

Mr Paul Skelton
Case Officer, Development Management
North Lincolnshire Council
Church Square House
30-40 High Street
Scunthorpe, North Lincs
DN15 9NL

(by email only)

8th November 2024

Dear Mr Skelton,

North Lincolnshire Council Application ref: PA/2024/1181

Certificate of Lawful Existing Use or Development (CLEUD/LDC)
Application for *"confirmation that the site benefits from the 1991 Planning Permission Ref 7/113/1991 dated 3rd December 1991 for 'remove condition 2 of planning permission BA/3/72B and 7/RBT/16/80 to allow all year round residential use of the existing caravan site'"* at Westfield Lakes, Far Ings Road, Barton-upon-Humber, DN18 5RG – Response to Comments on Application

Following the ending of the consultation period on the above application, we note that two comments have been received, from the Lincolnshire Wildlife Trust (the Trust) and a person referred to as 'Connells' on the application website. The contents of the Trust's letter are discussed below; the other party's comments are related to policy considerations that are not relevant to Lawful Development Certificate applications, so we do not consider these further.

The Trust's Objections

The Wildlife Trust are objecting to our client's application on two grounds:



- That Appletree Lodge (hereafter referred to as the Lodge), the chalet in the north-western part of the Eastern Field, was used for commercial purposes for a long period of time; and
- That the caravans in the north-western part of the Eastern Field adjacent to the Lodge were not 'caravans', but rather 'modular buildings' and linked to the use of Appletree Lodge.

We discuss each in turn below. In advance, we note that the Trust makes no comments on the law regarding replacement of planning permissions (as per the *Pioneer Aggregates* and *Hillside* judgments), particularly that there is a high bar to demonstrate that a permission has been replaced. They also have made no comment on the other evidence that we have presented with our application in support of the 1991 Planning Permission ref 7/113/91 is extant, such as the presence of the static caravans in the Western Field, the payment of Council tax on multiple caravans within the park over time, or the presence of the ancillary foul water drainage system to which those caravans were connected, etc. The Trust's comments must be taken in the context of the applicant's evidence, much of which has not been disputed by the Trust.

The Use of Appletree Lodge

The Trust asserts that the use of the Lodge was for commercial purposes, and not for purposes related to the 1991 Planning Permission. They provide references to companies registered at the Lodge, some references to photographic and video evidence found on company Facebook pages and other evidence. The applicant can agree that commercial use of the Lodge itself would not be consistent with what was permitted with the 1991 Planning Permission.

However, upon further examination of the evidence provided, it is not clear whether a lawful material change of use has indeed occurred. The evidence is imprecise and ambiguous. We set out this out below, but it means that it fails the relevant test for demonstrating that a material change of use had occurred.

The Trust notes that the first business began in the Lodge on 14th May 2004, as per the following statutory filing with Companies House (taken from the Trust's



comments):

Appendix 2 – Companies House registrations for multiple affiliated businesses, evidencing independent registration of Appletree Lodge.

1. Daisa Original Designs Ltd [04729687]

- i. We refer to Companies House and the filing history for Daisa Original Design Limited, specifically;
 - a. The company's change of registered address dated 14th May 2004 to "Appletree lodge, Westfield Lakes, Far Ings road, Barton-upon-Humber, North Lincolnshire, DN18 5RG".

(extract from Appendix 2)

It is certain that a) caravans will still on site in 2003 (see our Supporting Statement), and b) the hotel use ceased in December 2013, due to the severe flooding issues, and the hotel use only restarted in 2016. The Trust has not submitted any evidence regarding whether any commercial use of the Lodge continued shortly after the flooding event, or whether the use was significantly interrupted like the hotel use. It seems likely that an interruption of the use occurred given the extent of damage in the area, but there is inconclusive evidence either way.

There is no certainty that commercial use of the lodge was continuous use from May 2004 to May 2014, and the potential interruption in December 2013 is likely to have reset the clock regarding immunity. The first period of commercial use would not have gained immunity from enforcement and no material change of use would have occurred.

If there was a significant disruption to the use in December 2013, any restart of commercial use of the site would also fall short of 10-years. According to CompaniesHouse, the relevant companies situated in the Lodge vacated the site on 6th May 2022 (see extract from filing below):

06 May 2022	Registered office address changed from Appletree Lodge Westfield Lakes Far Ings Road Barton on Humber North Lincolnshire DN18 5RG to Unit 1 Concorde House Limber Road Kirmington Ulceby DN39 6YP on 6 May 2022	View PDF (1 page)
-------------	---	-----------------------------------

The period from 2014 to 2022 is clearly not 10 years and so upon departure from the Lodge, the material commercial use was lost, as it could not have gained immunity.



The applicant appreciates that this is a matter of planning judgment for the Local Planning Authority as to whether a lawful material change of use of the chalet was established by 2014, and it is no longer governed by the 1991 Permission. However, when applying the balance of probabilities test to the evidence, it is inconclusive in our view, and so we consider that there is insufficiently precise and unambiguous evidence to demonstrate a lawful material change of use had occurred. That said, the applicant may accept any CLEUD that excludes Appletree Lodge itself if the LPA is satisfied that the evidence demonstrates a change had occurred. We would be happy to discuss this point again.

The applicant cannot, however, accept the Trust's other claim that the wider Eastern Field was subject to a material change of use, for the following reasons:

- The Trust's evidence only demonstrates that there may have been the odd time when the business operator in the Lodge used the Eastern Field, and none of the videos show that the activity was directly related to the commercial use itself. Any activity appears to be at best *de minimus*, which cannot itself cause a material change of use. Something more would have had to be happening on the land.
- The video evidence is simply a snapshot in time and are on their own incapable of demonstrating a *continuous* 10-year period of material use had occurred. The evidence is therefore imprecise and ambiguous.
- The applicant's evidence, in the form of a series of aerial photographs (as found in Appendices 18a and 18b of our Statement) provides a snapshot over a much longer period of time. These do not show any obvious signs of material commercial (or any) activity taking place on the Eastern Field, associated with either the hotel or the Lodge, during the period from 2003 to 2019. If there was a material and consistent activity taking place on the land, from experience, we would likely see paths and other markings visible in the grass in some or all aerial photographs. A complete absence of corroborative evidence in the aerial photographs suggests that there was no material activity taking place as claimed by the Trust.
- We also know that the site was abandoned for a period following the December 2013 flooding event. Whilst there is no evidence regarding whether the commercial use of the Lodge's operations had continued following the flood, the wider Eastern Field was damaged and an extensive clean-up was required (such activities can be seen in the aerial photograph taken in 2014 shown in Appendix 18b). It is highly likely that any ancillary use of the Eastern Field (if any occurred, which we strongly doubt) was also disrupted. That



would reset the clock regarding the lawfulness of any alleged material change of use.

The applicant considers that there is significant doubt in the Trust's evidence on the commercial use of the Lodge and the Eastern Field for a continuous period of 10 years. It lacks corroborative evidence, and the evidence supplied is insufficient and imprecise. We dispute whether a material change of use has occurred, and in our view, the most logical conclusion available to the LPA is that the 1991 Permission was not replaced at any point in time between 2003 and 2022.

However, if the LPA is still minded to agree that a material change of use of the Lodge itself was established, then, as explained above, such a change is limited to the lodge and did not apply to the Eastern Field for the reasons set out above. The Lodge could be excluded from any Certificate using the LPA's powers under Town and Country Planning Act 1990 Section 191(4).

We would be happy to discuss this further if necessary.

The Caravans Adjacent to the Lodge

The Trust also argues that the caravan units that were stationed adjacent to the Lodge from between approximately 2005 and 2010 were in fact modular buildings, and not caravans. They state in their submission:

As detailed above, Appletree Lodge was in operation as a commercial business premises throughout this period. Further, imagery sourced from Bing Maps clearly identifies a direct physical structure between the single modular building visible in 2007 and Appletree Lodge, which appears to be a boardwalk or sheltered walkway.

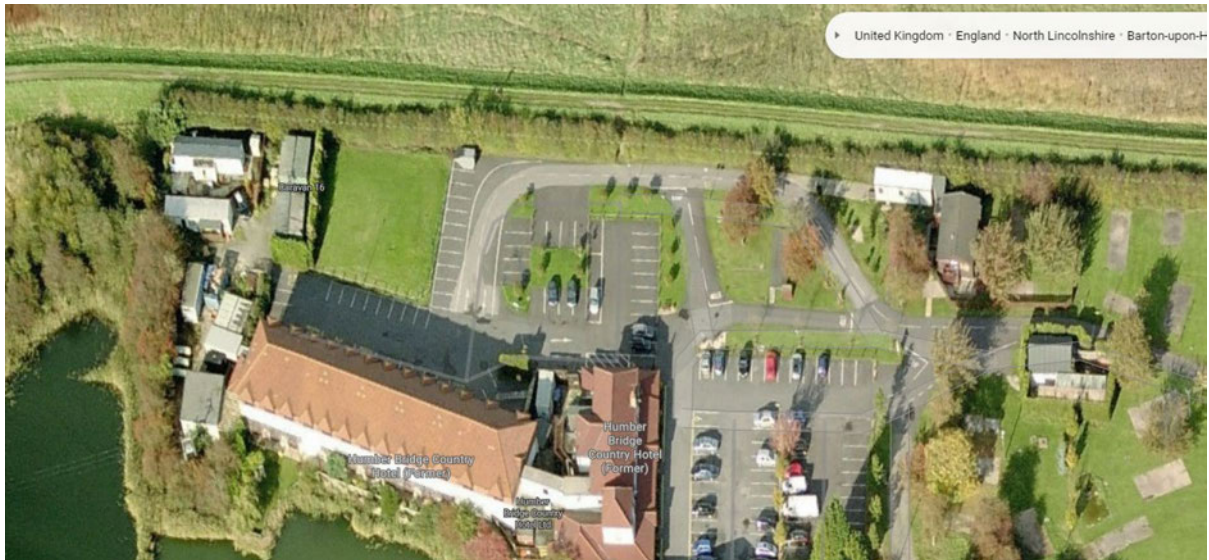
Contrary to the applicant's narrative, Bing Maps imagery at a higher resolution [Appendix 4 – inset] evidences the modular building as having a flat roof and a limited number of small windows, indicative of a standard portacabin or similar.

In addition, when 2 modular buildings are in-situ in imagery from 2007, the distance between the nearest modular building and Appletree Lodge measures pessimistically at 2m. In light of this imagery, coupled with the commercial nature of Appletree Lodge, and proximity, The Trust is of the opinion that these white modular buildings were likely additional commercial space and were not independent residential caravans as asserted by the applicant.

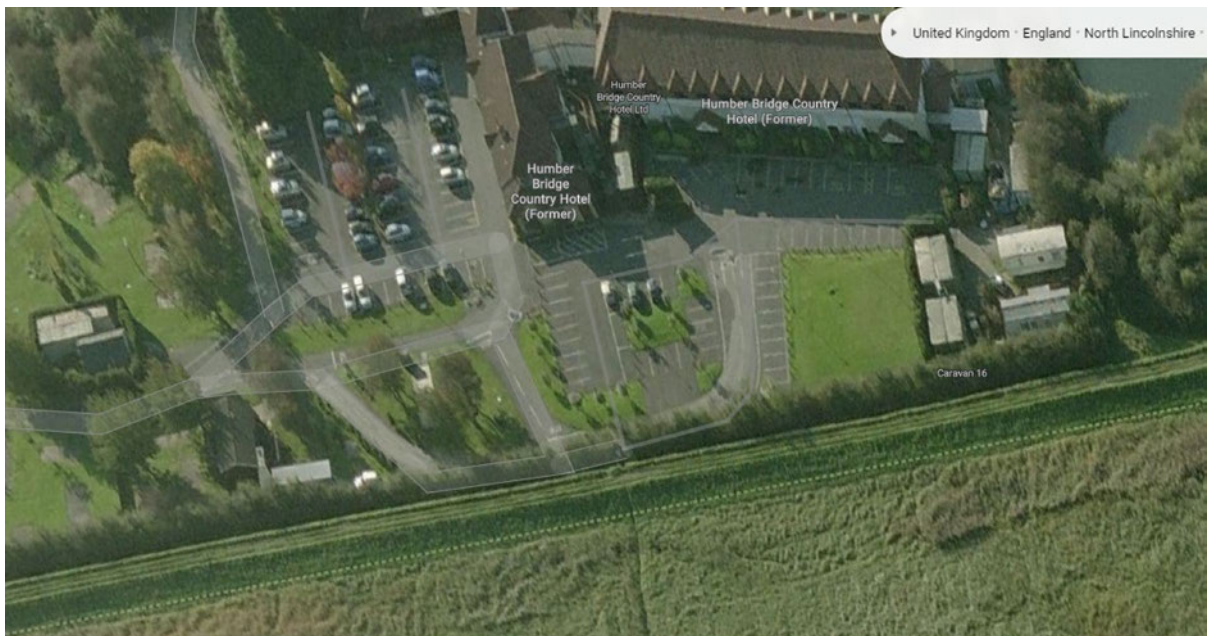
The Trust relies primarily on the Microsoft Bing's Map Bird's Eye view aerial photograph, presumably taken in 2005, to draw the above conclusions, and they provide a narrow extract focused on the unit in question.



However, Bings Maps information does not corroborate the Trust's position on the units when reviewed in its full context. The wider aerial photograph from Bing Maps is shown below:



The above view is looking north which perhaps is less clear; when using Bing Maps Bird's Eye view looking south, the following can be seen:



It is clear that the unit to the west of the hotel (in the Western Field) on the right side of the second aerial photograph above has the same or similar exterior appearance as the unit adjacent to Appletree Lodge. It is narrow, white, and has a flat roof (another static caravan unit to the south in the above photograph is more modern in style, with a pitched roof). Both small white units have limited,



small apertures are consistent with older styles of caravans that were found on site in the 1990s and 2000s. Indeed, the submitted aerial photographs in Appendix 18a show that most caravans at the time were flat-roofed and small in nature. The similarity of the units at both ends of the park, and with those that were there over the 1990s and 2000s, means it is most probable that the unit by the Lodge was a static caravan, and not a portacabin as alleged by the Trust.

We note that Mr Michael Lee's recollection is that the static caravans found in other parts of the site were moved to the north-west of the Lodge, as set out in his Statutory Declaration that was recently submitted.

I also wish to draw your attention to the style of static caravans found in Barton Broads, an active residential mobile home park in the northern part of Barton-upon-Humber. Please find below two screenshots of that park also taken from the Bing Maps Bird's Eye feature, dated around the same time as the Bird's Eye photograph used by the Trust. You can see that many of the residential mobile homes within that caravan park are narrow, flat-roofed, white static caravans with limited apertures, consistent with the caravan units at Westfield Lakes in the 1990s and 2000s:



(looking west/south-west)





(looking north)

More modern caravans can be seen on that site as well, with pitched roofs, which was becoming popular by the 2000s. A flat-roofed narrow structure is not automatically determinant of whether a unit is a static caravan used for human habitation (applying the statutory definition, set out in our report), as asserted by the Trust.

In this regard, the Trust also alleges that the units were used for purposes associated with the Lodge, as they presume that a structure found attached to the Lodge was potentially some sort of link between the two. However, this is wild speculation without any evidence to support that position.

Rather, in contrast, the applicant has provided evidence that the occupants of four caravans on site were paying Council tax in the mid 2000s (see discussion starting from 4.42 of our Supporting Statement). There were only four units on site which could qualify as caravans for human habitation on which Council tax could be paid: two in the Western Field and two to the north west of the Lodge in the Eastern Field. These are shown to exist in the series of aerial photographs found in Appendices 18a and 18b of our Statement. This strongly suggests that all four



units, including the two adjacent to the lodge, were static caravans being used for human habitation, associated with the lawful purposes authorised by the 1991 Permission. This is because Council Tax would not have been paid if the units were unoccupied for residential purposes (Council Tax is not paid on a vacant units, as demonstrated by the records).

The Trust, however, submits no evidence to dispute the Council tax records, but relies on its own current interpretation of some aerial photographs taken almost twenty years ago. There is significant doubt cast on their assertions.

Indeed, we also note that in the submitted aerial photographs that were taken between 2014 and 2019 (see Appendix 18b), the static caravans had been removed from site, but the “link extension” remains attached to Appletree Lodge. A zoomed-in version of the GetMapping September 2014 aerial photograph below shows its presence (note the dogleg in the shadow to the west of the lodge, and the extension structure’s shadow is not aligned with the shadow cast by the Lodge itself):



This “link extension” was more likely associated with the Lodge than anything to do with the static caravans, given its presence on site after the static caravans had been removed. Without further evidence, the Trust’s claims cannot be confirmed, and it represents imprecise and ambiguous evidence.

The Trust’s claims regarding the static caravan units in the north-western part of the Eastern Field are not reflective of the evidence available. Its interpretation of the physical features of the units can be shown to be incorrect, and the Trust has no evidence regarding their likely occupation, other than a wild guess.

The applicant’s version of evidence is demonstrated through various evidence, including Council Tax records, statutory declarations, and other evidence found in our Statement and this letter. We respectfully dispute any position that the Trust advocates on this matter as being incorrect. We trust that with this letter, you would agree, but we would be happy to discuss this again.

Conclusions

The Lincolnshire Wildlife Trust objects to our client’s CLEUD application. However, upon reviewing their evidence, their assertions do not reflect the evidence available.

On the use of the Lodge, it is not clear whether it has been used for commercial purposes for a sufficient period to demonstrate that a lawful material change of use had occurred. A significant interruption would have reset the clock in the ninth year of the commercial use’s existence (in December 2013), following severe flooding to the site. After the potential interruption, the Lodge was only used for eight more years. The applicant therefore believes that the relevant tests have not been met and no material change of use has occurred. The Lodge remains governed by the 1991 Permission for the caravan site.

However, if the LPA finds that a material change of use has lawfully occurred to the Lodge, the applicant may accept the Lodge’s removal from any CLEUD issued.

It is clear from the evidence that the change of use is limited to the lodge, and there is no evidence available to support the Trust’s claim that material ancillary activities took place within the Eastern Field for a period of 10 continuous years. Rather, the evidence shows no activities taking place over the periods when the Lodge may have been used for commercial purposes.

The Trust’s position that the two static caravans located in the north-western corner of the Eastern Field were not caravans is demonstrably incorrect; the Trust is relying on speculation to advocate a position which is not borne out by the



facts. The applicant has demonstrated that the units were likely to be static caravans consistent with those already on site, and that they were likely to be occupied in accordance with the extant planning permission.

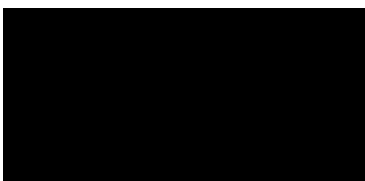
In accordance with the principles established by the House of Lords in the *Pioneer Aggregates* case, as re-affirmed by the Supreme Court at *Hillside*, there is no evidence that the 1991 Permission ref 7/113/91 for a residential caravan site materially replaced across the Eastern and Western Fields, save for potentially Appletree Lodge itself.

The applicant's version of events remains the most probable on a fact and degree basis, applying the relevant balance of probability test to the evidence available. As such, we kindly request that the CLEUD as requested is issued without delay.

We would expect the LPA to issue the Certificate before the end of the statutory period, unless more evidence comes to light (to which our client has a right of reply). This seems unlikely, however, so we expect a prompt decision with the Certificate being issued. The Council is aware of the urgency regarding resolving the site's planning status.

We look forward to hearing from you. However, if there are any further queries regarding this letter or our client's application, including our Supporting Statement, I would be more than happy to discuss these with you at your convenience.

Yours sincerely,



Nayan Gandhi
Director

cc. Ms Webster, Group Manager, Environmental Health
Client