



Appeal Decision

Site visit made on 30 March 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2026

Appeal Ref: APP/L2250/X/24/3340533

Site adjacent to Radnor Cliff Road containing properties 23-36 Radnor Cliff, Folkestone CT20 2JL; Grid ref Easting (x): 621367, Grid ref Northing (y): 135226

- 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 Ms Jane Davies against the decision of Folkestone and Hythe District Council.
 - The application ref 23/0882/FH, dated 24 May 2023, was refused by notice dated 21 December 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is described in the application form as '14 Yachtman houses and storage were commenced, after a Planning Approval was granted in 1971, the existing use is therefore residential (C3)'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Ms Jane Davies against Folkestone and Hythe District Council. This forms the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

Reasons

4. Case law confirms the onus is on the appellant to make out their case to the standard of the balance of probabilities, and that their evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. The site comprises the southern part of an area of land previously occupied by Cliff House, prior to that building being demolished and the land redeveloped in the 1970s. It is not in dispute that planning permission was granted on 28 June 1971 for 'Erection of 16 Yachtsman Houses / Boat Storage'¹ (the 1971 PP) and on 5 April 1973 for '14 Yachtsmen's Houses / Boat Storage / Parking'² (the 1973 PP) at the site. This is in addition to planning permission being granted for 18 townhouses and 4 penthouses immediately to the north of the appeal site on

¹ The Council's ref: CH/3/71/146

² The Council's ref: CH/3/73/65

- 28 June 1971³, within the former Cliff House site. The Council's planning register confirms these basic details, but no one has been able to provide a copy of a decision notice for any of these planning permissions, as the Council no longer holds planning records pre-dating 1975.
6. Town Planning Committee minutes dated 10 November 1971 (the 1971 minutes) refer to planning permissions as having previously been granted in respect of the 'Radnor Cliff House development', which were 'subject to written reports being obtained from specialist soil consultants.' The 1971 minutes detail that the Committee noted and approved that the Borough Engineer had reported that a satisfactory soil report had been received and approval had been given to the commencement of development. It appears likely that this was in respect of the 1971 PP and the accompanying planning permission for town houses and penthouses referred to above, which were approved on the same date.
 7. Further Town Planning Committee minutes dated 7 March 1973 (the 1973 minutes) explain that it was resolved that planning permission should be granted in respect of various applications for planning permission by reference numbers, including 73/65. The 1973 minutes describe planning application 73/65 as relating to land at Radnor Cliff for 'erection of 14 yachtmen's houses with boat storage and car parking for 28 vehicles for Radnor Cliff Development Limited subject to further additional conditions.' Six proposed conditions are then recited in the minutes, including (i) referring to the 1971 PP and (iv) referring to the need to provide a written report from a soil specialist.
 8. The 1973 minutes provide a good indication of the description of development and conditions intended to have been included in the 1973 PP. However, in the absence of the decision notice and clarification of the plans submitted with that application and approved, it remains unclear whether the planning permission was issued subject to those or any other conditions and what plans and other documents relate to it. This gap in the evidence is central to the appeal, particularly in respect of what plans may have been approved by any planning permission.
 9. I have been referred to an area of the appeal site where there are old sections of concrete, which are visible in Google aerial photographs dating back to at least 1989. The positions and layout of these concrete sections are broadly consistent with the walls of dwellings numbered 1 to 8 on plans provided by the appellant⁴, showing what are claimed to be the 14 dwellings authorised by the 1973 PP.
 10. An undated aerial photograph shows the concrete sections under construction as part of a retaining structure consistent with the site, section and floor plans provided by the appellant, prior to side and front walls being constructed to ground floor boat stores. Noting the state of the town houses / penthouses to the north in that photograph, and the relevant land registry registration dates for each of those dwellings, I concur with the appellant that this aerial photograph was likely taken at some point between March and August 1974. Works on the concrete sections therefore likely commenced prior to August 1974.
 11. I have visited the site and inspected the concrete sections, and alongside the 1974 aerial photograph there is little doubt in my mind that those works comprised the necessary retaining and foundation structure to construct the dwellings numbered 1

³ The Council's ref: CH/3/71/147

⁴ Drawing nos. 465 2 C dated 1 May 1971, 465 39 A, 465 40 A, 465 41, 465 50 A, 465 52 A, 465 53 A, 465 62 A.

- to 8 in the appellant's plans. Therefore, if these plans were approved by the 1971 PP or the 1973 PP, it is possible that either or both of those planning permissions may have been lawfully commenced. If that is the case, those developments may be capable of being lawfully completed.
12. It is claimed that the former owner and developer of the site 'indicated' to the appellant, when she purchased the site in 2000, that he had decided to stop construction of the Yachtsmen's houses due to the ensuing oil crisis in the 1970s, which is also why the final block of townhouses was not started. However, there are no sworn statements or other records in this regard, and I note that the former owner is now deceased. Furthermore, there is little to clarify where the appellant's plans originated or why they may be the approved plans for any planning permission.
 13. To be satisfied that either the 1971 PP or the 1973 PP were lawfully commenced, on the balance of probabilities, it might be reasonable to have a decision notice confirming the dates of those permissions and any conditions they were subject to, along with some form of confirmation of the approved plans. In this case, the 1973 minutes give a good idea of the conditions which were due to be attached to the 1973 PP, which probably followed those attached to the 1971 PP. The 1971 minutes also suggest an acceptable soil report could have been produced prior to the commencement of development in accordance with the conditions listed in the 1973 minutes. However, there is little to link either planning permission to the plans which have been provided.
 14. Therefore, while I am satisfied, as a matter of fact and degree, that the concrete sections comprise retaining and foundation works consistent with the plans provided, which commenced at some point prior to August 1974, it remains unclear whether those works were approved by the 1971 PP or the 1973 PP. As such, the appellant's evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that either the 1971 PP or the 1973 PP has been lawfully implemented.
 15. Claims that it made no sense for the developer to unlawfully commence the Yachtsmen's houses, considering the documented local opposition and that the townhouses and penthouses were to be completed and sold, hold little weight, as they are based on no more than speculation. I am also unconvinced that a lack of evidence of enforcement action in respect of the concrete sections means the Council was satisfied those works were lawful at the time they were carried out. This is because the Council would not have been obliged to take enforcement action against any unauthorised development, but also because of the general lack of planning records pre-dating 1975.
 16. Furthermore, I do not agree with the appellant's claim that as a soil report had been approved in respect of the 1971 PP, the same report would have likely been acceptable to discharge the pre-commencement soil report condition referred to in the 1973 minutes. This is especially so when only one set of plans have been provided, which the appellant now assumes relate to the 1973 PP on the basis that they show 14 Yachtsmen's houses. It is not surprising that the appellant previously claimed these plans were approved by the 1971 PP before they became aware of the 1973 PP, as it is simply unclear what was approved at the site, and whether there were any major or minor differences between the 1971 PP and the 1973 PP.

17. It is claimed that prior to refusing to issue an LDC the Council requested evidence to show that works on the concrete sections commenced within 5 years of either planning permission being granted, and that any pre-commencement conditions had been discharged. Be that as it may, I have found that the evidence provided is lacking in other regards, such that I am unable to issue an LDC either to confirm that any works lawfully commenced on the development approved by the 1971 PP or the 1973 PP, or that completion of the development approved by either of those permissions would now be lawful.
18. Therefore, the appellant has failed to provide sufficiently precise and unambiguous evidence to show, on the balance of probabilities, that works lawfully commenced in accordance with the 1971 PP or the 1973 PP such that either development permitted can be lawfully completed. In these circumstances, I am unable to issue an LDC as sought.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of '14 Yachtman houses and storage were commenced, after a Planning Approval was granted in 1971, the existing use is therefore residential (C3)' is well founded. The appeal should fail, and I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR