



Appeal Decision

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2025

Appeal Ref: APP/E9505/X/24/3350415

Driftwood, 104 Lower Street, Horning, Norfolk NR12 8PF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Atkins against the decision of the Broads Authority.
 - The application ref BA/2024/0032/CLEUD, dated 22 January 2024, was refused by notice dated 8 May 2024.
 - The application was made under section 191(1)(c) of the Act.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the property has been utilised as holiday and habitable accommodation in breach of condition 5 attached to application reference BA/2011/0353/FUL for more than ten years ago and continues, uninterrupted until the present day.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An LDC is not an application for planning permission. Its purpose is to enable the appellant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the appellant. The test of the evidence is one of balance of probability. The appeal concerns only the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based on the facts of the case and on relevant planning law and judicial authority.
3. An application under S191(1)(c) of the Act seeks to establish whether any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful. S191(2)(a) confirms that a use is lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. S191(4) of the Act sets out 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 use, operations or other 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. With regard to s191(4) of the Act, the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application.

Main Issue

5. The main issue is whether, on the balance of probability, the Authority's decision was well founded. This turns on whether the appellant can show, on the balance of probabilities, that Driftwood has been in use as holiday and habitable accommodation for a continuous period of four years in breach of a planning

condition, and as such, the time for enforcement action has expired or for any other reason.

Reasons

6. Planning permission was granted on 11 January 2012 for a “proposed new boatshed with wet room/workshop and sail loft together with enlargement of existing wet dock and alterations to quayheading.” The appellant says that the development subject of that planning permission was substantially complete by 28 February 2012. The planning permission was subject to condition 5, which states that “The boathouse hereby permitted shall not be used at any time for human habitation including overnight accommodation.”
7. Where it is necessary to assess whether the claimed use has taken place without complying with condition 5, the relevant ‘planning unit’ should first be identified. This is a matter of fact and degree. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes; the concept of physical and functional separation is key. The planning unit here originally comprised of the boathouse and the land between it and Lower Street, which seems to be used for parking. Its primary use was as a boathouse.
8. The claimed holiday and habitable accommodation use falls within a dwellinghouse use. There is no definition of the term ‘dwellinghouse’ in the Act. For the purposes of Class C3, this need not be used as a sole or main residence; it can therefore include a second or holiday home. However, it was held in *Gravesham BC v SSE & O’Brien* [1983] JPL 306 that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. I shall return to this shortly.
9. I note that the parties consider that a ten-year period is the time period for enforcement action, but for the purposes of my assessment, the relevant period to assess whether there has been a breach of planning control consisting of a change of use of the building to use as a single dwellinghouse is four years, having regard to s171B(2)(a) of the Act. As the LDC was submitted on 22 January 2024, the start of the four-year period is 22 January 2020.
10. But for the relevant immunity period to apply, condition 5 must have the effect of preventing the change of use from taking place. Condition 5 explicitly states that the boathouse should not at any time be used for human habitation, including overnight accommodation. It does therefore seek to prevent the boathouse from being used for the claimed use.
11. It is crucial to identify whether a breach of planning control through the contravention of condition 5 took place and when that occurred. The previous owners of Driftwood say that they started to use the boathouse for holiday accommodation on 9 January 2013 for two weeks and then for further weeks at a time for the remainder of 2013. They say that they continued to use the boathouse for holiday accommodation for the same dates each year up until the start of December 2023. However, given that the appellant purchased the building on 22 September 2023, it is unlikely that the previous owner’s recollection of their claimed use for dates in September and November/December 2023 is accurate. Furthermore, it does not seem plausible that the previous owners used the building for the same dates each year for a period of ten years given that the purpose of

their stay was often around birthdays or holidays with family. Days on which birthdays fall change every year and plans with family can and do typically change from year to year because that involves other people. However, I have no reason to doubt the appellant's use of the boathouse since they took ownership of it.

12. Photographs taken on 18 March 2024 show facilities that people would require for day-to-day private domestic existence. These photographs are after when the LDC was submitted, but I have no reason to doubt that the facilities were in place when the LDC was submitted. As such, I consider that a breach of planning control has arisen having regard to condition 5. The question is now when that breach started.
13. Photographs taken on 29 January 2014 show that the kitchen was part built and not complete and so does not have the necessary cooking facilities to support day-to-day existence. The photographs also show two chairs in the space that is now the lounge and the rest of the space being used to store materials or equipment. Further, the door to what is now the en-suite bathroom to the bedroom is closed, and there is no photographic evidence of any bathroom facilities. The utility room is in place, and there is a sink, storage facilities and a fridge/freezer. However, as of 29 January 2014, the building did not have the necessary facilities for day-to-day private domestic existence and the distinctive characteristics of a dwellinghouse. So, even if the previous owners may have stayed overnight before then, a breach of planning control had not occurred at this point.
14. There is a fair passage of time between 2014 and January 2024, but there is no other evidence that establishes when the facilities shown in the photographs of 18 March 2024 were finished and afforded anyone wishing to use the property as a dwellinghouse the possibility to do so. Hence, I cannot be certain precisely when the breach of planning control in contravention of condition 5 started due to the absence of clear and unambiguous evidence to that effect.
15. Electricity, gas and water bills have been provided since 20 November 2013, 30 June 2013 and 1 July 2013, respectively. The bills do not demonstrate when the claimed use started, as they simply show what electricity, gas and water have been used during billing periods. This is not surprising given that the appeal statement submitted before the 2015 appeal decision relating to Driftwood commented that the "substantial building has mains water and sewage, mains electricity and mains gas". As such, the bills could have just originated in connection with the approved boathouse use, not necessarily the claimed use. But, in any event, there are gaps in the chronology of the water and gas bills even if I took the electricity bills before 18 February 2017 to be annual bills.
16. The neighbour's letter confirms that the appellant has lived at the boathouse since 22 September 2023. It does not say whether this was when the breach of planning control started or whether it was another date. Reference to the previous owner's car being parked on the drive does not substantiate how the boathouse was being used, as a car could be parked there in connection with the approved boathouse use. Furthermore, the letter from the housekeeper does not explain how the boathouse was being used or any facilities within it. This does not help in establishing when the breach of planning control started even though they have known the appellant for around five years.
17. Council Tax was paid based on a non-domestic rated property between 1 April 2005 and 14 July 2023. Since then, Council Tax has been paid for a domestic property. This evidence only helps establish a breach of planning control on or

around 14 July 2023, not before. The toll receipt also only relates to the year of 2024/2025.

18. The appeal decisions made in 2014 and 2015 both relate to the development proposed in those schemes, which related to external alterations to the boathouse and to facilitate access to the sail loft. Although the 2014 decision says that “the alteration would not infringe the use of the boathouse for holiday use only its domestic appearance” there is no substantive assessment of the facilities within the boathouse to support a conclusion that the boathouse had the distinctive characteristics of a dwellinghouse at this time. Furthermore, the 2015 appeal decision stated that “although the proposal would facilitate the use of the first floor of the building, the scheme before me does not include any proposed alteration to the approved use”. This passage highlights that the evidence submitted as part of that appeal did not suggest that the approved use had or was going to change.
19. Points are made about whether the Inspector in the 2014 decision went inside the boathouse as part of their site visit. Inspectors do not always go inside a property during their site visits, as it depends on the development subject of the appeal. In any event, there is no such thing as a partial site visit. There is also no need to state what the site visit comprised of on the appeal decision, albeit I have no reason to doubt the appellant’s version of events that my colleague did not go inside in 2014. This is not determinative anyway for the reasons explained.
20. I have found that a breach of planning control has occurred in respect of condition 5. However, the appellant has not shown, on the balance of probabilities, when the boathouse had all the necessary facilities and the distinctive characteristics of a dwellinghouse to establish when that breach of planning control started. Therefore, I conclude that the relevant period in which there has been a breach of planning control, having regard to s171B(2)(a) of the Act, has not been established. My finding would equally apply even if ten years was the relevant period.

Conclusion

21. For the reasons given above, I conclude that the Authority’s refusal to grant a certificate of lawful use or development for the use of the property as holiday and habitable accommodation in breach of condition 5 attached to application reference BA/2011/0353/FUL is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Andrew McGlone

INSPECTOR