



Appeal Decision

Site visit made on 12 May 2026

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2026

Appeal Ref: APP/W1145/X/24/3353053

Land at Braddon Fishing Lakes, The Byre, 6 Braddon Farm Cottages, Ashwater, Beaworthy EX21 5EP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr David Midgley against the decision of Torridge District Council.
 - The application ref 1/0532/2024/CPE, dated 10 June 2024, was refused by notice dated 21 August 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is described in the LDC application as a use of an approved fishing lake for recreational fishing.
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Application for costs

1. An application for costs was made by Mr David Midgley against Torridge District Council. This application is the subject of a separate decision.

Preliminary Matters

2. At the time of my site visit the lake that is the subject of this appeal had been drained and I observed what appeared to be ongoing works of maintenance to the lake. Nevertheless, I could clearly see what would ordinarily be the extent of the lake. Furthermore, there is no dispute that the site is occupied by a lake that is, at present, absent of water.
3. The location plan submitted with the appeal should identify the land for which the LDC is sought, usually outlined in red. The location plan submitted with the appeal shows outlined in red a long but narrow strip of land within the blue outlined area. At the site visit I noted that the northern part of the land outlined appears to enclose the access track to the lake. The strip of land outlined in the more central part of the site falls at the very edge of the parcel of land within which the lake is located, away from the edge of the lake. It does not enclose the lake itself, nor what I understand to be the edge of the lake from where I would expect recreational fishing to take place. I note that this plan is appended to the decision notice relevant to the LDC application.
4. In view of the above, I wrote to the parties to ask whether the site location plan was correct. Whilst the response from the appellant suggested that it was, they later submitted a different plan showing a thick red line boundary drawn around the edge of the parcel of land within which the lake is located. This red line, as well as a blue outline, have been drawn on a HM Land Registry title plan for title number DN736307.

5. In their response to my request, the Council included a copy of this HM Land Registry based plan and confirmed that the LDC application was determined on the basis of this plan. Whilst this is not the plan appended to the decision notice, I am satisfied the Council determined the LDC application subject of this appeal having regard to the use of the land shown outlined in red on the annotated HM Land Registry plan. I will, therefore, determine this appeal on the same basis.
6. On a separate matter, the site visit had been arranged as an accompanied visit, where a representative of both the Council and appellant would be in attendance. The Council's representative did not, however, attend the site at the time and date specified. Accordingly, I carried out the site visit as an access only visit. In doing so I am satisfied that neither party would be prejudiced in any way.

Main Issue and Main Considerations

7. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC is well founded.
8. I have noted the representations of interested parties, many of which comment on such matters as highway safety and the living conditions of nearby residents. To be clear, the planning merits of the development are not material to the considerations in this appeal.
9. I have had regard to the reason for the refusal of the LDC and the case made by each party. The reason for refusal specifically refers to the appellant's failure to demonstrate that the appeal site has been 'used for recreational purposes for a continuous period of 10 years on the date of the application for a certificate'. However, in the Council's submissions they also refer to the planning permission granted in 1990 (Council reference 1/1419/1990) for the 'construction of a pond (for fishing)' and dispute that the lake in question has the benefit of this permission.
10. In view of the above, the main considerations in this appeal are as follows:
 - Whether the lake on site has the benefit of the planning permission granted pursuant to application reference 1/1419/1990 (herein after referred to as the 1990 Permission);
 - If so, whether the 1990 Permission granted consent for the use of the land (including the lake) for recreational fishing; and
 - If so, whether these lawful use rights have been lost;Or in the alternative:
 - Whether the use of the land for recreational fishing has continued substantially uninterrupted for a period of 10 years or more beginning with the date the use commenced¹.

¹ Having regard to section 171B(3) of the 1990 Act.

11. The test of the evidence is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Reasons

Does the lake have the benefit of the 1990 Permission?

12. The 1990 Permission was granted on 11 October 1990 for development described as the 'construction of a pond (for fishing)'. The plan approved by reason of the 1990 Permission shows a lake broadly in the same location as that subject of this appeal.
13. The 1990 Permission was granted with a number of conditions. The first requires the development permitted to begin no later than the expiry of 5 years from the date of the permission (i.e. by 11 October 1995). The second condition requires the development to be carried out in accordance with the approved plans, and the third and fourth conditions relate to the landscaping of the site.
14. The Council refers to the matter of the 1990 Permission and indicate that, if the planning permission had been implemented prior to its expiry, it says that 'the works for the creation and use of the lake would be covered by the extant 1990 permission'. There is no suggestion that the lake on site has not been constructed in accordance with the plans approved by reason of the 1990 Permission, or that the landscaping conditions imposed on the permission have not been complied with.
15. In view of the above, the matter between the parties is whether or not any material operation comprised in the development permitted in 1990 had been carried out before 11 October 1995. What is important, therefore, is establishing when it is more likely than not that the works to construct the lake commenced.
16. In this regard, the Council suggests that there is some confusion in the appellant's evidence where they say that 'our application stated that fishing had started in 1990 but although planning permission was granted 11th. October 1990 for the construction of the lake for fishing it actually started later, sometime around 1996-97, as far as we can tell'. The Council suggest that this conflicts with the appellant's later evidence, which is that the development commenced within 5 years of the grant of the 1990 Permission.
17. Having read the appellant's correspondence, when they refer to the 1996-1997 date, to my mind they are referring to when 'fishing had started' rather than the date the works to construct the lake had commenced. I do not, therefore, regard this evidence as conflicting with the appellant's later clarification that the development had commenced in time to benefit from the 1990 Permission.
18. The appellant's evidence is corroborated to a degree by the 12 or so letters submitted with the LDC application from those that have fished at the lake. The weight I attribute to some of this evidence is, however, limited as most of these letters repeat the same text. Whilst they say that they recall the lake having been

created in 1990, they also say that they have used the lake since that time. In doing so this contradicts to a degree the appellant's suggestion that the lake was not used for fishing until 1996/1997.

19. Notwithstanding the above, amongst the objections to the LDC application, one resident refers to the lake having been 'dug in 1991'. However, how they know this is unclear, given that they say that they only moved to their current address in 2014.
20. Of particular note is a number of representations from local husband and wife residents who say that they have 'lived and worked here at Braddon since 1987' and that 'it was my job to plant up the lake and the environs'. The representations were written in objection to the LDC application, but nevertheless say that 'the lake was dug in 1990 as stated, but it took over a year to fill up'. A photograph is provided with one of these representations which they say was taken in 1991 and shows the lake in question. As for the time when fish were present in the lake, they say 'there were no fish in it for the first 5 years, it was choked up with black grass and broad leaved pond weed, which covered the whole lake'. This aligns with the appellant's claims with regard to when they understand the lake was stocked. I find this evidence particularly compelling with regard to when the works to construct the lake were commenced, not least because this is evidence independent of the appellant's submissions and yet corroborates what they claim.
21. The Council suggest that the representations of local residents conflict with what is claimed by the appellant. They do not, however, point to any particular representation to demonstrate this conflict. Whilst the conflict in the evidence might well be the date on which fishing commenced at the lake (rather than the date of the construction of the lake itself), this is not relevant for the purposes of determining whether or not the 1990 Permission was implemented before it had expired. As I note above, what is important is when the works to construct the lake commenced, not when the lake was first stocked with fish and used for fishing.
22. I acknowledge that there are no aerial photographs to corroborate the appellant's claims. The absence of such aerial imagery does not, however, contradict what the appellant claims.
23. Having regard to all the evidence before me, I find it more likely than not that material operations comprised in the development permitted in 1990 had been carried out before 11 October 1995. Accordingly, the evidence indicates that the lake on site was, on the balance of probability, constructed with the benefit of the 1990 Permission.

Did the 1990 Permission Permit Recreational Fishing?

24. The Council's case, as I understand it, is that, notwithstanding my conclusions above, the lake is used for the primary purpose of storing fish, which it says is agriculture. Whilst the Council acknowledges that fishing has taken place at the site, it suggests that there is no evidence to indicate that this activity does not fall within the definition of agriculture. In making its case, it has referred to an extract of advice from DCP.
25. Section 336 of the 1990 Act provides a definition of agriculture which includes:

‘horticulture, fruit growing, seed growing, dairy farming, **the breeding and keeping of livestock (including any creature kept for the production of food**, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly’.

26. I have emphasised what I understand the Council considers to be the most relevant part of the definition.
27. In making its case, the Council refer to how the land has been used and the evidence submitted by the appellant to ‘detail the nature of the angling activities taking place’. However, how the land has been used since the implementation of the 1990 Permission is of limited relevance to the question of what was permitted by the 1990 Permission.
28. To determine what was permitted, the starting point is the decision notice itself. One must ask what a reasonable reader would understand the words in the decision notice to mean. I must have regard to the natural and ordinary meaning of the relevant words in the decision notice. A planning permission should stand by itself and the meaning of it should be clear within the four corners of the document.
29. With this in mind, whilst I acknowledge that the development permitted in 1990 is an operation (i.e. the construction of a pond) the description of what is permitted specifically states the purpose to which the operation (i.e. the pond) will be put. That purpose is for fishing.
30. Fishing is not an activity that is included within the above-mentioned definition of agriculture. Whilst I acknowledge that in some circumstances it can be a use of land that is ancillary to agriculture, it is not, to my mind, part and parcel of an agricultural use.
31. Neither the decision notice, nor the plan I have been provided with refer to the pond to be used for the purposes of agriculture or as a fish farm. Indeed, there is no reference to the keeping and breeding of fish for the production of food. Fishing is the only activity stated in the 1990 decision notice. This can, therefore, be regarded as the primary purpose or use of the pond permitted, rather than an ancillary use. The decision notice states that planning permission is granted for the construction of a pond for fishing. In this regard I find the decision notice to be clear within its four corners. The use of the pond for fishing is, therefore, permitted by the 1990 Permission.
32. There are no conditions of the 1990 Permission that limit the type or nature of fishing permitted. Neither do they prevent the use of the lake for recreational fishing. Accordingly, its use for these purposes would not constitute a breach of any of the conditions of the 1990 Permission.
33. Whilst I note the caselaw referred to by the Council (*Turner v SSE & Macclesfield BC* [1992] JPL 837), that case concerned itself with whether or not recreational angling constituted a material change of use of an existing lake. Having regard to the main consideration in this part of my decision (i.e. whether or not permission was granted in 1990 for the construction of a pond for recreational fishing), the relevance of this caselaw to the case before me is limited.

Have lawful use rights been lost?

34. Once the lawfulness of a use is established, which in this case is by the grant of a planning permission, for these lawful use rights to be retained the use need not continue substantially uninterrupted. There are particular circumstances where a lawful use of land or a building might, however, be lost. These include, for example, abandonment or where a material change of use of the land to some other use has occurred. It might also be extinguished by the creation of a new planning unit.
35. I understand from the evidence, including the representations from interested parties, that, once constructed and filled, the lake was initially used for fishing by visitors to the holiday cottages previously owned and let by the former owner of the site. Interested parties also say that the previous owner would allow a few anglers to come to the lake to fish. They suggest that this use might have been occasional and may have taken place along with other activities. Nevertheless, the evidence indicates that this use continued from the time the lake was filled and stocked with fish.
36. The evidence indicates that in 2010 a fishing syndicate began using the lake for recreational fishing and that this use continued to the appellant's purchase of the site in 2021. Again, members of the syndicate may not have regularly fished at the lake. Nevertheless, the evidence indicates that their use of the lake for recreational fishing continued from 2010 to the date of their written statements, early 2024. This use of the lake for fishing is corroborated by representations from interested parties.
37. None of the evidence indicates that there has been any other use of the land since the lake was first used, let alone any use that is materially different to a use for recreational fishing. Neither is there any suggestion that there has been a change to the planning unit in that time or that during this time the use has been abandoned.
38. Whilst I note above that the lake is, at present, absent of fish and water, I understand that this is for the purposes of undertaking maintenance to the lake. The form of the lake broadly remains extant and there is no suggestion that the current condition of the land has resulted in the abandonment of the 1990 Permission and the use it permits.
39. I have been provided with an article 4 direction, dated 10 May 2024, that relates to land within which the appeal site sits. Although this does not appear relevant to the use for which the LDC is sought, it would not interfere with any lawful use rights established.
40. All things considered, I have no reason to conclude that at the time the LDC application was made, the lawful use of the appeal site for recreational fishing, granted permission by reason of the 1990 Permission, had been lost.

Summary

41. Having regard to my findings above, I conclude that at the time the LDC application was made, the use of the appeal site and the lake therein for recreational fishing was, on the balance of probability, lawful.

42. Given this conclusion, it is not necessary for me to consider the alternative main consideration identified above.
43. I note the concerns of some local residents with regard to the potential use of the appeal site, should the appeal be allowed. To be clear, the certificate I intend to grant will be for a use of the land specified in the certificate. It would not apply to any other activities or uses that might take place on the appeal site in the future that are materially different to those described in the certificate.

Conclusion

44. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of an approved fishing lake for recreational fishing is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

Formal Decision

45. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

J Moss

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 10 June 2024 the use described in the First Schedule hereto in respect of the building specified in the Second Schedule hereto and edged in red 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:

The evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, that:

- i. material operations comprised in the development permitted on 11 October 1990, pursuant to the application reference 1/1419/1990, had been carried out before 11 October 1995 and that the lake on site was constructed with the benefit of the 1/1419/1990 permission;
- ii. the use of the lake specified in the First Schedule was permitted by the 1/1419/1990 permission; and
- iii. on 10 June 2024 the lawful use rights for the use specified in the First Schedule had not been lost.

Signed

J Moss

Inspector

Date: 7 July 2026

Reference: APP/W1145/X/24/3353053

First Schedule

The use of an approved fishing lake for recreational fishing.

Second Schedule

Land at Braddon Fishing Lakes, The Byre, 6 Braddon Farm Cottages, Ashwater, Beaworthy EX21 5EP.

IMPORTANT NOTES – SEE OVER

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.



Plans

These are the plans referred to in the Lawful Development Certificate dated: 7 July 2026

by J Moss

Land at: Braddon Fishing Lakes, The Byre, 6 Braddon Farm Cottages, Ashwater, Beaworthy EX21 5EP

Reference: APP/W1145/X/24/3353053

Scale: Not to Scale

