



DELEGATED DECISION REPORT

Application Reference Number	19NP0054
Description / Site Address	Lawful Development Certificate in respect of the continued use of High Tipalt as an unrestricted dwelling house (Class C3) at High Tipalt, Greenhead, CA8 7JB
Expiry date of publicity / consultations	28 June 2019
Last date for decision	15 th October 2019 (agreed extension)

Details of Proposal

An application has been received for a certificate of lawfulness in respect of the continued use of High Tipalt as an unrestricted dwelling house (Class C3). High Tipalt is in an isolated location, approximately 2.8km to the north of the B6318. Access to the property is via a farm track which leads east from the unclassified road which runs between the Roman Army Museum and Farglow.

High Tipalt is a large detached property of traditional stone and slate construction with a mix of traditional and modern outbuildings. Following a period during which the property was unoccupied, planning permission was granted in 2006 under application reference 05NP0057 for the change of use of the property to holiday accommodation, rebuilding of adjacent barn and the erection of a 6.5 metres to hub wind turbine. Condition 13 of the approval is worded as such:

This permission relates to the provision of holiday accommodation. For the purposes of this condition, holiday accommodation is accommodation which shall not be occupied by the same person or group of persons for a period in excess of 12 weeks during any calendar year.

The accommodation hereby permitted shall not authorise the use of the proposed development for human habitation during the period of 2 consecutive weeks from 6th January each year, or such other consistent time period of 2 weeks as may be agreed in writing by the Local Planning Authority.

In order to facilitate the policing / enforcement of the foregoing, a register of occupiers of the premises to which this planning permission relates shall be made available to the officers of the Local Planning Authority upon request, following 24 hours notice.

Reason: *The development is such that it could not be approved for permanent residential occupation (Policy CD4 and CD5 of the Northumberland National Park Local Plan)*

The application seeks to confirm the lawfulness of the continued use of High Tipalt as an unrestricted dwelling house. While the works to the barn and erection of the wind turbine have been completed, the application has been forwarded on the grounds that there has been a breach of Condition 13 for a period in excess of 10 years, it being asserted that the property has been in a residential rather than holiday use throughout this period.



The applicant has sought to evidence the breach of Condition 13 through the submission of a Supporting Statement '*Certificate of Lawful Use, High Tipalt, Greenhead, Brampton, April 2019*'. The Supporting Statement includes a Location Plan at Appendix A; a Statutory Declaration at Appendix B and additional Evidence Base at Appendix C. Following a request from the LPA, further evidence in support of the application was provided in correspondence from George F. White dated 30th August 2019.

Planning Policy & Guidance

National Planning Practice Guidance (NPPG)

Further policies are not relevant to the assessment of a Certificate of Lawfulness application.

Relevant Planning History

- 17NP0199** Removal of condition 13 (holiday accommodation use) of planning permission 05NP57 - Change of use to holiday accommodation, rebuilding of adjacent barn and erection of 6.5 metre to hub turbine. *Withdrawn by applicant.*
- 17NP0036** Removal of condition 13 (holiday accommodation use) of planning permission 05NP57 - Change of use to holiday accommodation, rebuilding of adjacent barn and erection of 6.5 metre to hub turbine. *Refused 19/06/2017*
- 05NP0057** Change of use to holiday accommodation, rebuilding of adjacent barn and erection of 6.5 metres to hub, wind turbine. *Planning permission granted conditionally 11/01/2016.*

Consultation/Representations

Greenhead Parish Council: No objection

NNPA Farming Officer: No comment

Assessment

This application seeks a Lawful Development Certificate in respect of the continued use of High Tipalt as an unrestricted dwelling house (Class C3), as detailed above.

Section 191 of the Town and Country Planning Act (1990) (as amended) allows for an applicant to apply to the Local Planning Authority (LPA) for determination as to whether an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition is lawful for planning purposes.



In assessing applications for Lawful Development Certificates, Government guidance states that the LPA must seek to ensure that on the basis of the evidence submitted, the lawful existence of the development can be established; critically, the relevant test of the evidence is the 'balance of probability', rather than the more onerous criminal burden of proof 'beyond reasonable doubt'. If the LPA does not have any evidence of its own (or evidence from others) to contradict the applicants' evidence, there should be no reason to refuse the application. The applicants' evidence must however be sufficiently precise and unambiguous to justify the grant of a Lawful Development Certificate.

In support of the application, the following documents have been provided:

- Application Form dated 31st May 2019;
- Location Plan dated 31st May 2019;
- Certificate of Lawful Use, High Tipalt, Greenhead, Brampton April 2019, George F White, received 31st May 2019;
- Appendix A, Location Plan received 31st May 2019;
- Appendix B, Statutory Declaration, received 31st May 2019;
- Appendix C, Evidence Base, received 31st May 2019;
- E-mail from Hannah Wafer dated 09th August 2019; 14:37;
- Correspondence from George F White ref: ALN509665 dated 30th August 2019;

In addition, the following documents have been referenced by the LPA:

- Planning Statement March 2017 submitted in support of application reference 17NP0036;
- Planning Statement October 2017 submitted in support of application reference 17NP0119;
- Correspondence dated 10th February 2018 from the applicant to Guy Opperman MP;
- Correspondence between LPA and George F White dated 14th March 2018;

Under Section 171B of the Town and Country Planning Act 1990, in relation to the breach of a planning condition, no enforcement may be taken after a period of 10 years beginning with the date of the breach. In attempting to demonstrate that such a breach has taken place, The 'Certificate of Lawful Use' report states at Section 2.2 that '*Following the grant of planning permission [05/NP/0057], the applicants undertook the change of use of the building and the various conversion works of the attached barn however the business never took off, but rather instead High Tipalt has been used as a dwelling as opposed to holiday accommodation in breach of condition 13 for in excess of 10 years*'. In the Statutory Declaration included at Appendix B of the 'Certificate of Lawful Use' Report, the applicant has similarly stated that '*..the business never took off. Instead High Tipalt has been occupied as a dwelling as opposed to holiday accommodation in breach of condition 13 of 05/NP/0057 for in excess of 10 years*' and '*..High Tipalt has been occupied as a dwelling as opposed to holiday accommodation of which it remains my only and fulltime home*'

The Committee Report and Decision Notice prepared / issued by the LPA in relation to application 05NP0057 both refer to High Tipalt as an 'existing dwelling'. As such, the LPA are satisfied that the property was in residential use in 2005 and there is no assertion by the LPA that the property has subsequently been abandoned. Through internet searches and internal consultation, the LPA have



been unable to find any evidence of the property having been marketed as holiday accommodation or having ever been used for this purpose following the grant of planning permission in 2005. However, the Planning Statement(s) submitted in 2017 in support of application(s) 17NP0036 (refused by the LPA) and 17NP0119 (withdrawn by the applicant) to remove condition 13 of planning approval 05NP0057 state at paragraph 3.3 that '*Following the grant of planning permission, the applicants undertook the change of use of the building and the various conversion works of the attached barn and have since established a holiday cottage business on the site*'. Paragraph 3.4 states that the aim is to '*continue to run the business*' suggesting the building has been used as holiday accommodation at some point.

Due to the apparent conflict between the information submitted in support of the current application and applications 17NP0036 and 17NP0119 submitted in 2017, further clarification was requested from the applicant. In response, it has been stated that the reference to '*continue to run the business*' referred to the applicant having greater flexibility in terms of letting out the property whether for short or long term residence.

It has also been stated that the applicant started occupying the property as a dwelling house on 9th January 2009 and it has been used as a dwelling house since, including a 12 month let from December 2015 to the following December. This appears to conflict with correspondence the applicant addressed to her MP in 2018, a copy of which was forwarded to the LPA, which stated that shortly after completing the conversion works, the applicant moved to Scotland for 8 years, only taking up permanent residence in High Tipalt in 2017. However, there is no evidence to suggest that the property was used as holiday accommodation during the period when the applicant was in Scotland and the supporting evidence does seem to suggest that the applicant has had periods of residence in the property, albeit it on a sporadic basis, between 2009 and taking up permanent residence in 2017. This is consistent with the content of correspondence between the LPA and George F White dated 14th March 2018 (following a meeting on 15th February 2018) in which it was noted that prior to 2017 the applicant had been living in the property for intermittent periods not exceeding 12 weeks at a time. The LPA are therefore satisfied that following the grant of planning permission there has been no holiday use of the building and therefore no change to the C3 residential use of the building.

The condition states that '*holiday accommodation is accommodation which shall not be occupied by the same person or group of persons for a period in excess of 12 weeks during any calendar year*'. While it is not clear whether the applicant has resided in the property for a total in excess of 12 weeks in each of the years since 2009, the supporting evidence does suggest that the applicant has been visiting the property on a regular basis throughout this period. The intent of the 12 week occupancy restriction was to ensure that the property was not used as a second home. However, the LPA are satisfied that the applicant was using the property as a second home in breach of the condition, until taking up permanent residence in 2017.

The LPA do not consider that the applicant has provided precise and unambiguous evidence relating to actual occupancy of the property, and indeed, consider much of the evidence submitted in support of the application conflicts with evidence submitted in support of previous applications and provided to third parties. It is however considered that on the basis of the information provided



and in the absence of any evidence to the contrary, that on the balance of probability, there has been no holiday use of the property following grant of planning permission and it has been used as a second home. The LPA are satisfied that there has been a continuous breach of condition 13 of 05NP0057 for a period in excess of 10 years with the only use of the property during this period being for residential rather than holiday purposes. It is therefore recommended that the certificate is issued, confirming that the continued use of High Tipalt as an unrestricted dwelling house is lawful.

Conclusion

It is considered that from an assessment of the evidence provided, and after full consideration of the balance of probability, the applicant has been in continuous breach of condition 13 of planning approval 05NP0057 for a period in excess of 10 years and the use of High Tipalt as an unrestricted dwelling house is lawful, and that in the context of the application, the Lawful Development Certificate should be issued.

Recommendation

Application for a certificate of lawfulness in respect of the continued use of High Tipalt as an unrestricted dwelling house (Class C3) at High Tipalt, Greenhead, CA8 7JB

In pursuance of powers under the above Act the Local Planning Authority hereby approve the certificate described above for the reasons given in the attached schedule.

Schedule of Reasons for application 19NP0054

1. A Certificate of Lawfulness for an existing lawful development be granted for:
 - i. Site: High Tipalt, Greenhead, CA8 7JB, as shown on location plan (1:1250) (Submitted on 31st May 2019)
 - ii. For: The continued use of High Tipalt as an unrestricted dwelling house (Class C3)
 - iii. Reason: It is considered that from an assessment of the evidence provided, and after full consideration of the balance of probability, the applicant has been in continuous breach of condition 13 of planning approval 05NP0057 for a period in excess of 10 years. It is therefore recommend that the certificate is issued, confirming that the use of High Tipalt as an unrestricted dwelling house is lawful.

Background Papers

Planning Application File: 19NP0054



	Signature	Date
Planning Officer	C Godfrey	14/10/19
Head of Development Management	S Buylla	14/10/19