
Appeal Decision

Inquiry held on 17 March 2015

Site visit made on 17 March 2015

by **B.S.Rogers BA(Hons) DipTP MRTPI**

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

Decision date: 24 April 2015

Appeal Ref: APP/Y2736/X/14/2223182

Steam & Moorland Garden Centre, Malton Road, Pickering, YO18 7JW

- 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 to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Hopkinson and Sons Ltd against the decision of Ryedale District Council.
 - The application Ref: 13/01242/CLEUD, dated 23 October 2013, was refused by notice dated 3 July 2014.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is retail sales of class A1 goods in breach of condition 06 attached to planning permission reference 00/00400/OUT.
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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 which is considered to be lawful.

Preliminary Matters

2. At the inquiry, the Council referred to "without prejudice" communications between the parties which should not have been included in the evidence before me but which, nevertheless, I had been provided with and had read. Because of this, I was asked to consider whether I could proceed to a fair decision or whether I felt I should reclude myself. I indicated that I felt able to proceed.
3. At the request of both main parties, I adjourned the inquiry shortly after opening to enable discussions to take place between them. During the adjournment, I carried out an accompanied site visit.
4. Although the appellants indicated in writing prior to the inquiry that a costs application would be made, they indicated at the inquiry that such an application was no longer being pursued.

Reasons

5. The condition in question, no.06, limits the goods that may be sold to a list of 9 specific categories and prohibits the sale of any other goods. The appellants made it clear at the inquiry that the LDC application relates only to the specific

schedule of goods sold in breach of the condition, which was agreed with the Council at the inquiry and set out in Doc.2.

6. Following the resumption of the inquiry, the Council conceded that it was now accepted that the appellants could show, on the balance of probability, that the schedule of goods listed in Doc.2 had been sold for a continuous period of more than 10 years prior to the date of the application. As a result, the Council decided not to call any witnesses. Having read the proofs of evidence of both main parties and heard the representations made at the inquiry, I have seen no reason to disagree with the Council's position. There was no need for the appellants' witnesses to be called.
7. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed.

B.S.Rogers Inspector

Appearances

For the Appellants:

Paul Brown QC - Instructed by Ms T.Hubbard

He did not call any witnesses. However, proofs were received from:

Mr C.Hopkinson - Appellant

Mrs B.Hopkinson - Appellant

Mr P.Turnbul - Former employee of Appellants

Ms T.Hubbard - Malcolm Scott Consultants Ltd

For the Council:

Giles Cannock of Counsel - Instructed by Mr A Winslip, Ryedale D.C.

He did not call any witnesses. However, proofs were received from:

Mr G.Housden - Head of Housing & Planning, Ryedale D.C.

Ms S.Wilson - Former Enforcement Officer, Ryedale D.C.

Mr C.M.Cooper - Local resident

Mr J.Flintoft - Local resident

Mr P.Bowley - Local resident

Ms K.Wynn - Local resident

Documents

1. Attendance list
2. Schedule of goods which form the subject of the LDC application
3. Plan of appeal site, showing area of permission no.14/000692/73A
4. Transcript of Berg v IML London Ltd (QBD) [2002]

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 23 October 2013, the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged in a bold black line on the plan attached to this certificate (but excluding the hatched area, which was the subject of application no.14/000692/73A), was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that, on the balance of probability, the goods set out in the first schedule have been sold continuously in breach of condition no.06 attached to outline planning permission no.00/00400/OUT for a continuous period of more than 10 years prior to the date of the application.

Signed

B.S. Rogers
Inspector

Date: 24 April 2015

Reference: APP/Y2736/X/14/2223182

First Schedule

Use of the land and building(s) identified on the plan edged in a bold black line (but excluding the area hatched black) for sale (within Class A1 of the Town & Country Planning (Use Classes) Order 1987 (as amended)) of the following goods in breach of condition 06 attached to planning permission no.00/00400/OUT:

1. Books (non-gardening);
2. Indoor toys and games;
3. Outdoor toys and games;
4. Food (for consumption off the premises) comprising jams, biscuits, preserves, cans of drink, ice creams, chocolates, sweets, cakes and crisps;
5. Non-gardening clothing: country and casual day wear including: travel jackets, ladies fleeces, ladies jackets, men's gilets and fleeces, shirts, shooting waist coats, wax jackets, tweed caps, socks, scarves, hats, gloves, thermals, trousers (moleskins, corduroy, canvas and jeans) but excluding evening or dress clothing;

6. Non-gardening footwear comprising wellington boots, winter boots, safety boots, walking boots, brogues office and day shoes, sandals and flip-flops but excluding evening or dress shoes and sports shoes;
7. DIY and hardware comprising:
 - * non-powered hand tools, hand-held powered tools (drills, drill bits, sanders and jig saws;
 - * electrical fittings and cables;
 - * nuts, bolts, washers, screws, nails and metal fittings and fixtures;
 - * outdoor paint and preservatives (excluding interior paints);
 - * caulk, caulking guns, sand paper and sealant;
 - * door furniture, gate furniture and shed furniture;
 - * chains and ropes;
 - * cable ties and clips;
 - * batteries;
8. Homewear;
9. Gift ornaments, souvenirs, lamps and pictures;
10. Candles, home scents and toiletries;
11. Garden buildings, greenhouses and accessories; and
12. Gas, coal and logs, winter fuels, de-icer and grit.

Second Schedule

Land at Steam and Moorland Garden Centre, Malton Road, Pickering, YO18 7JW, edged in a bold black line on the attached plan, but excluding the cross-hatched area which was the subject of application no.14/000692/73A.

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, 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 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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.

Plan

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

by B.S.Rogers BA(Hons) DipTP MRTPI

Land at: Steam and Moorland Garden Centre, Malton Road, Pickering, YO18 7JW

Reference: APP/Y2736/X/2223182

Scale: NTS

