The Planning Inspectorate

Appeal Decision

Hearing held on 9th April 2014

by Clive Whitehouse BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 April 2014

Appeal Ref: APP/N2535/X/13/2205963
Lakeside Caravan Park, Barlings Lane, Langworth, Lincolnshire LN3 5DF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr John Epton against the decision of West Lindsey District Council.
- The application (Ref.129067) dated 14th August 2012, was refused in part by the Council by notice dated 31st July 2013.
- The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and a modified certificate of lawful use or development is issued, in the terms set out below in the decision.

Application for costs

1. At the hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Background

2. The appeal concerns a touring caravan park and, in particular, the lawfulness of the number of caravans that may be accommodated on the land. There are some ambiguities in the way the application form was completed, resulting in disagreement as to purpose. The appellant contends that in granting a lawful development certificate (LDC), the Council substituted a description of the lawful use that was not what had been applied for. He believes that the certificate, as issued, introduces an unjustified limitation on caravan numbers. It is therefore necessary for me to interpret the purpose of the application, having regard to its content and context.

3. Planning permission was granted on appeal in 1993 for *"the change of use of the land to a touring caravan park and extension to a children's play area and sports area",* subject to conditions. Condition 4 states that *"there shall not be more than 20 touring caravans stationed on the touring caravan park at any one time".*

4. In the course of investigating an application for holiday chalets on part of the site in 2012, it became apparent to the Council that the number of touring caravans using the site significantly exceeded 20, and that there were other

irregularities, including a static caravan occupied by the site warden. The appellant met a Council officer in order to regularise any planning issues concerning the authorised site, and was advised to submit a Lawful Development Certificate application.

5. The Council was satisfied (on the basis of its understanding of the evidence accompanying the application and the scope of the pre-application discussions) that it was dealing with an application to regularise the use of part of the site for an increased number of up to 32 touring caravans. The Council also understood the application to relate to a static caravan used as warden's accommodation; the use of a caravan storage area and the use of the lakes (former gravel workings) for recreational fishing.

6. The Council accepted the appellant's evidence that, on the balance of probability, the limitation to 20 touring caravans contained in condition 4 had been consistently breached for more than ten years and that the condition was unenforceable. The appellant's evidence that electrical hook-ups for 32 touring caravans had been in use since about 1999 was also accepted. The LDC certificate under appeal specifies an area within the site where up to 32 touring caravans and one static caravan may lawfully be sited. It also certifies the lawfulness of an area for caravan storage for up to 50 caravans, and the use of the lakes for recreational fishing.

7. The appellant maintains that he had only applied for a ruling under section 191(1)(c) that condition 4 of the 1993 permission was no longer enforceable. His case is that it was not open to the Council under that clause to impose a new limit of 32 caravans.

8. There were about 50 touring caravans on the site at the time of my inspection, many of which were in areas where no electrical hook-ups had been installed. There were also some little-used mown areas where further caravans could be accommodated.

9. A certificate issued on 5th December 2012 contained an error concerning a relevant date, and that was corrected by the Council by the issuing of the revised certificate, dated 31st July 2013.

The Application Form and Supporting Documents.

10. At the hearing the answers given to each of the questions on the application form were examined and discussed. I have taken into account the fact that Mr Epton was not professionally advised at the time of completing the application.

11. In question 7 the box is ticked stating that the LDC is needed for *"an existing use … or activity in breach of a condition".* Under that question it is also asked whether the use or activity falls within a Use Class (which it does not). The appellant did not understand that part of the question, and his answer (referring to the description of the 1993 planning permission) use is not relevant to that question.

12. Question 9 deals with the grounds on which the LDC is sought and, of the six options available, the box is ticked that relates to *"a use … or activity in breach of a condition that began more than 10 years before the date of the application".* The reference number and date of the 1993 permission and condition 4 are quoted. The answer to question 10 also refers to an existing use or activity in breach of a condition.

13. The main source of confusion on the application form derives from the answer to question 8, which asks for a description of the existing use or activity on the site. Mr Epton has entered the existing uses of the land as consisting of *"caravan park, caravan storage, fishing lakes, one static caravan sited",* which is factually correct. His answer continues by referring to the continuous use by more than 20 caravans and the provision of 30 electrical hook-ups in 1999. However, the appellant maintains that he was not intending to seek a certificate for all of the existing activities on the site.

14. I accept that the pre-application discussions covered a wider scope than the matter of condition 4 on the 1993 permission, and that the Council was expecting the LDC application to address all of those issues. However, it is the application form itself that sets the limits of the certificate to be issued and I conclude as a matter of fact and degree that on a fair reading of the application form it seeks to establish under section 191(1)(c) that the 1993 planning permission may be operated without compliance with condition 4 limiting the number of touring caravans at any one time to not more than 20. The Council accepts that the condition has become unenforceable after being breached for more than 10 years, and there is no evidence that would lead me to disagree.

15. The certificate issued by the Council does not mention condition 4 of the 1993 planning permission, and I clarified at the hearing that section 193(5) requires the condition to be described in the certificate where it is the subject of the application. The certificate therefore needs to be modified to include a reference to the condition in question.

16. The certificate also needs to be modified to delete references to the siting of a single static caravan for warden's accommodation; caravan storage (covered by a separate planning permission) and recreational fishing, since I have concluded that the application does not seek a certificate for any of those uses.

Limitation to 32 Touring Caravans

17. The remaining issue is whether the Council is entitled to set a new limit of 32 touring caravans; having accepted that the original condition is no longer enforceable.

18. Representations were made at the hearing on behalf of the appellant which sought to clarify the legal distinction between applications made under section 191(1)(a) to ascertain the lawfulness of an existing use, and applications made under section 191(1)(c) concerning a failure to comply with a condition subject to which planning permission has already been granted.

19. It is clear to me from the discussion at the hearing that the Council has approached this case on the basis of addressing the legality of all the activities on the site under 191(1)(a), and has been guided by the advice on the content of LDC certificates in Annex 8 of the recently cancelled Circular 10/97. The advice concerning the importance of stating the limits of a use as a point of reference for any subsequent changes relates to examples where the application is to establish the lawfulness of an existing use under section 191(1)(a). That advice does not in my view extend to applications under section 191(1)(c), where the use itself is already authorised by a specific grant of permission, as in this case, and where the issue concerns compliance with a condition.

20. My understanding of the appellant's evidence concerning the number and length of time that electrical hook-ups had been installed on the site is that it was submitted primarily for the purpose of demonstrating that the condition had been breached for the requisite period. Having concluded that condition 4 is not enforceable, I consider that the Council was not entitled under section 191(1)(c) to impose a new limitation of 32 touring caravans in the LDC. The effect is that the 1993 planning permission remains in force without the limitation to 20 touring caravans in condition 4, but subject to the other conditions, so far as those remain in force.

21. Condition 2 of the 1993 appeal decision requires details of the layout of the sites; means of access, circulation and parking spaces to be submitted to and approved by the local planning authority, and condition 3 requires those details to be provided in accordance with the approved details. There was some discussion at the hearing as to whether the Council had formally considered and approved a site layout in a manner that defines the permitted location of touring caravans within the site as a whole. No clear documentary evidence was produced for the purpose of the appeal to demonstrate that there is an approved layout for the site. Since the appeal is concerned only with non-compliance with condition 4, I reach no conclusion on that matter.

Conclusion

22. I have had regard to all other matters raised. I conclude that the terms in which the Council issued the LDC was not squarely based on the application as it was made, and was therefore not well-founded. The LDC issued on 31st July 2013 will be modified to relate to the application made under section 191(1)(c). Discussion took place at the hearing on the form of a modified certificate in the event of the appeal succeeding. The extent of modification required is such that for clarity the modification will take the form of a new certificate.

Decision

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

C Whitehouse

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Graham Machin	Barrister instructed Andrew Jay Solicitors
Philip Hanby	Solicitor, Andrew Jay Solicitors
Giles Crust	Planning Consultant
John Epton	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Simon Sharp	Planning Officer

INTERESTED PERSONS:

Chris Driffill	Resident of Barlings Lane
Gerald Davies	Resident of Barlings Lane
Councillor Chris Darcel	Local Councillor

DOCUMENTS submitted at the hearing

1 Application for costs by the appellant.

The 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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 14th August 2012 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 condition No.4 of the planning permission Ref: W4/1002/91 granted on appeal on 5th March 1993 states that "there shall be not more than 20 touring caravans stationed on the touring caravan park at any one time". It is concluded on the balance of probability that the application site has been used consistently for stationing more than 20 touring caravans over the period of more than ten years before the date of the application. The failure to comply with the terms of condition 4 is therefore immune from enforcement action.

Signed

C Whitehouse
Inspector

Date 17.04.2014
Reference: APP/N2535/X/13/2205963

First Schedule

The use of the land as a touring caravan park and extension to children's play area and sports area without complying with condition No.4 of planning permission Ref: W4/1002/91 granted on appeal on 5th March 1993 (appeal ref: T/APP/N2535/A/92/213480/P7).

Second Schedule

Land at Lakeside Caravan Park, Barlings Lane, Langworth LN3 5DF

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.

The Planning Inspectorate

Plan

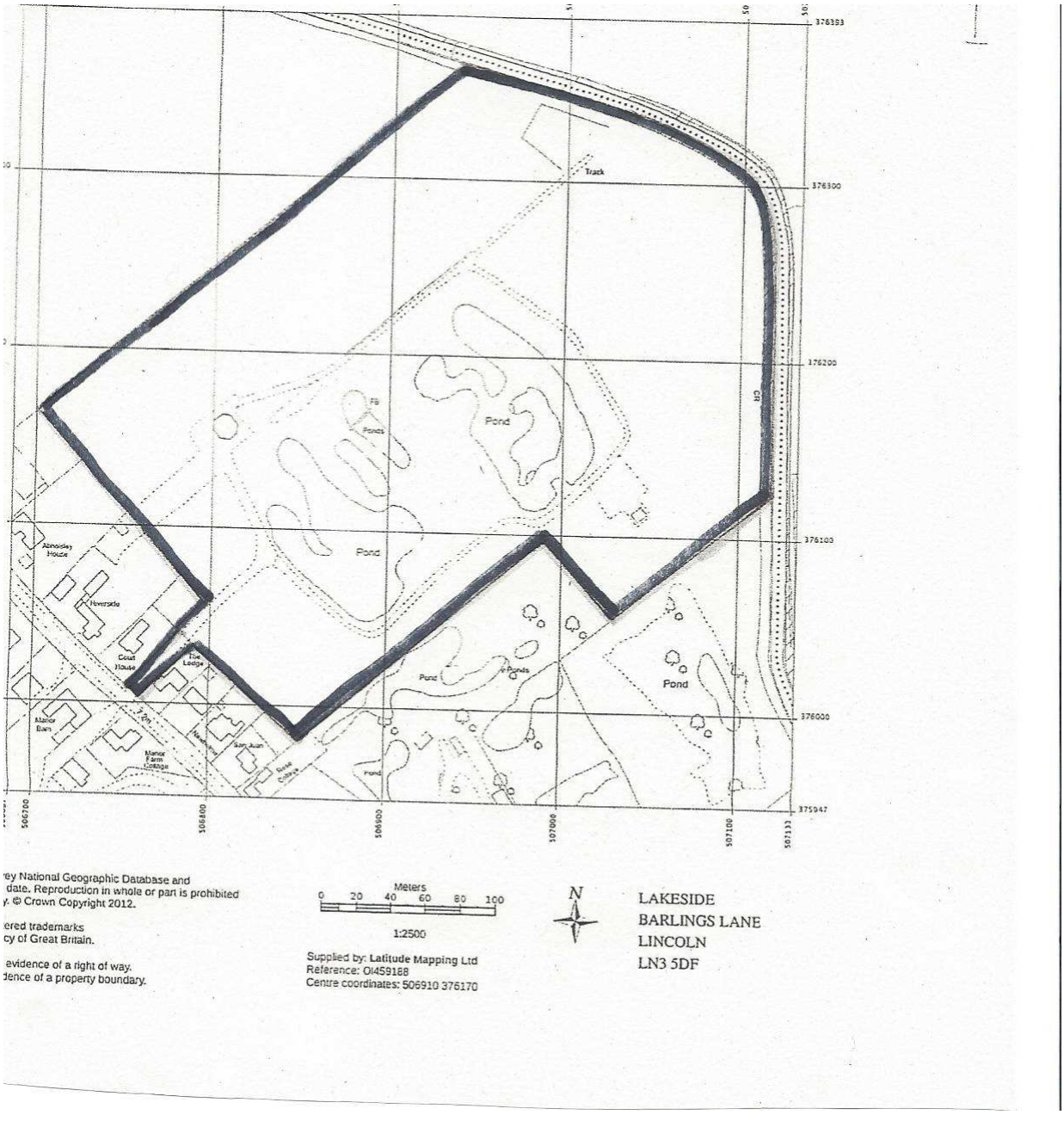
This is the plan referred to in the Lawful Development Certificate dated: 17.04.2014

by C Whitehouse, Inspector

Land at: Lakeside Caravan Park, Barlings Lane, Langworth LN3 5DF

Reference: APP/N2535/X/13/2205963

Scale: not to scale



The Planning Inspectorate

Costs Decision

Hearing held on 9th April 2014

by Clive Whitehouse BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 April 2014

Costs application in relation to Appeal Ref: APP/N2535/X/13/2205963 Lakeside Caravan Park, Barlings Lane, Langworth LN3 5DF

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr John Epton for an award of costs against West Lindsey District Council.
- The hearing was in connection with an appeal against the terms of a Lawful Development Certificate (LDC) issued in respect of a touring caravan park.

Decision

1. The application for an award of costs is refused.

The submissions for Mr J Epton

2. It was submitted on behalf of Mr Epton that the Council had behaved unreasonably in failing to recognise that the application was made under section 191(1)(c) of the 1990 Act concerning non-compliance with a specific condition attached to the planning permission for the site. Instead, the Council treated the application as if it were an invitation to issue a certificate for all of the various activities taking place on the site. This misunderstanding led the Council to issue an inappropriate certificate with an unjustified restriction on touring caravan numbers. If the Council had been uncertain as to the nature of the application, it should have obtained clarification before proceeding to issue the certificate. As a result of the Council's unreasonable behaviour, it was necessary for the appellant to incur the costs of appealing against the terms of the certificate.

The response by West Lindsey District Council

3. The Council has cooperated fully with Mr Epton in addressing a number of planning issues concerning the site, including non-compliance with the condition limiting touring caravan numbers. All these matters were discussed before the LDC application was submitted and the Council advised Mr Epton that he should seek to regularise all the outstanding matters. The application form contains a number of ambiguities and it was reasonable for the Council to interpret the application as being for more than non-compliance with a single condition. The Council based its decision on well-established case law and has fully justified its handling of the case in correspondence after the decision and in the appeal statement. It is contended that the Council did not behave unreasonably in its handling of the case and the appeal.

Reasons

4. Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary expense in the appeal process.

5. The application submitted by Mr Epton contained some ambiguities, and I consider that he bears some responsibility for the subsequent confusion and the approach taken by the Council. The Council's approach was also influenced by the wide scope of the pre-application discussions. Even though I have concluded in my decision on the appeal that the application was more narrowly based than was understood by the Council, I am satisfied that the Council behaved reasonably in its handling of the case. The council's appeal statement provides sufficient reasoning to support the Council's case.

C Whitehouse

INSPECTOR