made on behalf of the appellant on the matters contained in the Council's Appeal Statement, it is noted out that Mr Josi did not inspect the interior of the western chalet, but no point is advanced about any significant distinction between the interiors of the two chalets. It is also stated that potable water was available in each chalet, which would have been shown to Mr Josi had he asked; and that the sofa was in fact a sofa bed. It is asserted that "There is also a toilet in each Chalet..." but again, no information is provided as to the date on which these, or any other of the items of equipment and furniture, were installed.
37. As a matter of fact and degree, I consider that the chalets as they stood at the date of Mr Josi's visit were not, even with the presence of potable water and a chemical toilet, sufficient to afford occupiers the facilities required for day to day living. Rather, the chalets remained single-room timber-built structures with no running water or washing facilities. More furniture and equipment was present on the date of my site visit, including the electrical inverter, but as noted above the installation dates of the facilities, furniture and equipment are nowhere evidenced.
38. In an appeal relating to a lawful development certificate, the burden of proving relevant facts rests with the appellant. On the basis of what is currently before me, I consider that there is simply insufficient evidence for me to be satisfied on the balance of probabilities that at the date of the application for the LDC or at any time prior to that, the chalets had the ability to afford to those using them the facilities required for day-to-day private domestic existence so as to constitute dwellinghouses. That being so, their existing use on the date of the LDC application cannot have fallen within Use Class C3.

Conclusion

39. For the reasons given above I have found that while the two chalets have a lawful use as holiday chalets, which was established on the Appointed Day and has not subsequently been lost or abandoned, there is insufficient evidence to establish that as a matter of fact and degree, the chalets were dwellinghouses at the date of the LDC application. Thus, while an LDC can be granted confirming the existing lawful use of the holiday chalets, it should not extend to describing the chalets as falling within Use Class C3. I have also found that the use of the fenced area of land for garden purposes ancillary to the use of the chalets has gained immunity from enforcement through the passage of time, such that this can be included in the LDC. An LDC can therefore be granted for the description of use originally agreed between the Council and the appellant.

40. I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of "two existing holiday chalets and use of land for ancillary and incidental garden purposes" was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Jessica Graham

INSPECTOR

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 21 December 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown on the plan attached to this certificate, on which the chalets are edged in blue and the land is edged in red, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The chalets were in use as holiday chalets on 1 July 1948 (the Appointed Day for the purposes of planning control), and that use had not subsequently been lost or abandoned. The use of the land for garden purposes ancillary to the use of the holiday chalets was a breach of planning control that has subsisted for a period longer than 10 years, and by virtue of S.171B(3) of the 1990 Act has achieved immunity from enforcement.

Signed

Jessica Graham
Inspector

Date 16 January 2018

Reference: APP/P1133/X/17/3180033

First Schedule

Two existing holiday chalets and use of land for ancillary and incidental garden purposes.

Second Schedule

Land to the west of Devon Valley Holiday Village, Ringmore Road,
Stokeinteignhead, Devon TQ12 4RS

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: 16 January 2018

by **Jessica Graham BA(Hons) PGDipL**

**Land to the West of Devon Valley Holiday Village, Ringmore Road,
Stokeinteighhead, Devon TQ12 4RS**

Reference: APP/P1133/X/17/3180033

Do Not Scale

