



Appeal Decision

Site visit made on 8 December 2025

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2025

Appeal Ref: APP/K0940/X/24/3353780

Ecclerigg Tarn, Near Killington, Kendal LA6 2HB

- 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 Hilltop Lodges Limited against the decision of Westmorland and Furness Council.
 - The application ref SL/2023/0494, dated 9 August 2023, was refused by notice dated 6 November 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is formation of seasonal caravan park.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

Preliminary Matters

2. An appeal is determined on the basis of 'all the evidence now available' and an Appellant is entitled to bring forward additional evidence in support of his appeal.

Reasons

3. The appeal site is an area of land in open countryside. Within the site is a tarn that is, or is intended to be, an artificial fishing lake. The site has a gated access off Old Scotch Road. On 19 September 2006 planning permission SL/2005/0767 was granted, subject to conditions, for the 'formation of seasonal caravan site for five units and siting of package treatment' on the appeal site. One of the conditions required the development to be commenced within three years. The Appellant is seeking an LDC to confirm that the development was commenced before 19 September 2009 and that, therefore, the planning permission is extant.
4. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the development was lawfully commenced before 19 September 2009. Section 56(2) of the 1990 Act states that "...development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out". The Council claims that works carried out to commence the development were not 'comprised in the development'.
5. None of the conditions in planning permission SL/2005/0767 set out approved plans. However, the proposed development was permitted as "...described in your application and on the plans and drawings attached thereto...". One of the drawings is

an 'Ecclerigg Tarn Management Plan'. The plan, given that it is one of the plans expressly referred to in the permission, is an approved plan. The plan shows the site as proposed with a stone surfaced track from the site entrance towards the centre of the site. It was seen at the site visit that a stone surfaced track exists from the site entrance off Old Scotch Road for some considerable distance into the site.

6. The track, which has been created by the laying and compacting of hardcore, is 'comprised in the development'. Taking into account its nature and extent the creation of the track was, as a matter of planning judgement, a material operation. If the works to create the track were begun prior to 19 September 2009 then the development was lawfully commenced and the planning permission is extant.

7. The land was purchased by the Appellant company in February 2007. Mr Philip Counsell, a Company Director, has provided a properly made Statutory Declaration in which he states that Mr Cooper, the previous owner of the land, had carried out works that included "...creating a hard standing area...". He also states that "...I continued the development..." and "...continued to build the single track road..."; "This work was carried out at various stages within the first two years of my purchase and later as an when we had the materials...". In another properly made Statutory Declaration by Mr G Hayton he states that "When the site was acquired I worked with Philip and we extended the works that had been carried out by the previous owner".

8. Mr Hayton also states that "The road...was constructed in stages over the next 12 months or so as and when we had suitable and sufficient amounts of material..." and "I can clearly recall constructing the new road...in late 2007...". Mr J Atkinson has also provided a properly made Statutory Declaration in which he states that "In 2007 Philip, Graeme Hayton...and myself laid an access for the site". The three Statutory Declarations comprise the Appellants evidence on the period within which the material operation was begun. The Council, from the reason for refusal, considers that "...there is other evidence from Google Earth and Street View that contradicts or otherwise makes the applicant's version of events less than probable".

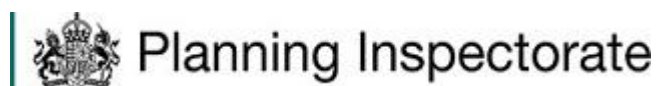
9. There is a Google Earth aerial photograph of May 2009 and a Street View image of April 2009 in evidence. In both photographs there is a white container within the site to the right of the access off Old Scotch Road. The aerial photograph is otherwise indistinct but the Street View photograph does show a significant area of hardstanding extending into the site from the gated access. It is overgrown but this is commensurate with the works to create the track having been undertaken two years before in 2007. The Street View image does not contradict the Appellant's evidence; the image, in fact, corroborates the consistent recollections of Mr Counsell, Mr Hayton and Mr Atkinson.

10. The Appellant has provided sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the development was begun before 19 September 2009. Planning permission SL/2005/0767 remains extant.

11. For the reasons given above, and on all evidence now available, the Council's refusal to grant an LDC for formation of seasonal caravan park at Ecclerigg Tarn, Near Killington, Kendal was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector



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 9 August 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-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:

Planning permission SL/2005/0767 was begun before 19 September 2009 and the permission remains extant

Signed

John Braithwaite

Inspector

Date: 10 December 2025

Reference: APP/K0940/X/24/3353780

First Schedule

Formation of seasonal caravan park

Second Schedule

Land at Ecclerigg Tarn, Near Killington, Kendal LA6 2HB

IMPORTANT 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 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 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 10 December 2025

by John Braithwaite

Land at Ecclerigg Tarn, Near Killington, Kendal LA6 2HB

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Scale: Not to Scale

