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## Appeal Decision

Inquiry Held on 25 and 26 February 2020

Site visit made on 26 February 2020

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

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

**Decision date: 29 June 2020**

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**Appeal Ref: APP/J9497/X/18/3219534**

**The Barn, Magpie Leisure Park, Bedford Bridge, Horrabridge, Yelverton, Devon PL20 7RY**

- 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 Barton Park Estates Ltd against the decision of Dartmoor National Park Authority.
- The application Ref 0379/18, dated 10 July 2018, was refused by notice dated 22 October 2018.
- 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 use as an unrestricted dwellinghouse.

**Summary of Decision: The appeal is allowed, and a LDC is issued in the terms set out below in the Formal Decision**

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### Procedural matters

1. The Inquiry at which this appeal was heard also dealt with a separate appeal concerning an application for a LDC for the proposed use of adjacent land at Magpie Leisure Park for the stationing of up to 80 caravans for the purposes of human habitation.<sup>1</sup> That appeal is the subject of a separate Decision Letter.
2. All evidence to the Inquiry was given on oath.

### Background

3. The Appellant and the Dartmoor National Park Authority ("the DNPA") both hold copies of a planning permission dated 29 January 1986, reference F/3/35/1582/1985/8027/2, granted by the DNPA for the conversion of The Barn to a dwelling ("the 1986 Permission"). The copy held by the DNPA has five conditions attached, one of which states: *The dwelling hereby permitted shall only be used as accommodation for a manager or staff employed at Magpie Caravan Park and their dependants*. However, the copy held by the Appellant has only four conditions attached; the condition restricting the occupancy of the dwelling is not present.

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<sup>1</sup> Ref APP/J9497/X/18/3217988

## **Main issue**

4. The question of whether or not a LDC should be granted turns entirely upon whether or not there is “satisfactory” evidence that the use for which the Certificate is sought was lawful as at the date of the application for the Certificate.<sup>2</sup> For the avoidance of doubt, this means that the planning merits of the use are not relevant. The main issue for this appeal is whether the DNPA’s refusal to grant a LDC was well-founded.

## **Reasons**

5. The DNPA’s refusal notice indicated that its refusal to grant a LDC was based primarily on its conclusion that there was insufficient information to show that, on the balance of probabilities, the 1986 Permission was not subject to a condition restricting occupancy. At the inquiry, the DNPA clarified that it did not take issue with the legitimacy of the copy of the 1986 Permission held by the Appellant: rather, it acknowledged that there are in existence two copies of that Permission, one with an occupancy condition and one without, both of which appear on their faces to be entirely regular. The position taken by the DNPA at the start of the inquiry was that it was simply not possible to know which of these two versions of the 1986 Permission was the authorised version.
6. Having reviewed that position in the light of the evidence, the DNPA withdrew its objection to the grant of the LDC. This was on the basis that while it may be possible that one of the two versions of the grant of permission had been issued without the proper authority it was not possible to establish which, and in any event, the “unauthorised” version would not necessarily be a nullity. In its closing submissions, the DNPA invited me to allow the appeal.
7. The circumstances of this case are unusual. The Appellant has provided a statutory declaration from Mr Reginald James Bidder, a director of the site when the 1986 Permission was granted, stating that the copy without the restrictive condition is the copy he has on his files. The evidence of the DNPA is that the copy of the 1986 Permission with the restrictive condition is the only copy it has on its files, and this is the copy that was registered as a land charge. Neither party is able to provide any further information to shed any light on how the existence of two different versions of the same permission came about. It is of course possible to speculate, but in the absence of any further evidence at all, it is not possible to conclude that any one possible explanation is more or less likely than any other.
8. S.191(2) of the 1990 Act explains that a use is lawful at any time if no enforcement action may then be taken in respect of it; whether because it did not involve development, or require planning permission, or because the time for taking enforcement action has expired, or for any other reason. Here, it is common ground that there is what appears to be a valid grant of planning permission for the use described in the LDC application. To put it another way, there is no evidence that the version of the 1986 Permission which does not contain a condition restricting occupancy is in any way invalid, or that it should be regarded as anything less than a full and operative grant of conditional permission. That being the case, no enforcement action could be taken against the use of the Barn as an unrestricted dwellinghouse, and it follows that such use must be lawful.

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<sup>2</sup> S.191(4) of the Town and Country Planning Act 1990

## **Conclusion**

9. For the reasons given above I conclude, on the evidence now available, that the DNPA's refusal to grant a certificate of lawful use in respect of the use of The Barn as an unrestricted dwellinghouse 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.

## **Formal Decision**

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

*Jessica Graham*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Mr M Rudd, of Counsel

Instructed by Mr B Eiser

He called:

Mr B Eiser BSc(Hons) MA PG Dip MRTPI

Director, Eiser Planning and  
Development Consultancy Services Ltd

### **FOR THE LOCAL PLANNING AUTHORITY**

Mr T Leader, of Counsel

Instructed by Ms H Union, Solicitor to  
Devon County Council

He called:

Mr J K Aven BSc MRTPI MRICS

Deputy Head of Development  
Management, DNPA

### **INTERESTED PERSONS**

Mr N V Morgan

Local Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Summary Proof of Evidence of Mr Aven
- 2 Copy of opening submissions made on behalf of the Appellant
- 3 Copy of opening submissions made on behalf of the DNPA
- 4 Copy of the notification letters dated 19 November 2019 sent by the DNPA to interested parties, notifying them of the details of the Inquiry
- 5 Copy of the press advertisement placed by the DNPA on 6 February 2020 providing details of the inquiry
- 6 Composite Plan, agreed by the parties, showing the extent of the land covered by each of the relevant planning permissions
- 7 Copy of the closing submissions made on behalf of the DNPA
- 8 Copy of the closing submissions made on behalf of the Appellant
- 9 Bundle of judgments provided by the Appellant: (1) *Cotswold Grange Country Park LLP v SoS CLG & Tewkesbury BC* [2014] EWHC 1138 (Admin); (2) *Winchester CC v SoS CLG, Mr Wall & ors* [2013] EWHC 101 (Admin); (3) *Breckland DC v SoS HCLG & Plum Tree Country Park Ltd* [2020] EWHC 292 (Admin)
- 10 Appellant's outline application for an award of costs

## **DOCUMENT SUBMITTED AFTER THE INQUIRY**

- A Copy of email dated 8 March 2020 from Counsel for the LPA, confirming in writing the oral submissions made at the inquiry, viz that in the light of the evidence the NPA formally withdraws its objection to the grant of a LDC and invites the Inspector to allow appeal ref APP/J9497/X/18/3219534.

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## 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

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**IT IS HEREBY CERTIFIED** that on 10 July 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the land as a dwellinghouse is permitted by an express grant of planning permission reference F/3/35/1582/1985/8027/2 dated 29 January 1986, which contains no conditions restricting the nature, tenure or period of occupancy.

Signed

*Jessica Graham*  
Inspector

Date 29 June 2020

Reference: APP/J9497/X/18/3219534

### ***First Schedule***

Use as an unrestricted dwellinghouse

### ***Second Schedule***

The Barn, Magpie Leisure Park, Bedford Bridge, Horrabridge, Yelverton, Devon  
PL20 7RY

## 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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 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: 29 June 2020

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

**The Barn, Magpie Leisure Park, Bedford Bridge, Horrabridge, Yelverton, Devon  
PL20 7RY**

**Reference: APP/J9497/X/18/3219534**

Do Not Scale

