



Appeal Decision

Site visit made on 14 April 2026

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2026

Appeal Ref: APP/W1145/X/25/3365962

Little America, Land At Grid Reference 245328 125127, Coach Drive, Bideford, Devon, Bideford, Devon, EX39 5JH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ewan Butler against Torridge District Council.
 - The application ref 1/0260/2025/CPL is dated 20 March 2025.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended) ('the Act').
 - The development for which a certificate of lawful use or development is sought is Use of the land in accordance with Planning Permission 1/869/82/8/45.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are, in the absence of a decision by the Council, are:
 - Whether the application was valid when it was submitted to the Council; and
 - If it was valid, whether the use of the land in accordance with Planning Permission 1/869/82/8/45 was lawful.

Reasons

3. Section 192(1) of the Act provides for the making of an application to ascertain whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land would be lawful. The onus lies with an appellant to make out their case to the standard of the balance of probabilities. Where, as here, a local planning authority fails to determine an application for a certificate within the statutory period, an appeal can be made under s195(1)(b) of the Act.
4. Planning application 1/0869/1982 ('the 1982 application') was an application for outline planning permission for the 'Erection of builders contractors depot comprising storage areas, vehicle service bays, workshop, petrol pumps, offices, septic tank, car and lorry parking facilities'. It was granted permission on 20 December 1982, subject to 14 conditions. Subsequently, application 1/0806/1984 ('the 1984 application') was made for the matters reserved in the 1982 application. It was granted permission on 31 January 1985, subject to 1 condition.
5. When the Appellant, as he has become, initially applied to the Council, on 20 March 2025, it was for a certificate of proposed use under section 192 of the Act. Section 6 of the application form related to the 'Description of Proposal'. In

answer to the question asking, amongst other things, for a detailed description of all such operations, the applicant said, "Works as per planning permission 1/869/82/8/45". He answered "Yes" to those questions that asked whether the proposal consisted of operational development and a change of use. When asked to provide a full description of the scale and nature of the proposed use, including the processes to be carried out, any machinery to be installed and the hours the proposed use will be carried out, his answer was "As per planning permission 1/869/82/8/45". The final question in section 6 asks for a full description of the existing or the last known use, with the date when this use ceased, to which the answer was "The intention is to fully implement the permission".

6. The Council informed the Appellant, by letter dated 25 March 2025, that his application for a certificate was invalid. It said that it should have been submitted as an application under s191; that is to say, for a certificate of lawful existing use or development. The corollary of this was that the fee that had been paid was incorrect. The letter required changes to be made to the application and the correct fee to be submitted.
7. Thereafter followed an exchange of emails between the parties. The upshot of this was that the Council agreed with the Appellant that the application could be made under s192 of the Act. However, the Council informed the Appellant that the correct fee for the application would be £6552, which represented half of the fee for the development approved under the 1982 permission. The parties say that the figures are correct under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended) ('Fees Regulations') at the time the application was made.
8. Following further correspondence, the Appellant took the Council's advice to withdraw his application with a view to resubmitting a revised application. In an email dated 7 May 2025, the Appellant formally asked the Council to withdraw his application. That request was made at 11.39AM. Just 26 minutes later he wrote to the Council to tell it that the Planning Portal had allowed the application to be amended and that there was no need to withdraw the application.
9. 12 minutes after the second of the Appellant's emails, referred to above, the Council emailed back thanking him for his confirmation. It also asked him "to withdraw and re-submit"; notwithstanding what had been written shortly before. The Council's reasoning was that this would allow "For a cleaner application". It told the applicant that the fee had not by that time been refunded and the application had not been closed.
10. Neither party has referred to any statutory procedure for withdrawing planning applications. The very short period of time between the various emails, and the Council's lack of action in withdrawing the application, to my mind carry significant weight. Taking a pragmatic approach, and as a matter of fact and degree, I find that the application was not withdrawn.
11. Thereafter, the parties contested the validity of the application. Article 39 of the Town and Country Planning (Development Management Procedure) Order 2015, as amended, ('the Order') sets out the procedure to be followed for applications for certificates of lawfulness, whether made under s191 or s192. It is to be read separately from other articles in the Order, save where specific reference is made to their relevance.

12. Its definition of a “valid application” is two-fold: (a) that it must comply with the requirements of Article 39(1)-(4), which are concerned with the documentation and information to be submitted; and (b) that it is accompanied by the appropriate fee. The contention between the parties is in respect of (b).
13. The Appellant’s position is that his application is very simple; he seeks a certificate giving “confirmation that the permission has been implemented, and in accordance with the terms of the permission, the use would be lawful”. Thus, the fee that he has submitted reflects that his application only relates to the use of the land. This fee, he says was accepted by the Planning Portal.
14. The Fees Regulations set out how fees should be calculated. Its Regulation 3(c) states that “in the case of an application under section 192(1)(a) or (b) (or under both paragraphs) half the amount that would be payable in respect of an application for planning permission to institute the use or carry out the operations specified in the application (or an application for planning permission to do both, as the case may be)”.
15. The application form, as amended by the Appellant via the Planning Portal, shows a change in the Appellant’s position. There, he answered “No” to the question as to whether there was any operational development, and “Yes” to whether there was a change of use. The full description of the use was “use in accordance planning permission 1/869/82/8/45”. In response to the request for a full description of the existing or the last known use, with the date when this use ceased, he wrote “The intention is to use the land in accordance with planning permission 1/869/82/8/45 which has been lawfully implemented”.
16. Applying Regulation 3(c) to this case, I read it to require a fee that reflects that the 1982 permission included a material change of use and operational development. or where a development includes both. The latter was a fundamental part of the proposal. Although the description on the certificate application form changed when the Appellant amended the forms through the Planning Portal, the reason behind the application, to demonstrate that the development allowed under the 1982 permission had commenced, remained.
17. In support of his position, the Appellant says that the use “could be implemented without the construction of any buildings on the land”. That might well be the case. However, no evidence has been submitted to show that it could be implemented without reliance on any operational development. Indeed, the Appellant’s case that there had been a lawful commencement of the development in accordance with the 1982 permission, on which his assertion that he might use the land lawfully is based, is reliant on the formation of the access from the highway into the field, which included culverting a watercourse. This is confirmed in the Appellant’s Grounds of Appeal where he says that “the application was supported by five (5) statutory declarations (‘SDs’) attesting as to the works that had been undertaken to implement the relevant planning permission mentioned in the application”. The SDs make direct reference to the operational development to form the access and/or the culvert. It is these SDs that provide the bulk of the substantive evidence in support of his application.
18. At my site visit, it appeared that without this operational development, the land could not be lawfully used in accordance with the 1982 permission. Furthermore, it is hard to see how the land might be used without other operational development

occurring. The appeal site is low-lying and is close to an estuary from which tidal water enters a small area of the land. From what I saw from my vantage points on the adjacent highways, to my mind the use would not be possible without suitable surfacing, as proposed in the approved layout plan for the 1982 permission, which shows a 'tarmac road', and areas for lorry and car parking. Without surfacing it would not be practical to be used by vehicles.

19. Thus, what the Appellant seeks to do is to disaggregate one element of the 1982 permission, the use of the land, from the operational development it also allowed. The Appellant does not point me to any statute, regulation, order or case law that supports his position of disaggregation. I do not know of any. My finding is that the Fee Regulations do not allow for the disaggregation of a planning permission in the manner put forward, by choosing a part of the scheme on which to base the application fee and relying on this to prove the lawfulness of the scheme as a whole. In this case, as matter of fact and degree, the use of the land and the operational development allowed in the 1982 permission are inseparable. As such, the fee should be half of the fee that would be charged for the development allowed in the 1982 permission.
20. That the fee was accepted by the Planning Portal cannot be considered to be determinative. Its calculation would have been dependent on the information that was input, and it is quite possible that its programme does not reflect all possible scenarios. In any event, for a definitive position, reference must be made to the Fee Regulations. They show that the incorrect fee was submitted with the application.
21. The Appellant, in his Grounds of Appeal, refers to the case of *R. (on the application of Morris Homes (North) Ltd) v Bolton Council* [2025] EWHC 657 (Admin). The telling part of that judgement, for this appeal, is in paragraph 28 where the judge said "It seems to me that any application, no matter how flawed, is capable of being saved by the provision of correct documentation. Once the correct documents are provided, and the application is valid, the application is treated as valid from the point it was made".
22. Here, taking 'documents' to include the required fee, the application was not made valid. Having found it to be invalid, I cannot take the appeal further and shall not assess whether the use of the land in accordance with Planning Permission 1/869/82/8/45 was lawful.

Conclusion

23. For the reasons given above, I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of Use of the land in accordance with Planning Permission 1/869/82/8/45 that refusal would have been well-founded. The appeal should fail, and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Curnow

INSPECTOR