



Appeal Decision

Inquiry held on 24 – 25 October 2023

Site visit made on 23 October 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/D0840/X/23/3324851

Calamankey Farm Campsite, Longdowns, Penryn, Cornwall TR10 9DL

- 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 Charlie Barton of Rosecliston Park Limited against the decision of Cornwall Council.
 - The application Ref PA22/03618, dated 12 April 2022, was refused by notice dated 10 August 2022.
 - 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 described as: "*Condition 2 of planning permission W2/PA08/01056/F has been breached for a period exceeding 10 years.*"
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Decision

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

Application for Costs

2. At the Inquiry an application for costs was made by Mr Charlie Barton of Rosecliston Park Limited against Cornwall Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description provided on the application form contains superfluous wording and so I have omitted this in the description used in the heading above.
4. Before the Inquiry opened, I saw the site, unaccompanied, from the road to the northwest of the site. No caravans or campervans were present. At the Inquiry, both main parties agreed that a further site visit, accompanied by the main parties, was not necessary and I had no reason to disagree.
5. All evidence at the Inquiry was given under oath.
6. No agreed Statement of Common Ground has been provided. However, by an email dated 23 October 2023 (Document 1) the Council set out its position in particular respects, summarised below.

- The Council has accepted that the appeal site is a single planning unit.
- The Council contends that any lawfulness found to exist can only relate to the extent to which Condition 2 was breached and for this purpose the Council contends that the second part of Condition 2 relating to "permanent" residential accommodation has not been breached.
- The Council accepts that the 15 caravans have been used for residential rather than for holiday/leisure purposes for a period of more than 10 years before the date of the relevant application in breach of part of Condition 2. However, it is the extent to which a condition is shown to have been breached for 10 years which defines the scope of the accrued right and which should be specified in the certificate, no less and no more.
- The occupation for the purposes of holiday/leisure purposes would amount to a breach of only part of Condition 2. The main issue on this appeal is contended to be whether the second part of the condition has been breached, namely: *"and shall not be used to provide any form of permanent residential accommodation."*

Background

7. On 13 August 2008 planning permission was granted on Calamankey Farm for:
"Continued use of land for the stationing of fifteen caravans/campervans and stationing of an additional static caravan".
8. The permission was subject to 2 conditions, the second of which says:
"The fifteen motorised caravans, caravans or campervans hereby approved shall be used for holiday/leisure purposes only and shall not be used to provide any form of permanent residential accommodation."
Reason: To accord with current planning policies under which continuously occupied accommodation would not normally be permitted."

Main Issue

9. In accordance with section 195(2)(a) of the 1990 Act, the main issue in the appeal is whether the Council's decision to refuse the application was well-founded or not.

Reasons

10. Under section 191(1)(c) of the 1990 Act, if any person wishes to ascertain whether any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the matter.
11. Section 191(3) of the same Act states that for the purposes of this Act 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 (a) the time for taking enforcement action in respect of the failure has then expired; and (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

12. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
13. In an LDC appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities. Their evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Issues of planning merit are not relevant.
14. In summary, the appellant's position is that the Council's acceptance that the caravans have been used for residential accommodation rather than for holiday/leisure purposes for a period of more than 10 years before the date of the LDC application means that Condition 2 is entirely unenforceable. However, the Council's position is that the second part of Condition 2 has not been breached for the requisite period and so that second part remains enforceable.
15. As such, to determine this appeal, it is necessary for me to interpret the 2008 planning permission and, in particular, what Condition 2 means. To carry out this task, as stated in *Lambeth*¹, the starting-point - and usually the end-point - is to find the natural and ordinary meaning of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense.
16. Consistent with *Trump*², I must consider what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which I must have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.
17. The purpose of the planning permission in this case is clear from its description. It is to allow the land to be used as a caravan site, caravans being structures designed or adapted for human habitation.
18. The purpose of Condition 2 is clear from its stated reason. It is to prevent the caravans/campervans from being continuously occupied. Given that no seasonal occupancy condition exists on the permission, as a matter of common sense, I take the reason for Condition 2 to mean that Condition 2 is a restriction on any of the caravans/campervans being used as a person's home.
19. For this reason, I am not satisfied that Condition 2 should be read in two parts such that the second part allows caravans/campervans to be used for temporary residential accommodation. To my mind, in light of the worsening housing crisis since 2000, that my attention has been drawn to, such temporary residential accommodation could (and most likely would) be continuously occupied. This cannot be reconciled with the stated reason for the condition so this cannot be what was intended by Condition 2 when it was imposed in 2008.

¹ *Lambeth LCB v Secretary of State for Housing Communities and Local Government* [2019] 1 WLP 4317

² *Trump International Gold Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74

20. Therefore, the second part of Condition 2 must be read in conjunction with and as an accompaniment to the first part of Condition 2 and not as a separate enforceable limitation. The two parts go hand in hand and are not severable. The second part does nothing more than add explanation to the first part, both parts seeking to achieve the same aim set out in the single reason for the condition.
21. Moreover, the first part of Condition 2 is clear. The caravans/campervans shall be used for holiday/leisure purposes only. This excludes any type of residential accommodation that is not for these purposes. It makes no sense for the word "only" to have been included if the second part of the condition were then to be read to allow the caravans/campervans to also be used for temporary residential accommodation in the manner described by the Council in this appeal.
22. If the interpretation of the Council were right, the condition would have been worded differently to say that the caravans/campervans shall only be used for holiday/leisure purposes or as temporary residential accommodation. But this is not what Condition 2 says.
23. I appreciate that over the years, Condition 2 may have conveniently been interpreted by various people to allow caravans/campervans to be used as temporary residential accommodation. From the evidence in this case, it seems to me that this was done either as a response to housing needs or to avoid taking enforcement action (as defined in section 171A(2) of the 1990 Act) or both.
24. I make no comment in this regard, except to say that the email of 13 October 2015 in the enforcement case file notes is particularly telling. The "loose" interpretation of Condition 2 over the years does not mean this is how Condition 2 should correctly be interpreted in light of the relevant case law noted above. This is because that interpretation pays no regard to the clearly stated reason on the decision notice for why Condition 2 was imposed.
25. I acknowledge the Council's view that inclusion of the word "permanent" in Condition 2 must have been intentional or the condition could have simply referred to "residential accommodation". But this makes no difference to my overall conclusion, in light of my comments above about the reason for the condition, which I cannot reconcile with the Council's case.
26. I have considered the Council's view that the phrase "permanent residential accommodation" is aimed at the difference between permanent and temporary accommodation. But I disagree. In my view, the word "permanent" was aimed at the fact that a caravan by definition is suitable for human habitation, ie accommodation that can be used permanently to live in. This is a specific point which I noted that the Council conceded on during closing submissions.

Conclusion

27. 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: "*Condition 2 of planning permission W2/PA08/01056/F has been breached for a period exceeding 10 years,*" 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.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Rudd

Barrister, Kings Chambers

He called

Matthew Green

Director, Green Planning Studio Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Sancho Brett

Barrister, Kings Bench Godolphin Chambers

He called

Peter Blackshaw

Principal Development Officer, Cornwall Council

DOCUMENTS

- 1 Email dated 23 October 2023 on behalf of Peter Blackshaw
- 2 Extracts of Authorities
- 3 *R (Ocado) v Islington London Borough Council* [2021] EWHC 1509 (Admin)
- 4 *Din v Wandsworth London Borough Council* (Transcript, 23 June 1981)
- 5 *Knight v Vale Royal Borough Council* [2004] HLR 106
- 6 Opening Submissions on behalf of the Appellant
- 7 Opening Submissions on behalf of the Local Planning Authority
- 8 Unredacted Planning Contravention Notice Questionnaire for Pitch 9, dated 2 September 2015, and Pitch 10 dated 1 September 2015
- 9 Closing Submissions on behalf of the Local Planning Authority
- 10 Closing Submissions on behalf of the Appellant
- 11 Costs Application on behalf of the Appellant
- 12 Response to the Costs Application on behalf of the Local Planning Authority

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 12 April 2022 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 edged in red 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 reason:

The caravans/campervans have been used for residential rather than for holiday/leisure purposes continuously for a period of 10 years before the date of the application in breach of Condition 2 of planning permission W2/PA08/01056/F and not in contravention of any requirement of any enforcement notice or breach of condition notice then in force, such that Condition 2 is no longer enforceable.

Signed

L Perkins
INSPECTOR

Date: 27 November 2023

Reference: APP/D0840/X/23/3324851

First Schedule

Condition 2 of planning permission W2/PA08/01056/F has been breached for a period exceeding 10 years

Second Schedule

Land at Calamankey Farm Campsite, Longdowns, Penryn, Cornwall TR10 9DL

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: 27 November 2023

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: Calamankey Farm Campsite, Longdowns, Penryn, Cornwall TR10 9DL

Reference: APP/D0840/X/23/3324851

Scale: Not to scale

