



Appeal Decision

Inquiry held on 5 July 2022

Site visit made on 7 July 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/E2001/X/20/3252645

Little Eden Country Park, Bridlington Bay Road, Carnaby, East Riding of Yorkshire YO15 3QG

- 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 Mr Mitchell Barney against the decision of East Riding of Yorkshire Council.
- The application ref 19/00623/CLE, dated 21 February 2019, was refused by notice dated 11 July 2019.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
- The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is non-compliance with conditions 4, 23 and 24 of planning permission 05/01682/STPLF.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the matter constituting a failure to comply with a condition or limitation which is found to be lawful.

Preliminary matters

2. The Inquiry opened on 5 July 2022 and sat for 2 days. The evidence was affirmed at the Inquiry.
3. The description of development is normally taken from the application form. The application form however states '*see supporting statement*'. The supporting statement refers to seeking confirmation of the '*non-compliance with conditions 4, 23 and 24 of planning permission 05/01682/STPLF*' and '*attaining a legal determination from the local planning authority on this established use as an independent residential unit*'. The description of development ascribed to the LDC application by the Council was 'Certificate of lawfulness for continued use of holiday site as permanent residential use (in breach of conditions 4, 23 and 24 of planning permission 05/01682/STPLF)'.
4. The appellant claimed that this amended description had not been agreed and that it went beyond what had been applied for. The appeal parties have confirmed¹ that the description of development is '*non-compliance with conditions 4, 23 and 24 of planning permission 05/01682/STPLF*' and that is what I shall consider.

¹ Agreed Statement of Common Ground dated 4 February 2022

Background

5. Planning permission was granted for a '*change of use of an agricultural smallholding to allow the siting of timber holiday lodges*' in May 2005² (the 2005 PP). There is no dispute that the 2005 PP was lawfully implemented nor that the lodges sited on the land fall within the statutory definition of a caravan, thereby representing a use of land.
6. Conditions 4, 23 and 24 of the 2005 PP functionally restrict the development as follows:
 - Condition 4: The scheme shall only be used for holiday accommodation and not permanent residential occupancy.
 - Condition 23: No timber lodges on the site shall be occupied between 18 January and 18 February in any one year.
 - Condition 24: No timber lodge on the proposed development can be used continuously for more than 6 months in any one calendar year.
7. The reasons given for the imposition of conditions 4, 23 and 24 include that '*the timber lodge site fulfils an important social function by providing holiday accommodation*', '*tourism has an important part to play in the economy of the area and that holiday sites are important in this respect*' and '*established planning policies seek to restrict residential development in the open countryside to that which is essential in order to protect the countryside for its own sake, to avoid placing demands on services and in the interests of sustainability*'.
8. The conditions impose continuing requirements on the use and occupation of the development permitted. They are imposed for a planning purpose. They relate fairly and reasonably to the development permitted. They are not unreasonable, they are enforceable and they do not take away any pre-existing use rights.

Reasons

9. S191 of the 1990 Act enables any person to apply to the Local Planning Authority for an LDC to the effect that, relevant to this appeal, any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful. S191(3)(a) sets out that any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if no enforcement action may be taken. The enforcement expiry time for failure to comply with conditions or limitations imposed on a planning permission is 10 years. That 10-year period would need to have expired by the date that the application for the LDC was made. The date of the LDC application was 21 February 2019 ("the material date"). The burden of proof rests with the appellant.
10. The **main issue** is whether the decision of the local planning authority was well-founded. This turns on whether the appellant can show, on the balance of probability, that there has been a failure to comply with conditions 4, 23 and

² Council reference 8/01682/STPLF

24, either individually or collectively, so that the time for taking enforcement action has expired.

The planning unit

11. Where the use of land is relevant to the matter being considered, the extent of the planning unit needs to be defined. The land is owned by the appellant and there is a single main purpose, being the siting of timber holiday lodges. There is no dispute that lodges are used for residential purposes. Some lodges have associated parking and garden spaces. There are communal areas, a lake and a workshop with site office, which are all incidental to the main purpose. Not all available pitches are occupied by lodges.
12. Some lodges are owned by their occupiers, who pay a ground rent and maintenance fee to the appellant. Other lodges are owned by the appellant and rented out as holiday accommodation. Whether individual lodges are owned or rented by their occupiers does not change the main purpose, the siting of timber holiday lodges. Having regard to *Burdle*³, I find no reason to disagree with the appeal parties that the planning unit is the land edged red on drawing numbers 17_848_001 and 17_848_001 Rev A.

The timber holiday lodges

13. The appeal parties agreed during oral evidence that the lodges contain all the facilities required for day-to-day private domestic existence and that they are occupied for residential purposes. The length of time or purpose of that occupation does not change their residential purpose.
14. The 'scheme' referred to in condition 4 is the siting of timber holiday lodges. The use or occupation of any lodge for any purpose other than holiday accommodation purposes would therefore breach this condition. The occupation of any lodge at any time between 18 January and 18 February would breach condition 23. While condition 23 could be construed as a seasonal occupancy condition, the Council has not raised any argument in this regard. The continuous use of any individual lodge for more than 6 months, without significant interruption, in any one calendar year would breach condition 24.
15. In *Gabbitas*⁴ it was held that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse to grant an LDC. That is provided the appellant's evidence alone is sufficiently precise and unambiguous.

Evidence relating to Plot 8

16. Mr Harry Benson's evidence, provided in 2 sworn affidavits and oral evidence given at the Inquiry, confirms that he has lived permanently at Plot 8 since March 2007 and that he has not owned or had access to any other dwelling since moving to Plot 8. He also confirmed that he and his wife used to go away on holiday during the month of February each year. While he was unclear as to when he stopped vacating his home during the month of February each year, there is nothing before me to contradict Mr Benson's evidence.

³ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

⁴ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

17. The lodge located on Plot 8 has therefore been shown, on the balance of probability, to have been occupied as a permanent residence in breach of condition 4, to have been occupied between 18 January and 31 January each year in breach of condition 23, and been used and occupied for more than 6 months in each calendar year since 2007.

Evidence relating to Plot 13

18. Mrs Patricia Tranmer's evidence, provided in 2 affidavits and oral evidence given at the Inquiry, confirms that she and her husband have lived permanently at Plot 13 since October 2008 and that they have not owned or had access to any other dwelling since moving to Plot 13. While Mrs Tranmer and her husband may spend every other weekend and the month of February away from their home, this does not materially change the use of their lodge from residential to some other use.
19. The lodge located on Plot 13 has therefore been shown, on the balance of probability, to have been occupied as a permanent residence in breach of condition 4 and have been occupied for most of the time between 18 January and 31 January each year in breach of condition 23. Spending every other weekend away from the lodge could demonstrate that the lodge on Plot 13 has not been used or occupied continuously for more than 6 months in each calendar year since 2008. However, Mrs Tranmer confirmed that the lodge remained furnished and occupied by her possessions during the weekends they were absent. Their absence over a weekend does not represent a substantial interruption to the lodge's use. The lodge located on Plot 13 has therefore been used and occupied in breach of condition 24.

The appellant's evidence in respect of Plot 31

20. Mr Brambles' affidavit confirms that his and Miss Penny Senior's lodge was erected in 2008 and that they moved into their lodge in October 2009. Even if I were to find that Mr Brambles' and Mr Mitchell Barney's evidence shows that they have lived permanently in their lodge in breach of conditions 4, 23 and 24, their use and occupation of this lodge did not begin until October 2009, which is after the material date. The appellant has therefore failed to show, on the balance of probability, that the lodge on Plot 31 has been occupied in breach of conditions 4, 23 and 24 for the relevant 10-year period.

Leases and Council Tax records

21. It is generally accepted that leases and council tax records do not confirm occupation. At most the leases provided show the extent of the land forming each specified plot and that limitations on occupancy, like those imposed by the 2005 PP, are in effect.
22. The Council Tax evidence confirms that Plots 8 and 13 have been registered for Council Tax payments since 22 November 2009 and 4 May 2009 respectively. The Council tax record for Plot 31 confirms registration since 25 June 2018. Even if I were to accept that these records show residential occupation, they are dated after the material date, and do not cover the relevant 10-year period.
23. The leases and Council Tax records do not therefore add anything to my conclusion that only plots 8 and 13 have been shown to be occupied or used in breach of conditions 4, 23 and 24 throughout the relevant 10-year period.

The extent of the land affected by the breach

24. The National Planning Practice Guide advises that the determination of an LDC turns on whether the specific matter is or would be lawful⁵. It is the matter constituting the failure to comply with the condition, rather than the condition itself, which the LDC should describe. For example, if a condition prohibiting open storage on a site has been breached for more than 10 years by storing materials in the open on specific parts of the site, the LDC should describe the extent of the breach which has become lawful. Such an LDC would not then cover a future breach of the condition involving open storage on a different part of the site from that described in the LDC. The LDC needs to spell out the characteristics of the matter to define it with precision.
25. While the appellant claims that '*about 7 lodges*' are occupied on a permanent residential basis, it has only been demonstrated that plots 8 and 13 have been occupied in breach of conditions 4, 23 and 24. This raises the question of whether the use of one or more lodges for more than 10 years in breach of these conditions also allows all other lodges on the land to be occupied without complying with them.
26. In this respect the case of *St Anselm* is relevant. Briefly, this related to a development for flats with a condition that the associated parking bays, which are marked out, should be reserved for use by occupiers or users of the development. A number had been used contrary to the condition and this had become lawful through the passage of time, so the question was whether other parking bays could be used not in association with the development, contrary to the condition.
27. There was some question as to the wording of the condition and whether the Council wanted the whole of the car park to be retained for the benefit of the permitted development. It was concluded that whether the condition required all the car parking spaces to be used, each and every car parking space, or no part of the car parking accommodation shall be used, there would still have been a breach of the condition as soon as one of the spaces ceased to be used in the manner prescribed. I have already concluded that the permanent residential occupation of the lodges on plots 8 and 13 results in a breach of conditions 4, 23 and 24.
28. However, the judge went on to note that '*merely because one of the spaces is not used in accordance with the terms of the condition it does not follow that the Council would be at all happy to see the remainder of the car parking spaces free from effective control*'. Clearly that is the same situation here, with the LDC application being refused.
29. When interpreting words in a condition *Lambeth LBC*⁶ requires regard to be given to what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and the planning permission. This is an objective exercise, where regard will be had to the natural and ordinary meaning of words within conditions, the overall purpose of the planning permission, any other conditions that cast light on the purpose of the relevant words, and considering common-sense.

⁵ PPG on Lawful development Certificates: Paragraph 9 Reference ID: 17c-009-20140306

⁶ *Lambeth LBC v SSHCLG* [2019] 1 WLR 4317

30. The wording of conditions 4, 23 and 24 may not be consistent, with references to '*the scheme*', '*timber lodges*', '*units*' and '*timber lodge*'. Taking the 2005 PP in the round and considering its context, the siting of timber lodges was only granted for holiday accommodation purposes as the site's location in the countryside is not appropriate for unrestricted residential development. Taking the natural and ordinary meaning of conditions 4, 23 and 24, a reasonable reader would take their purpose to be the prevention of permanent residential occupation of any lodge sited on the land. Such an interpretation of conditions 4, 23 and 24 does not result in an implied new condition⁷. While conditions 4, 23 and 24 have been breached by the permanent residential occupation or use of the lodges on plots 8 and 13, they remain effective in respect of lodges sited elsewhere on the land.
31. In *Royale Parks Limited*⁸, the court rejected the contention that a breach of condition on a well-defined and identifiable part of the site had to be treated as a breach across all the land. In that case the Inspector had been correct to conclude that just because 4 caravans had accrued immunity, that immunity could not then be applied to other caravans sited on the land. The presence of communal areas and communal facilities on the appeal site is a relevant difference to be considered.
32. Individual lodges are readily identifiable on the land by their physical presence. The parts of the planning unit forming plots 8 and 13 are also identified on the plans attached to their respective leases. Whether each lodge is physically separated from one another by fences, hedgerows, or some other physical barrier, or whether each lodge could be moved elsewhere on the land, is not determinative.
33. There was some discussion about the likely content of an enforcement notice, if it was found expedient to take action in respect of the breach of conditions 4, 23 and 24. *St Anselm* clarifies that a notice must go beyond identifying that the breach falls under s173(1)(b). It must also specify the matters which are said to constitute the breach (s173(1)(a) and (2)). Furthermore, the notice must specify the steps which it requires to be taken. Those steps may not be more than is necessary to make any development comply with the conditions which are alleged to have been breached (173(3) and (4)).
34. While Mr Green is correct in his assertion that an enforcement notice would need to identify the land as Little Eden Country Park and that it is conditions 4, 23 and 24 that have allegedly been breached. That of itself would not be sufficient to comply with the statutory framework. An enforcement notice would also have to make it plain that the breach of conditions 4, 23 and 24 is by reason of the use of the lodges located on plots 8 and 13. Then, having identified the lodges with sufficient clarity, the steps required to be taken could be no more than that the use of lodges 8 and 13, in breach of conditions 4, 23 and 24, shall cease.
35. The 2005 PP does not control the number of lodges to be sited by condition. The main parties agree that the land has not yet been fully developed and more lodges may be sited on the land in the future. It would be absurd if establishing the lawful occupation of one lodge in breach of conditions 4, 23

⁷ *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74

⁸ *Royale Parks Limited v SSHCLG and Bournemouth, Christchurch and Poole Council* [2021] EWCA Civ 1101

and 24 meant that lodges not yet sited on the land could be lawfully occupied in breach of these conditions as soon as they were sited on the land.

36. The appellant has therefore shown that a breach of conditions 4, 23 and 24, by the permanent residential occupation of the lodges on plots 8 and 13, has occurred continuously for more than 10 years. The breach of conditions 4, 23 and 24 in respect of the permanent residential occupation of the lodges on plots 8 and 13, as identified in the plans attached to their respective leases, is therefore immune from enforcement action due to the passage of time.

Conclusion

37. For the reasons given above I conclude, on the evidence now available, that the Council's refusal in part to grant a certificate of lawful use or development in respect of the residential occupation of plots 8 and 13 in breach of conditions 4, 23 and 24 of planning permission 05/01652/STPLF was not well-founded and that the appeal should succeed to that extent. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr Michael Rudd of Counsel

He called: Mr Harry Benson

Mrs Patricia Tranmer

Mr Matthew Green

Mr Mitchell Barney

FOR THE LOCAL PLANNING AUTHORITY: Mr Killian Garvey

He called: Mr Keith Thompson

DOCUMENTS

CD1 Opening Statement on behalf of the appellant

CD2 Opening submission on behalf of the Council

CD3 Mr Michael Barney's Second Affidavit signed

CD4 Mr Harry Benson's Second Affidavit signed

CD5 Mrs Patricia Tranmer's Second Affidavit signed

CD6 Carnaby Parish Council's Consultation Response

CD7 Closing Submissions on behalf of the Council

CD8 Closing submissions on behalf of the appellant

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 February 2019 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, 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(3) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The lodges sited on plots 8 and 13 have been occupied for permanent residential purposes. The lodges sited on plots 8 and 13 have been occupied between 18 and 31 January each year. The lodges sited on plots 8 and 13 have been occupied continuously for more than 6 months in any one calendar year.

Signed

M Madge

Inspector

Date: 19 August 2022

Reference: APP/E2001/X/20/3252645

First Schedule

The permanent residential occupancy of the lodges on plots 8 and 13 in breach of conditions 4, 23 and 24 of planning permission 05/01652/STPLF.

Second Schedule

Land at Little Eden Country Park, Bridlington Bay Road, Carnaby, East Riding of Yorkshire YO15 3QG

IMPORTANT NOTES – SEE OVER

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, 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 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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: 19 August 2022

by M Madge DIPTP MA MRTPI

Land at: Little Eden Country Park, Bridlington Bay Road, Carnaby, East Riding of Yorkshire YO15 3QG

Reference: APP/E2001/X/20/3252645

Scale: Not to Scale

