



Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2024

Appeal Ref: APP/Y9507/X/23/3330139

Polowood Shooting Ground, St Mary's Farm, Ridge Road, Falmer, East Sussex BN1 9PN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Polowood Clay Shooting and Corporate Entertainments Ltd against the decision of South Downs National Park Authority.
 - The application ref SDNP/23/02552/LDE, dated 16 June 2023, was refused in part by notice dated 15 August 2023.
 - 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 a Clay Pigeon Shoot and other sporting/leisure activities including archery, air rifles and axe throwing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Given the nature of the case, I did not consider it necessary to visit the site and made my decision on the basis of the information submitted. I consulted the Authority and appellant, both of whom were content for me to proceed on this basis.
3. This was the second LDC application relating to this use. In response to the first application¹, the Authority granted a certificate certifying that the use was lawful for a maximum of 52 days per calendar year.
4. The supporting letter accompanying the application which led to the current appeal states that it seeks a lawful development certificate to certify that the use of the site as a Clay Pigeon Shoot and other sporting/leisure activities including archery, air rifles and axe throwing for 200 days a year is lawful.
5. In the event, the Authority again granted a certificate for 'Clay Pigeon Shoot and other sporting/leisure activities including archery, air rifles and axe throwing, for a maximum of 52 days per calendar year'. I have therefore approached the appeal on the basis that the appellant seeks a certificate similar to that issued by the Authority, but with the reference to 52 days replaced with 200 days.
6. The use of the site as described, whether before or after the modification made by the Authority, does not fall within any planning use class. The application

¹ SDNP/22/05978/LDE

and appeal relate only to the use of the land and not to any operational development.

Main Issue

7. The main issue is whether the Authority's decision was well-founded. This turns on whether the evidence shows, on the balance of probability, that the use, as described in the application form, taking place for 200 days per year, would have been lawful at the time of the application.

Reasons

General approach to LDCs

8. Advice relating to LDCs is provided by the Government's *Planning Practice Guidance* (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability². A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. The planning merits of the use are not relevant.
9. In this case it is relevant to note that section 191(4) of the Act establishes that it is open to the local planning authority to modify the description of a use in an LDC application and issue a certificate to that effect, if the information provided satisfies it of the lawfulness of the use as modified.

Assessment

10. Section 191(2) of the Act indicates that uses may become lawful when the time for enforcement action has expired. The time periods for taking enforcement action are set out in s171B of the Act. In accordance with s171B(3), the relevant period in this case is 10 years, and it is clear that both parties have approached the matter with that in mind. Any 10-year period prior to the date of the application would be sufficient to establish lawfulness, provided the use was not subsequently changed or abandoned before the application was made.
11. It appears that the appeal site has been used for shooting since 2007 and, at varying levels of intensity, for the range of activities referred to in the LDC application since 2009. The appeal site is served by administrative offices at St Marys Farm, which is approximately a kilometre from the appeal site. Although the dispute concerns how frequently the site has been used for shooting etc in the past, there is no suggestion that other uses have taken place on the land when it is not being used in that way.
12. The main evidence provided by the appellant takes the form of a series of tables indicating the total number of days the facility was open and the number of visitors for each month for the period January 2013 until December 2022. A summary table also includes the year 2012. The tables provide separate figures for 'open shoots' (when the facility is available without prebooking) and for prebooked activities. Even taken at face value, this information does not

² This reflects the judgement in *Gabbittas v SSE & Newham BC* [1985] JPL 630.

support the claim that the site has operated for 200 days per year for a 10-year period. Indeed, the summary table indicates that the site was not open for 200 days per year until 2019, when the total number of days open was said to be 214.

13. Moreover, there is no detail of how the information in the tables has been collated, and the appellant has not provided me with any evidence such as booking forms to support it. It is noticeable that for the period until the end of 2016, the entries for the number of visitors for open shoots is only ever 10 or 30 people, which suggests they may not be precise figures. The figures from 2017 onwards are apparently precise figures, but there is again no information regarding their source. In the absence of any adequate explanation of how the figures have been arrived at, and given the lack of documentary evidence to support them, I do not find the information submitted to be sufficiently precise and unambiguous to show that the facility was operating on those open shoot days.
14. The figures for prebooked activities appear to be more precise figures throughout. The Authority has not queried the figures and states that booking forms were submitted to support them. Thus, greater reliance can be placed on this information. In more recent years, the facility appears to have been in regular use; the booking forms submitted to the Authority indicate that the number of days with bookings rose from 185 in 2019 to 274 in 2022. This increase coincides with a change in the business, a limited company having been created in November 2019. In the earlier years, however, the figures were much lower - just 52 in 2016, one day a week on average. Such a low level of use seems to me to be a very different thing to the far more intensive use of the site now claimed for shooting etc. Thus, I am not persuaded that the appellant has demonstrated a continuous 10-year use of the site at the intensity claimed.
15. It appears that some evidence not before me was submitted to the Authority, but I have no reason to think it would have led me to any different conclusion. The delegated report states 'The statements and statutory declarations submitted do not clarify how many days a year the use has been carried out over the last ten years'. The appellant has not challenged this statement. Moreover, as indicated above, even the appellant's own figures do not suggest 200 days/year of use over a relevant 10-year period. There is no dispute as to the existence of the business throughout the relevant period or the fact that it enjoys a strong customer base, but that does not amount to clear evidence regarding the intensity of use.
16. The appellant argues that 'to specify any number of days is not relevant. It is the use of the land which is relevant and that has been accepted on two occasions by the local authority with the issuing of the two approvals'. Elsewhere, the 52 days is referred to as a 'restriction' and a 'condition'.
17. However, the reference to '52 days' is not comparable with a planning condition. Rather, it is the Authority's attempt to define the character of the use that has been demonstrated. It is important to do this; by carefully defining a use, a certificate provides a baseline against which the materiality of future changes of use can be judged. The PPG advises that 'In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the

characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (ie "sui generis" use)'.

18. As to whether a reference to the overall number of days per year was an appropriate way to characterise the use, the Authority could only make its decision on the information available to it, and this suggested a generally low level of use in the early years, with no clear pattern. In my judgement, it was legitimate to try to reflect the low level of use in the certificate, since the more intensive use of the land for those same purposes could result in a material change in the character of the use of the land, and thus amount to a material change of use. Thus, given its view as to the low-level of use that had been established, the Authority was justified in its approach.
19. Overall, the appellant has not shown, on the balance of probability, that the Authority was wrong to refer to the intensity of the use in the certificate it issued, or that it should have adopted a figure of 200 days per year rather than 52. In these circumstances, the appeal is dismissed and the certificate remains as issued by the Authority. While I understand that, in another case elsewhere in the National Park, a less restrictive LDC for use by a gun club was issued, I have made my decision on the basis of the specifics of this particular case.

Conclusion

20. For the reasons given above I conclude that the Authority's decision was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

Peter Willows

INSPECTOR