



Appeal Decision

Site visit made on 7 May 2025

by **R Merrett BSc(Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 June 2025

Appeal Ref: APP/V0510/X/24/3351291

Lazy Otter Marina, Cambridge Road, Stretham, Ely CB6 3FS

- 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 Mr Anthony White against the decision of East Cambridgeshire District Council.
 - The application ref 21/00131/CLE, dated 26 January 2021, was refused in part by the Council by notice dated 14 September 2023.
 - 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 Existing Use of land at the Lazy Otter Caravan site without complying with Condition 7 on E/00081/83/F in respect of Layout Drawing 83/A/1 (dated 26 July 1983).
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Decision

1. The appeal is dismissed.

Background

2. The appeal site is part of a larger caravan site, which originally gained planning permission in 1983¹. The wider site accommodates residential and holiday lodges and static caravans. This appeal specifically relates to an expanse of land in the north-western part of the site.
3. In terms of layout, the southern part of the appeal site itself includes the junction and initial curved alignment of one of the access roads serving the caravan site; the site office and a residential caravan. Within this area, are residual pockets of land, that have been surfaced with gravel and left open. The northern portion of the appeal site is separated by a fence and gate, and comprises a fishing pond, surrounded by dense perimeter planting.
4. The 1983 permission was subject to several conditions. Condition 7 states as follows:

"All works shall be carried out and completed strictly in accordance with the approved details to the satisfaction of the Local Planning Authority."
5. A site plan relating to the 1983 permission indicated part of the present appeal site (the southern part) to be utilised as a parking area for late arrivals, with "new plantings" to take place within the remaining area.
6. The appellant's case is that the aforementioned condition has been breached in respect of the area subject to the present appeal, in that the site has not been, and

¹ Reference E/00081/83/F – Approved 8 August 1983.

cannot be, implemented as approved. The reason for this, it is argued, is because the access road now passes through, and the site office and caravan have been sited upon, the land shown on the original plan to be the late arrivals car park.

7. S.191(4) of the 1990 Act allows the local planning authority to modify the terms of the application, giving a certificate in somewhat different terms, so as to accord with the facts and evidence, rather than an outright refusal. The Council decided the breach of condition had occurred, and for sufficient time, but only in relation to a more confined area than had been applied for. Accordingly, it decided to grant a lawful development certificate in more restricted terms, specifically in relation to the vehicular access road and site office. In so doing, the Council effectively partly refused a certificate in relation to the remaining part of the appeal site.

Procedural Matters

Significance of Drawing No 83/A/1

8. Condition 7, as quoted above, refers to completion strictly in accordance with the 'approved details'. Whilst the wording of the condition does not specifically use the words 'layout plan', there is nothing to persuade me that drawing No 83/A/1 should not be regarded as included within those approved details.

Significance of the '2009 permission'

9. There is a lengthy and complex planning history associated with the caravan site as a whole. Of relevance is a permission granted by the Council in 2009, under section 73 of the 1990 Act, not to comply with Condition 2 of the 1983 permission, in order to allow for holiday use all year round². This permission included a relatively small portion of the present appeal site (within the southern area).
10. Whilst it appears the 2009 decision would have granted a separate permission for use as a caravan site, no evidence has been provided to persuade me that Condition 7, in relation to the 1983 permission, does not remain valid and binding in relation to the 2009 permission. This is the case, even if as the appellant suggests, Condition 7 was not expressly repeated on the 2009 permission.
11. It follows that Condition 7 is applicable within the entirety of the present appeal site boundary. Thus, for the avoidance of doubt, the 2009 permission does not, in itself, assist the appellant's case in relation to the present appeal.

Reasons

12. Under s191(1)(c) of the 1990 Act an LDC may be sought in respect of a 'matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted'. The failure to comply with a planning condition would become lawful if no enforcement action may be taken in respect of it because the planning condition in question had been breached for a continuous period of 10 years, without any material interruption to that breach.
13. The onus rests with the appellant to provide evidence to demonstrate that the breach of condition has been continuous. The standard of proof is the balance of probability.

² Reference 09/00198/VAR – Approved 20 May 2009.

14. That there has been a breach of Condition 7 in relation to the appeal site, as a matter of fact, is not at issue between the parties. The dispute, however, is focused around the question of whether continuous breach of the condition over part of the site would be sufficient to mean the whole site is being used in breach of the condition [my emphasis].
15. To help answer this question it is necessary to consider, having regard to relevant case law³, whether it would be possible to spatially identify any parts of the site where the breach has occurred, and can be sensibly said to be contained, because the relevant areas are well defined and identifiable on the ground.

The Key Parts of the Site

16. The access road, found by the Council to be lawful, leads into the appeal site before curving to the right and meeting metal entrance gates. It seems to me that the road, surfaced with black tarmac, definitively edged and separated from gravelled areas beyond its footprint, constitutes a clearly definable feature.
17. The site office, with a roughly square footprint, is situated just to the north of the access road. From the evidence before me, it appears this structure was moved eastwards, by several metres, from its original position. Nevertheless, as a matter of fact and degree, the present and previous siting of the office appear to me to be within a sufficiently well-defined part of the site, identifiable on the ground when having regard to the footprint of the structure, nearby boundary features and the alignment of the access road. It also seems to me this area would be capable of further definition on the ground.
18. The residual gravelled area in the south-eastern corner of the appeal site, roughly forms a square, and is clearly delineated by the alignment of the access road boundary and boundary fencing.
19. The planted area containing the fishing pond is separated from the remainder of the appeal site due to boundary fencing. Again, it appears to me that this can be reasonably regarded as a physically separate and distinct, identifiable area.
20. The caravan, with adjacent gravelled area, including land between the site office and access road, does not occupy an immediately distinct plot. However, the presence of dense boundary planting, boundary fencing, the alignment of the access road and that it is essentially the land left over having defined the above features, help to delineate this area.
21. Therefore, as a matter of fact and degree, and having regard to the aforementioned case law, I consider the various features to be sufficiently well-defined and identifiable to enable the question of the breach of condition to be sensibly applied in relation to those individual parts of the site, such that it would not necessarily mean the appeal site as a whole was in breach of the condition. I have also taken into consideration that the layout of the wider site is different from the approved 1983 layout (possibly in response to subsequent planning permissions), however the evidence before me does not alter this conclusion.

³ *R (oao St Anselm Development Co Ltd) v FSS & Westminster CC* [2003] EWHC 1592 (Admin) and *Royale Parks Ltd v SSHCLG* [2021] EWCA Civ 1101. In those cases it had been possible to isolate specific parts of the site where a breach of condition had occurred and thus reach the conclusion that lawfulness of breach was limited to those specific areas, rather than across the site as a whole.

Breach of Condition

22. Having regard to the lawful development certificate granted by the Council, in more restricted terms, I have no reason to dispute the Council's finding that the access road and site office are lawful developments.
23. Similarly, from the evidence before me, I am not persuaded the residual gravelled area in the south-eastern corner of the appeal site, which could be used for late arrival car parking in keeping with the original plan, would fail to conform with the requirements of Condition 7.
24. I acknowledge the appellant's point that the site was never implemented as approved. However, on the balance of probability, I find there would be no impediment resulting from the aforementioned lawful developments, to clientele utilising that residual area as a late arrivals car park. It seems to me there would be capacity within this area to accommodate parking for several vehicles, should this be required. This area of land could therefore be utilised in a practical and meaningful way for its intended use. There has been no breach of the condition in this respect, let alone one that has become lawful.
25. Similarly, I have no reason to conclude, on the balance of probability, that the planted area within the northern part of the site, fails to conform with the requirements of Condition 7. There has therefore also been no breach of the condition in this respect, let alone a breach that has become lawful.
26. As to the residential caravan, this has been sited within part of the area designated on the approved plan, 83/A/1, as the late arrivals park. It represents a part of the site not being completed in strict accordance with the approved details. It is therefore necessary to consider whether the condition has been breached in this regard for the requisite period, such that this amounts to lawful development.
27. It is undisputed that the caravan has been sited since late January 2020 and that it replaced a different structure. This earlier structure was removed from the site in December 2019. There is no dispute that neither structure has been present on the site for long enough, in its own right, to have resulted in a breach of condition 7 for the requisite period.
28. It is also undisputed that there was a six week break⁴ between the older structure being removed and the current one being sited. As a matter of fact and degree, I consider a six week intervening period represents a material break in the period during which Condition 7 was being breached, within this specific part of the site. Notwithstanding the introduction of a concrete slab foundation, there is no evidence to persuade me that, during this intervening period, this specific part of the site, including adjacent gravelled area, could in principle not have been used to accommodate late arrival parking, as had been originally intended, in accordance with approved details.
29. It follows the appellant has failed to demonstrate, on the balance of probability, that the breach of condition in relation to this part of the site has continued for the requisite period. If the caravan were removed, I would envisage no impediment to this vacated part of the site, along with the adjoining gravelled area, being used to accommodate late arrival parking, as envisaged on approved plan 83/A/1. I

⁴ Albeit the Council says it was at least this length of time.

therefore conclude, on the balance of probability, that the caravan does not represent lawful development.

30. To summarise, I concur with the Council that neither the access road nor site office prevent the remaining parts of the appeal site being carried out in accordance with approved details, including areas either side of the access road. I conclude that substantial parts of the appeal site could either be utilised, or continue to be utilised, in accordance with approved details. This is despite the variation to the routing of traffic, facilitated by part of the access road being within the appeal site.
31. Therefore, although the appellant has referred to case law concerning development without planning permission, in circumstances where there is substantial deviation from approved plans⁵, I am not persuaded the circumstances relating to the appeal site fall within those provisions.

Conclusion

32. For the reasons given above, I conclude that the Council's refusal in part to grant a certificate of lawful use or development for Existing Use of Land at the Lazy Otter Caravan site without complying with Condition 7 on E/00081/83/F in respect of Layout Drawing 83/A/1 (dated 26 July 1983) is 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).
33. For the avoidance of doubt, I do not consider this conclusion to be inconsistent with a (hypothetical) scenario whereby a Council serves an enforcement notice, in relation to which an appellant's ground (d) appeal is partially successful.

R Merrett

INSPECTOR

⁵ *Handoll & Suddick v Warner Goodman & Streat & East Lindsay DC* [1995] JPL 930.