Planning Inspectorate

Appeal Decision

Site Visit made on 11 August 2026

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2026

Appeal Ref: APP/E2001/X/25/3364422
West Garth, Main Street, Brigham, East Riding of Yorkshire YO25 8JW

- 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 Timothy Foreman against the decision of East Riding of Yorkshire Council (the LPA).
- The application ref 24/02966/CLE, dated 7 October 2024, was refused by notice dated 11 February 2025.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 (as amended).
- The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the use of 2 West Garth as a dwellinghouse.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition or limitation which is found to be lawful.

Preliminary Matters

2. The application form indicates that an LDC was sought for an existing use, building work or activity in breach of a condition. Such an application is made under S191(1)(c) of the Act. I have dealt with the appeal on that basis.

Main Issue

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

Reasons

4. S191(2) of the Act sets out that uses are lawful at any time if: (a) 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, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. S171A(1) of the Act sets out that a breach of planning control constitutes: (a) carrying out development without the required planning permission; or, (b) failing to comply with any condition or limitation subject to which planning permission has been granted.

6. The time limits for taking enforcement action against a breach of planning control are set out in S171B of the Act, as amended by the Levelling Up and Regeneration Act 2023, and subject to transitional arrangements set out in the Planning Act

2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

7. The statutory scheme sets out under S171B(2)(a) that, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. However, where the date of the breach was before 25 April 2024, the relevant period is four years.

8. Under S171B(3), the Act states that, in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach

9. The appellant's case is that the building was erected pursuant to a planning permission granted on 7 November 2019[1] for the erection of 2 cabins for use as holiday accommodation. Condition one of the permission states the cabins on the site shall be occupied for holiday purposes only and shall not be occupied on a permanent basis. Condition two states that the cabins shall not be occupied as a person's sole, or main place or residence. The LPA accepts the permission was lawfully implemented and thus the occupancy conditions bite. There is no dispute on that matter.

10. The appellant states that the development commenced in April 2018 and that it was substantially completed by April 2019. Thereafter, following internal works and the connection of services, the appellant began occupying the cabin, as holiday accommodation, from November 2019. It is said that, from November 2019 to 23 March 2020, the applicant used the cabin at weekends and some evenings for overnight stays for recreational purposes whilst they had permanent residence elsewhere. Thus, it is said that it was used in accordance with the planning permission as holiday accommodation.

11. The appellant submits that on 23 March 2020, they had to leave their main place of residence. Upon that date, they moved into the cabin at 2 West Garth as their permanent residence. They say it has been their permanent residence since.

12. As such, the appellant's case is that there was a material change of use at that point from holiday accommodation to a dwellinghouse and thus a breach of planning control under S171A(1)(a) took place, that being development without planning permission. Therefore, it is argued that at the date of the LDC application, no enforcement action may then have been taken against that breach because the time for doing so had expired in accordance with the four-year limit in S171B(2) of the Act.

13. In contrast, the LPA argues that the original permission was granted for a C3 dwellinghouse with a limitation on its use to holiday accommodation only and thus, its use from 23 March 2020 onwards did not constitute a material change of use but rather a breach of the occupancy restriction in conditions 1 and 2 of the 2019 permission. The LPA therefore argues that the breach falls under S171A(1)(b) as a failure to comply with conditions subject to which permission has been granted and consequently, the relevant time limit for taking enforcement action is 10 years in accordance with S171B(3) of the Act. On that basis, the LPA say 10 years

[1] LPA Ref: 19/02493/VAR

immunity cannot be demonstrated since the cabin was only substantially completed in 2019.

14. However, whether the breach is the material change of use to a dwellinghouse without planning permission, or whether it is a breach of the occupancy conditions, the relevant time limit for consideration is the same, that under S171B(2)(a) of the Act. It was held in *FSS v Arun DC & Brown* [2006] EWCA Civ 1172; [2007] JPL 237 that S171B(2) applies where a building is being used as a dwellinghouse in breach of a condition which, whether by express wording or practical effect, serves to prevent that use. That is the case here. Regardless of whether the permitted use fell within the C3 use class, the permission was expressly granted for the erection of two cabins for use as holiday accommodation. The wording and practical effect of conditions 1 and 2 is to prevent the use of the cabins changing to permanent single dwellinghouses. Accordingly, regardless of whether the change amounted to being material, there was clearly a breach of planning control consisting in the change of the use of the cabin from a residential use for holiday accommodation to a residential use a separate single dwellinghouse. As a result, the four-year time limit under S171B(2)(a) of the Act applies.

15. The LPA does not dispute the use of the cabin changed to a dwellinghouse in breach of the holiday accommodation conditions from 23 March 2020. Nor does it argue that there has been any breaks in the continuity of the breach. Indeed, the LPA's own case is that, on the balance of probabilities, the appellant's evidence is sufficiently precise and unambiguous to ascertain that the cabin has been used as a permanent dwellinghouse for more than for years prior to the submission of the LDC application. Having considered the evidence, I see no reason to conclude otherwise.

16. On that basis, regardless of whether the breach of planning control falls under S171A(a) as a material change of use without planning permission or (b) as a failure to comply with conditions subject to which a planning permission has been granted, the evidence indicates, on the balance of probabilities, that the breach of planning control took place on or before 7 October 2020 and continued for four years thereafter without interruption.

17. The corollary is that, at the date of the LDC application, enforcement action may not have been taken against the use of the cabin as a dwellinghouse, because the time for doing so had expired. Moreover, there is no evidence that the use was in contravention of any of the requirements of an enforcement notice then in force.

18. On that basis, at the date of the LDC application, the use of 2 West Garth as a dwellinghouse was lawful within the meaning of S191(2) of the Act.

Conclusion

19. For the reasons given above, I conclude that the LPA's refusal to grant a certificate of lawful use or development for the use of 2 West Garth as a dwellinghouse 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 (as amended).

J Whitfield

INSPECTOR

Planning Inspectorate

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 7 October 2024 the use described in the First Schedule hereto in respect of the land 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:

Enforcement action may not have been taken against the use of 2 West Garth as a dwellinghouse, because the time for doing so in accordance with S171B(2)(a) of the Act had expired. Moreover, there is no evidence that the use was in contravention of any of the requirements of an enforcement notice then in force

Signed

J Whitfield

INSPECTOR

Date: **14 August 2026**
Reference: APP/E2001/X/25/3364422

First Schedule

The use of 2 West Garth as a dwellinghouse.

Second Schedule

Land at West Garth, Brigham, YO25 8JW

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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **14 August 2026**

by J Whitfield BA(Hons) DipTP MRTPI

Land at: West Garth, Main Street, Brigham, East Riding of Yorkshire YO25 8JW

Reference: APP/E2001/X/25/3364422

Scale: Not to Scale

