



Appeal Decision

Site visit made on 5 April 2022

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/X1165/X/20/3257909

Sladnor Park, Sladnor Park Road, Maidencombe, Torquay TQ1 4TF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by English Care Villages Ltd against the decision of Torbay Council.
- The application ref P/2020/0315/CP, dated 18 March 2020, was refused by notice dated 9 June 2020.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is "Completion of a 188 unit 'retirement village', associated healthcare, leisure and restaurant facilities, retention of 3 pairs of existing lodges, landscaping and parking, pursuant to P/2008/1418/PA and P/2009/0240/MRM."

This decision supersedes that issued on 3 March 2021. That decision on the appeal was quashed by order of the High Court.

Decision

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

Background

2. In 2006, the Council granted outline planning permission for the development of a retirement village ("the 2006 Permission").¹ It subsequently approved an application in 2007 for reserved matters ("the 2007 RM Approval"),² and then an application in 2008 for 'amendments' to the 2006 Permission and 2007 RM Approval ("the 2008 Permission").³ A further application for reserved matters was approved in 2009 ("the 2009 RM Approval").⁴
3. In March 2020 an application was made for a certificate to the effect that (I summarise) the development which had been permitted had been lawfully commenced, and so could lawfully be completed. That application was refused in June 2020. An appeal was lodged against the Council's refusal, and was dismissed for the reasons set out by the appointed Inspector in his decision letter dated 3 March 2021⁵ ("the 2021 Decision").

¹ P/2006/0474/MOA dated 21 June 2006

² P/2007/1410/MRM dated 29 November 2007

³ P/2008/1418/PA dated 19 December 2008

⁴ P/2009/0240 dated 29 June 2009

⁵ APP/X1165/X/20/3257909

4. The Appellant's challenge to that appeal decision was heard by the High Court. For the reasons set out in her judgment dated 11 November 2001⁶ Steyn J allowed the claim, and ordered that the 2021 Decision be quashed, and the appeal remitted "for determination by a different Planning Inspector in accordance with the judgement of the Court". That is the task now before me.
5. The Planning Inspectorate invited the Council, the Appellant, and other interested parties to submit representations on any material change in circumstances which may have arisen since the 2021 Decision was issued, and to comment on the specific issues upon which that Decision was quashed. I have taken all of those submissions into account, together with all of the other material originally submitted in the course of the appeal.
6. The Council notified the Planning Inspectorate that it would not seek to defend the re-determination of the appeal, on the basis that the judgement of the court was that the appeal was to be allowed and a certificate granted.
7. In the light of some of the submissions by interested parties, and in recognition of their clearly heartfelt nature, it is worth clarifying the approach I must take. If the application was for a grant of planning permission, my decision-making process would involve an assessment of the planning merits of the proposal (such as, to use examples raised by local residents, its impact upon biodiversity, and flood risk) and its compliance with national and local planning policies. However, since the application is not for planning permission but for a LDC, none of those considerations are before me: rather, my remit is confined to the narrow issue of determining whether the operations described in the application would be lawful if begun at the date of the application.⁷

Analysis

8. A key issue in this appeal has been the correct interpretation of the 2008 Permission; specifically, whether it related to the whole of the site for which permission was granted by the 2006 Permission, or – like the 2007 RM Approval – only to the central part of that site. The High Court Judgment has now established conclusively that the site of the 2008 Permission was the same as the site of the 2006 Permission.
9. The Judgment has also clarified the status of the 2008 Permission as a free-standing permission granted under s.70 of the 1990 Act, which effectively varied the scheme that had been granted permission in 2006 (and in respect of which certain reserved matters had been approved in 2007). In other words, the 2008 Permission authorised the entirety of the development consented by the 2006 Permission and the 2007 RM Approval, save as amended by the 2008 Permission itself. The conditions attached to those earlier permissions continued to apply, save to the extent that the time limit was governed by the express condition in the 2008 Permission, which specified that development must commence within 3 years.
10. A short section of the access road detailed by the 2006 Permission was constructed in December 2011, on a part of the site where the authorised layout was unaltered by the 2008 Permission. It is common ground, between the Council and the Appellant, that this was a "material operation" as defined by s.56(4) of the 1990 Act. The works would therefore constitute the

⁶ *R oao Gallagher Ventures Ltd v SSHCLG & Torbay Council* [2021] EWHC 3007 (Admin)

⁷ Per section 192(2) of the Town and Country Planning Act 1990 (as amended)

commencement of development, for the purposes of the time-limiting conditions attached to grants of planning permission. This has been queried by some who live near the site, who have pointed out that only limited works were carried out on a small area of land. However, caselaw has established that very little is in fact needed for development to be begun under s.56: what is important is that the works were comprised in the development. In this case it is clear that they were, being for a section of the access road authorised by the 2006 Permission.

11. The works carried out in December 2011, then, took place on the site of the 2006 Permission, but after the time limit for commencement specified by conditions (a) and (b) of that Permission had lapsed. However, as set out at paragraph 21 of the High Court Judgment, they took place within the specified three-year commencement period for the 2008 Permission, so would be effective to commence that Permission if its site was the same as the 2006 Permission.
12. The Court having found that site of the 2008 Permission was indeed the same as that of the 2006 Permission, it follows that the works carried out in December 2011 effectively commenced the 2008 Permission.
13. A number of local residents have provided detailed reasons for their continuing belief that the site of the 2008 Permission was not in fact the same as the 2006 Permission, and that the works carried out in 2011 may have been in breach of one or more conditions. However, the proper interpretation of a planning permission is a matter of law, rather than of planning judgment. The site to which the 2008 Permission relates has been established by the High Court, and the effect of the 2011 works affirmed. The Court has ordered that the re-determination of this appeal proceed in accordance with its judgement. It is not, therefore, open to me to consider those arguments anew.
14. The 2008 Permission, having been commenced within the specified time limit, remains extant. The completion of the development it permitted, if done in accordance with the conditions that remain relevant, would therefore be lawful. The LDC application sought a certificate for the completion of the authorised development "pursuant to" the 2008 Permission (and the subsequent 2009 RM Approval), and I consider that a certificate in those terms would encompass the obligation to comply with the relevant remaining conditions.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of "Completion of a 188 unit 'retirement village', associated healthcare, leisure and restaurant facilities, retention of 3 pairs of existing lodges, landscaping and parking, pursuant to P/2008/1418/PA and P/2009/0240/MRM" 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 192
(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 18 March 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The Judgment of the High Court in *R oao Gallagher Ventures Ltd v SSHCLG & Torbay Council* [2021] EWHC 3007 (Admin) established that the site covered by planning permission ref P/2008/1418/PA ("the 2008 Permission" was the same as the site covered by planning permission ref P/2006/0474/MOA. The works carried out on that site in December 2011 commenced the development authorised by the 2008 Permission, such that this permission remains extant. Completion of the authorised development in accordance with the terms and conditions of this Permission, and the terms of Reserved Matters Approval ref P/2009/0240/MRM, would therefore be covered by an express grant of planning permission and so would be lawful. (For the avoidance of doubt, the conditions of the 2008 Permission are the conditions imposed on P/2006/0474/MOA and P/2007/1410/MRM, with the exception of the conditions specifying time limits for commencement, which were replaced by condition 1 of the 2008 Permission.)

Signed

Jessica Graham

Inspector

Date: 24 May 2022

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First Schedule

Completion of a 188 unit 'retirement village', associated healthcare, leisure and restaurant facilities, retention of 3 pairs of existing lodges, landscaping and parking, pursuant to P/2008/1418/PA and P/2009/0240/MRM.

Second Schedule

Land at Sladnor Park, Sladnor Park Road, TORQUAY, TQ1 4TF

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 May 2022

by Jessica Graham BA (Hons) PgDipL

Land at: Sladnor Park, Sladnor Park Road, TORQUAY, TQ1 4TF

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Not to Scale

