Planning Inspectorate

Appeal Decision

Inquiry and site visit held on 18 March 2025

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2025

Appeal Ref: APP/U2750/X/24/3350034
Tipperthwaite Lodge, Paley Green Lane, Giggleswick, Settle BD24 0DY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Martin Beanlands against the decision of North Yorkshire Council.
- The application ref ZA24/26053/CPE, dated 4 June 2024, was refused by notice dated 31 July 2024.
- 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 is sought is the residential use of the building (Use Class C3) in breach of condition 4 of planning permission 31/2006/6193.

Decision

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

Procedural and Preliminary Matters

2. All oral witness evidence given to the Inquiry was made under affirmation.

3. Usually, the description of what is being applied for is taken from the application form. The application form declares the LDC to be for an existing activity in breach of a condition and goes on to confirm the existing use in breach of a condition as falling in Use Class C3: Dwellinghouses. However, it also describes the existing activity as *"removal of B1 restriction to existing dwellinghouse. NB Status has never been implemented and the property has only been used as a dwelling.*" The description of what is being applied for set out in the application form therefore lacks precision.

4. The description set out in the Council's refusal notice identifies the LDC to be for the *"removal of B1 restriction to existing dwellinghouse."* As there is no power under s191 of the 1990 Act to remove restrictions imposed by conditions on planning permissions, the Council's description is incorrect.

5. At the Inquiry, the appellant advised that he was seeking to demonstrate that Tipperthwaite Lodge had been occupied in breach of an occupancy condition for more than 10 years. In fact, he claims that there has never been any B1 business use undertaken at the property. The Council also confirmed that this is what they understood the application to be for.

6. The LDC is therefore seeking confirmation that the building has been used for residential purposes (Use Class C3) in breach of a condition. For precision, the

description should also identify the condition that the residential occupation is claimed to be in breach of.

7. Two planning permissions were granted for the *'conversion of barn to employment creating use with ancillary living accommodation'*: the first is reference 31/2004/4514 and was granted on 14 October 2004 ("the 2004 PP"), and the second is reference 31/2006/6193 and was granted on 2 May 2006 ("the 2006 PP"). My Pre-inquiry Note, dated 19 February 2025, requested that an agreed Statement of Common Ground ("SoCG") confirm which of these two planning permissions had been implemented.

8. While both permissions were for the same development, they were for significantly different schemes. It therefore seems unlikely that both planning permissions could be carried out simultaneously, notwithstanding what the main appeal parties have agreed in the SoCG. This was a matter of discussion at the Inquiry.

9. Condition 2 of the 2004 PP states *"The existing buildings shall be retained and adapted for their new use in accordance with the approved plans supplied by Andrew Durham and received by the Local Planning Authority on 13 July 2004. The buildings…"*. Whereas condition 2 of the 2006 PP states *"The existing buildings shall be retained and adapted for their new use in accordance with the approved plans supplied by Brian Smith and received by the Local Planning Authority on 7 March 2007. No part…".* The Council advises that its Public Access records do not hold copies of the approved plans for either the 2004 PP or the 2006 PP.

10. The appellant's submission includes a photograph of a drawing prepared by Andrew Durham showing elevations and floor plans of the barns on the appeal site converted into office space and residential accommodation. There is no legible date or date stamp on this drawing. In the absence of any evidence to the contrary, in my judgement, it would seem more likely than not that this plan is the approved plan identified in condition 2 of the 2004 PP. This plan shows the development consisting of two separate buildings. As Tipperthwaite Lodge is a single building, it would be reasonable to conclude the 2004 PP was not implemented. A position agreed by the appellant and Council during the Inquiry.

11. While the Council's Public Access records may not hold copies of the approved plans supplied by Brian Smith dated 7 March 2007, it does hold copies of 3 plans supplied by Brian Smith which do have date stamps. Unfortunately, the date stamps are only semi-legible and while it was agreed at the Inquiry they read *"May 2007"*, the specific date cannot be discerned. However, the plans show the barns converted and extended to form a single building, which is the form that Tipperthwaite Lodge takes. The appellant and Council therefore agreed at the Inquiry that it is more likely than not that the 2006 PP was implemented, and it is therefore the relevant planning permission.

12. The three Brian Smith plans[1] show different window and roof light detailing and two are annotated with red pen. Condition 3 of the 2006 PP required the submission and approval of plans showing revised fenestration treatment to the rear lean-to extension and details of a roof light. The annotation on the Brian Smith plans provided to the Inquiry refers to these revised fenestration treatments and roof lights. In my judgement, these 3 plans were submitted to address condition 3

[1] ID1 – 3 plans drafted by Brian Smith

of the 2006 PP. During my site visit I saw that, with the exception of the covered walkway and roof lights, which have not been provided, the rear fenestration detailing of the building is as shown on the Brian Smith drawing annotated *"18 May 06"* in red pen. This lends further weight to the 2006 PP having been implemented.

13. For these reasons, I agree with the appellant and Council that it was the 2006 PP that was implemented. The description of the LDC applied for shall be corrected to read *"residential use of the building (Use Class C3) in breach of condition 4 of planning permission 31/2006/6193"*. I shall proceed on this basis.

Reasons

14. The **main issue** is whether the Council's refusal to grant an LDC was well founded. The onus of proof is on the appellant and the relevant test is the balance of probability.

Evidence for the appellant

15. It is the appellant's case that, after purchasing and occupying the property in August 2007, it was not occupied in compliance with condition 4 on the 2006 PP as the building has not been used for Use Class B1 purposes. While a home office/study has been provided since his son moved out in 2017, the approved ground floor offices, identified on the Brian Smith plans, has only been used for residential purposes.

16. At the Inquiry, the appellant told of how he operated a cleaning franchise business until 2017/2018, when his business was dissolved. He told of how his franchise business operated from several different commercial premises over time, which were located in Steeton, Earby and Skipton. His franchise business employed a maximum of 17 members of staff and their roles included: carpet cleaning technicians, insurance technicians and accounts staff. Mrs Beanlands worked as the finance director for the business until it was dissolved, after which she has worked part time at a local school. Mr Beanlands claims they had no need to work from Tipperthwaite Lodge as they had commercial workspace available, allowing them to maintain a good work life balance.

17. The Inquiry was told how he has operated a carpet cleaning business as a 'one-man-band' operation since 2017. The appellant claims he works out of his van, but employs a call centre to handle business calls, which are directed to him by email. He uses his mobile phone to handle work calls and emails and uses Xero for his invoicing and accounts. His work van is his means of travel from home to work and it is therefore parked at Tipperthwaite Lodge when he is not working. When necessary, he may make work calls and respond to emails from his van parked at the property or from the home office/study located on the first floor of his home.

18. The appellant recalls Mr Hazeldine visiting the property in his capacity as the Council's Investigative & Compliance Officer. He retained a business card given by Mr Hazeldine and claims to have written the date of the visit *'12 August 2017'* on the back as he was unsure of the purpose of the visit. The appellant recalls being alone at the time of the visit as he had "nipped home as he had forgotten his lunch". He also recalls it being a Saturday as he remembers mentioning that it was nice to know that he was not the only one working on a Saturday. He recalls showing Mr Hazeldine his study/home office and then showing him out.

19. Several neighbouring property occupiers provided written submissions in support of the appellant's case. These claim that staff and customers have not been seen visiting the property. Also, to the best of their knowledge, the appellant has never operated a business from the property.

20. Mr Howarth confirmed to the Inquiry that he lives a quarter of a mile away from Tipperthwaite Lodge and that his view of the property from his home is obscured by a leylandii hedge. While he passes the property several times a day and advised that he has only ever seen the appellant's work vehicle parked on the land, he has never been inside the premises.

21. Two versions of an estate agent's brochure, one claimed to have been produced in January 2014 and one produced at a later, unconfirmed date, are provided. These include several internal and external images of the property and indicative floor plans. The ground floor space is shown in these brochures to be interconnected. While the indicative floor plans show a single ground floor room annotated 'B1 Workspace', the corresponding photographs show that room to be laid out as the bar/snug referred to by the appellant.

Evidence for the Council

22. A handwritten "Revenue Visit Record", dated 28 January 2017, is provided by the Council. This states that the visiting officer *"Spoke to Mrs Beanlands who confirmed that there is an office operated by her husband for working from home. It is situated in the building next door to main house."* A hand drawn sketch points to the office being located in a rear offshoot of the main house.

23. Mr Hazeldine's completed 'Planning Enforcement Complaints/Alleged Breaches of Planning Control' form, dated 19 May 2017 and referenced ENF/2656/2017, is provided. The completed form identifies the details of the alleged breach to be *"Is EMP9 workspace being used in accordance with 31/2004/4515?"*. Mr Hazeldine confirmed to the Inquiry that the first 2 handwritten entries on the "Action Sheet" for ENF/02656/2017 were completed by him. They indicate that on 10 August 2017 he carried out a site visit to the property and states, *"No photos of office were taken for privacy reasons – sensitive paperwork etc on desks."* The note includes an email address, which is partially redacted. The second entry confirms that Mr Hazeldine's enforcement report was passed to "CD" on 15 August 2017. The final entries indicate the file was closed on 31 August 2017, with no need to update.

24. The 'Delegated Enforcement Report' includes Mr Hazeldine's account of his site visit, which is recorded as follows: *"Both Mr and Mrs Beanlands were present and were happy to show me around the interior of the property. There was a large office containing two large desks, computers, telephones and numerous cupboards, shelves and filing cabinets. Mr Beanlands stated that they run two companies from the office and it was clearly in permanent use. Due to the sensitive nature of some of the paperwork on the desks and cupboards I did not take any photographs. My Visit was unannounced and I found the office in full operation. I do not believe that there is any breach and the file should be closed."*

25. Mr Hazeldine told the Inquiry how he could be required to work out of hours to investigate claims that a breach of planning control is occurring outside of normal office hours. This was not the case here and he did not visit the property on a Saturday. He acknowledged that his written statement may have misrepresented

his recollections of the visit. Rather than Mrs Beanlands accompanying her husband in showing him round the property, she may have met him at the gate as she was taking their dog, a Labrador, out for a walk. Mr Hazeldine recalled that she returned before he left, and that she joined the discussion with the appellant.

26. An application to remove condition 4 of the 2006 PP was made in July 2018 (reference: 2018/19598/VAR). According to the application form, it was lodged on behalf of the appellant. It was accompanied by a ‘Planning Statement’ prepared by Ian Swain, a Principal Planner at WBW Surveyors Ltd and a Member of the Royal Town Planning Institute. The justification for the removal of the condition as set out in the Planning Statement details the appellant’s attempts to sell the property with the condition in place and how removing the condition would comply with relevant local plan policies. Mr Binney claims the Planning Statement makes no reference to the condition having not been complied with, which arguably could have been an easier route to follow.

27. Mr Binney further claims that the Planning Statement, in particular paragraph 5.4, demonstrates that business activities were taking place at the appeal property. Paragraph 5.4 states *“..the amount of floor space given over to a business use is very limited…Business activities conducted at Tipperthwaite Lodge are purely office based activities (for example planning and scheduling, finances and accounting, etc). On average the applicant works from home three days a week. No employees are based at or visit the property.”*

28. Mr Binney’s Proof of Evidence includes images which allegedly show businesses operating from the property. These include address details, the suggestion that clients can ‘Visit Us’ at Tipperthwaite Lodge, and photos of commercial vehicles parked at the property. Mr Binney also identifies that four companies registered with Companies House have operated from Tipperthwaite Lodge.

29. Given the nature of the appellant’s business, the Council accepts that the physical cleaning operations would be undertaken at client’s properties. The use of Tipperthwaite Lodge as a registered business address, a place for clients to visit, parking of work vehicles and the carrying out of administrative tasks associated with a business demonstrate, in the Council’s opinion, that the property is being used for B1 business purposes. The Council therefore argue that the property is and has been occupied in compliance with condition 4 of the 2006 PP.

Assessment of the evidence

30. While perhaps not directly relevant, the 2004 PP provides context for what was subsequently granted planning permission and implemented. The 2004 PP was for the conversion of a barn to **employment creating use** with ancillary living accommodation [my emphasis]. The Andrew Durham plan shows the single storey building to be used solely as office space. Within the two-storey barn office space, with WC and kitchen area, is shown occupying slightly less than half the ground floor area with a further office shown at first floor level. The living accommodation is shown to occupy the remainder of the two-storey barn. Two staircases are shown: one providing access between the ground and first floor offices and one providing access between the ground and first floor living accommodation. While a connecting door is shown between the first-floor landing within the living accommodation and the first-floor office, there is no ground floor internal connectivity. Outside space is shown to accommodate two ‘house parking’ spaces and four ‘staff parking’ spaces. No garden space is shown.

31. Furthermore the 2004 PP is conditioned that the occupation and operation of the converted barn has to be for the *"dual purposes of a workspace (Use Class B1) and associated living accommodation"*. It goes on to make it clear that both uses must be occurring in tandem and that at least one person employed in the workspace must occupy the associated living accommodation. This suggests that the workspace may accommodate employees that do not live at the property.

32. Having regard to all these factors, it is not unreasonable to conclude that the employment creating use granted by the 2004 PP amounts to something considerably greater than a residential occupier working from home.

33. The 2006 PP proposed an alternative conversion scheme to that shown in the 2004 PP. This included an extension to link the previously approved ground floor workspace elements, which would then comprise the entirety of the workspace. The living accommodation would occupy the same ground floor space as approved previously but also all the first-floor accommodation. This approved scheme still maintained that there would be no internal connectivity between the ground floor workspace and the associated living accommodation. While the number of parking spaces is shown reduced to 4 in total, this would be more than what would usually be required for a 3 bedroomed dwellinghouse.

34. The 2006 PP is also conditioned that: *"The building shall be occupied and operated only for the dual purposes of a workspace (Use Class B1) and associated living accommodation. The dwelling shall not be occupied unless the workspace is used for business purposes or vice versa. The dwelling space and workspace shall be occupied and operated by the same person or people and the workspace shall be operated to the extent that at least one occupant of the dwelling shall derive the equivalent of a full time income from that operation."*[2] Again, having regard to the scale of the workspace, the physical separation between the workspace and living accommodation, and the wording of the condition, it is reasonable to conclude that the employment creating use amounts to something considerably greater than a residential occupier working from home.

35. The appellant told of how he purchased the completed property from the developer. He asserted that when he purchased the property the single internal staircase was not located as per the Brian Smith plans. The relocated staircase provides for an internal doorway to be positioned between the approved open plan kitchen, dining and living area into what was the approved workspace. We saw that the staircase is located adjacent to the front entrance door and that the ground floor accommodation is not divided into two distinct areas during my site visit.

36. The appellant advised that the only changes that have been made to the property since his purchase are redecoration and the provision of a new internal wall to divide what he refers to as the snug/bar area to create an additional room for his granddaughter to play in. The two estate agent brochures show the redecoration that has taken place. The new internal wall is not however shown in either brochure, confirming that it is a recent alteration.

37. Corroborative evidence to support the appellant's claim that his business was operated from commercial premises in Steeton, Earby and Skipton has not been provided. However, given the description of how the business operated, the number of staff claimed to be employed and details of how things changed in

[2] Condition 4 of the 2006 PP

response to the economic climate, I find the appellant's version of events leading up to 2017 and beyond to be credible.

38. The information obtainable from Companies House usually shows the registered address of a business, not necessarily the premises from which the business operates. Whether businesses were or are registered at Tipperthwaite Lodge does not therefore show that those businesses were or are being physically operated from there. Similarly, images of vehicles being parked at the property only provides a snapshot in time and do not show that a business is being operated from the premises.

39. The written submissions of neighbouring occupiers and the oral evidence of Mr Howarth support the appellant's claims that the only commercial vehicles parked at the property have been his and his son's vehicles. I find the appellant's explanation that the vehicles were parked so that photographs could be taken for marketing purposes to be credible. Furthermore, there is nothing to prevent the appellant or his son parking their works vehicles at the property, which is the family home.

40. The date on which Mr Hazeldine's visit took place in August 2017 and who was present is not determinative. It is what area(s) within the property he saw being used as 'workspace' and what 'business' activities he saw to be taking place that is relevant. In his oral evidence to the Inquiry, Mr Hazeldine confirmed that the office space he saw was that located at first floor level. Mr Hazeldine also confirmed at the site visit that, except for the new dividing wall, the internal layout of the property has not changed since his visit in August 2017.

41. The Planning Statement accompanying the 2018 application, to have condition 4 of the 2006 PP removed, offers a degree of support to the Council's assessment of the level of business activities taking place at the property. The 'very limited' floor space given over to business use is suggestive of the first-floor bedroom still being used as a home office/study. In my judgement, the description of activities taking place are those that could be undertaken by any residential occupier working from home. Even if these activities did take place on average three days a week, that is not sufficient of itself to demonstrate that these activities amount to anything greater than an incidental use, secondary to the residential occupation of the property.

42. There is no evidence to show the ground floor accommodation was ever physically separated into two distinct parts, nor used for the approved workspace purposes. The Council has no evidence of its own or from others to show that the workspace identified on the Brian Smith plans was ever laid out or used as a workspace for Use Class B1 purposes.

43. Condition 2 of the 2006 PP requires the development to be carried out in accordance with the approved Brian Smith plans received on 7 March 2007. While I accept that those plans have not been made available, for the reasons given above, it is reasonable to conclude the floor layout shown on the Brian Smith plans provided in May 2007 have the same floor layout as the approved plans. The workspace to be used for Use Class B1 purposes was clearly defined on the Brian Smith plans and it was physically separated from the living accommodation due to the lack of internal connectivity.

44. I agree with the Council that condition 4 applies to the whole building in so far as the workspace and living accommodation uses were to occupy the whole building. While the Council claim that the workspace could be located anywhere in the building, I do not agree. Locating the workspace anywhere else in the building would breach condition 2, unless an alternative floor layout had been agreed. I was not made aware of any such agreement. Even if I were to accept that it could be located elsewhere in the building, the workspace would still have to be of a scale, facilities and formal arrangement to ensure the *“dual purposes of a workspace (Use Class B1) and associated living accommodation”* were achieved.

45. The approved workspace was shown occupying approximately half of the ground floor area. However, the Inquiry was told the home office/study was formerly the appellant’s son’s bedroom and its floor area is substantially less than the floor area of the approved workspace. The only means of access to the home office/study is through the living accommodation. It has no external access for staff or clients to enter as shown on the approved plans. These are significant differences in the scale, facilities and accessibility of the approved workspace and the home office/study provided.

46. From the written submissions and the oral evidence provided to the Inquiry the first-floor home office/study was created in 2017, after the appellant closed his franchise business in Skipton and his son left home. The desks I saw in the home office/study during my visit are of the large modular variety that would be suited to a commercial office environment. The appellant’s claim that the desks were relocated from the Skipton commercial premises seems a likely scenario. The presence of multiple desks is not however sufficient to demonstrate that this room is being used as the 2006 PP workspace.

47. There is disparity in respect of how the appellant and Council consider the home office/study is used. Whether there is one or two computers set up on the desks is not demonstrative of the room being used as the approved workspace. Similarly, neither is the presence of paperwork and telephones. There is no suggestion that staff are employed at or work from here. The appellant operates a cleaning business, which requires the majority of his work to be carried out at client’s properties. Regardless of whether the appellant’s address features in marketing material, given the nature of the appellant’s work it would be unlikely that clients would visit the appeal property as the appellant would need to visit their properties for the purposes of providing quotes and undertaking contracted work.

48. I do not doubt that the appellant carries out some administrative business functions from Tipperthwaite Lodge. However, any residential occupier can potentially work from their dwellinghouse without causing a material change of use. In my judgement, as a matter of fact and degree, the nature, scale and frequency of the activities undertaken by the appellant at Tipperthwaite Lodge are not dissimilar to what would, in any other circumstance, be considered incidental to the residential occupation of the property. I do not therefore agree with the Council that the undertaking of administrative activities such as responding to emails, filing of paper copies of work-related documentation, making work related telephone calls, authorising invoices, and/or parking a commercial vehicle that is used to commute between the appellant’s home and client’s properties demonstrates compliance with condition 4 of the 2006 PP.

49. For these reasons, I am satisfied that Tipperthwaite Lodge has not been used for the dual purposes of a workspace (Use Class B1) and associated living

accommodation. The appellant has therefore demonstrated, on the balance of probability, that Tipperthwaite Lodge has instead been occupied for residential purposes (Use Class C3) in breach of condition 4 of planning permission 31/2006/6193. The property can continue to be occupied for residential purposes (Use Class C3), unless it is occupied for the dual purposes of a workspace (Use Class B1) and associated living accommodation in compliance with condition 4 at some future date.

Conclusion

50. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use for the residential use (Use Class C3) of the building in breach of condition 4 of planning permission reference 31/2006/6193 is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Martin Beanlands	Appellant

He called:

Russell Howarth	Neighbour

FOR THE LOCAL PLANNING AUTHORITY:

Elana Kaymer	of Kings Chambers, Counsel for the Council, instructed by Kate Navel of North Yorkshire Council

She called:

Ivan Hazeldine	Principal Enforcement Officer, North Yorkshire Council
Sam Binney	Senior Planning Officer, North Yorkshire Council

DOCUMENTS

ID1	Three plans prepared by Brian Smith taken from the Council's Public Access record for 31/2006/6193

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 4 June 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and 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:

There is no evidence to show that the building has been occupied for the dual purposes of a workspace (Use Class B1) and associated living accommodation. Any business activity shown to have occurred at the property is of a scale that is incidental to the residential occupation of the building. The building has therefore been occupied for more than 10 years in breach of condition 4 of planning permission 31/2006/6193.

Signed

M Madge

Inspector

Date: **31 March 2025**
Reference: APP/U2750/X/24/3350034

First Schedule

The residential use (Use Class C3) of the building in breach of condition 4 of planning permission reference 31/2006/6193.

Second Schedule

Land at Tipperthwaite Lodge, Paley Green Lane, Giggleswick, Settle BD24 0DY

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations 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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **31 March 2025**

by M Madge

Land at: Tipperthwaite Lodge, Paley Green Lane, Giggleswick, Settle BD24 0DY

Reference: APP/U2750/X/24/3350034

Scale: Not to Scale