



Appeal Decision

Site visit made on 1 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/R0660/X/21/3286936

Woodmoss Farm, Gore Lane, Alderley Edge, Cheshire SK9 7SP

- 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 Ms Sophie Beever against the decision of Cheshire East Council.
 - The application ref 21/1166M, dated 25 February 2021, was refused by notice dated 16 September 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The use for which a certificate of lawful use or development is sought is use of existing buildings an [sic] associated land for equine purposes.
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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 existing use and existing operations which are found to be lawful.

Applications for costs

2. An application for costs has been made by Ms Sophie Beever against Cheshire East Council. This is the subject of a separate decision.

Preliminary Matters

3. The application form describes the use as 'use of existing buildings an [sic] associated land for equine purposes' and the Council uses this description in its decision notice. The appellant also describes the existing use within the application form as 'Construction of stables, use of the stables for the stabling, breeding and care of horses' and the 'use of the land shown edged blue for the keeping and exercise of horses'.
4. I am obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence. The Planning Practice Guidance advises that precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. The certificate needs to spell out the characteristics of the matter so as to define it with precision.
5. S191(4) allows the local planning authority to modify the description of the existing use or operation. I sought views of the parties regarding the modification of the description to 'The construction of stables, shown hatched red on the attached plan and the non-commercial use of the aforementioned stables for the stabling, breeding and care of up to 5 horses and the non-commercial use of the land shown edged blue for the keeping and exercise of up to five horses.' and shall consider the appeal on this basis.

Main Issue

6. The main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

7. An application under Section 191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) They do not constitute a contravention of any enforcement notice then in force.
8. In an LDC, the burden of proof is on the appellant, on the balance of probabilities. As held in *Gabbitts v SSE and Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
9. Aerial photography provided by the appellant shows the buildings have been present on the land for well in excess of 4 years. The Council acknowledge that the buildings have clearly been in place for a significant period of time. The fact that the buildings were substantially completed more than 4 years prior to the submission of the application does not appear to be in dispute.
10. The main area of dispute between the parties is whether the use of the buildings and land for the stabling, breeding and care of up to 5 horses and the non-commercial use of the land for the keeping and exercise of up to five horses began more than 10 years before the date of the application¹ and continued for a period of 10 years thereafter without significant interruption.
11. Section 55(1) of the Act sets out that the making of any material change in the use of any buildings or other land constitutes development. Section 55(2)(e) of the Act sets out that the use of any land or buildings for the purposes of agriculture does not involve development.
12. The Act 1990 defines agriculture as including 'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly'.
13. Since the use of the land for the grazing of horses would be an agricultural use, it would not constitute development, whereas the breeding and keeping of horses, which involves activities other than just putting the horses out to graze would not fall within the definition of agriculture and would constitute a material change of use of the land.

¹ On or before 25 February 2011

14. The site is bound by a track and bridle path on one side, which enables users of the path to see into the site. It is also possible to see into some of the buildings from outside of the site. The path appears to be well used and I saw a number of walkers using it during my visit. I consider it likely that users of the path would be able to get an understanding of the activities taking place within the site from the Bridlepath.
15. Although the appellant acquired the site on 6 January 2021, the appellant confirms, in a statutory declaration, that they have personal knowledge of the site going back to November 1997, having walked and hacked past the appeal site and from speaking to the previous occupants of the site. The appellant also confirms in their statutory declaration, that the site was used to breed and exercise Shire horses, which were exhibited at local parades and village fetes. The statutory declaration is accompanied by a plan showing the extent of the site.
16. A number of other individuals who live in the area, including the owner of the neighbouring site, Freya's Folly Stables, have also provided statutory declarations which confirm the appellant's account and point towards the site being used for the breeding, keeping and exercising of horses, particularly Shire horses. The period of knowledge varies, going back as far as 1990 in the case of the owner of Freya's Folly Stables.
17. The appellant has also provided a letter from an individual who has provided farrier services to the appellant for a number of years and has knowledge of the site from 2004/05. The individual visited on a five-to-six-week cycle and confirms that it appeared the site was used for the keeping and exercise of horses. Although not a statutory declaration, it is consistent with the information provided by the appellant and other individuals, and I have no reason to doubt its authenticity.
18. The Parish Council has confirmed that the land has been used for the continuous grazing and keeping of horses for a period of ten years and beyond. Although grazing alone would not constitute development, the keeping of horses would. The Parish Council queries the information provided by the appellant and appears to be concerned about potential changes, particularly commercial activities. However, planning merits form no part of the assessment of an application for a LDC under section 191 of the Act. The proposed development must be considered in the light of the facts and the law.
19. The appellant has provided a series of photographs appended to their statutory declaration. The photographs provided show up to around 5 horses in the site at any one time. Although most of the photographs are undated, it is not disputed that they show animals which have used the appeal site. The photographs appear to have been taken at different times, having regard to the changing seasons and the different ages of the gentleman in the pictures.
20. The pictures show foals being born in the buildings and foals and horses being cared for in the buildings and wider appeal site. I have no evidence to suggest these activities were not continuous prior to the previous occupant's death in 2014. Given the layout of the buildings, I consider the site is unlikely to have accommodated many more than 5 horses at any one time.
21. The Council states in its delegated report that 'the area outlined in red is extremely large and without sufficient evidence to prove that the site was used

intensively as a livery it has not been proven that all of this land has been used for the exercising of horses.’ However, this is not the basis upon which the application has been made.

22. The appellant confirms that they have never sought to suggest that the buildings are being or have used commercially or for livery purposes and the evidence appears to show a fairly low key use. As a consequence, I would not expect there to be the sort of documentary evidence that may be available to a commercial business.
23. Although some of the photographs show that the appeal site has been delineated with fencing, it is not unusual to use fencing to limit where horses can graze within a wider site. I do not consider that the presence of fencing within the site indicates the northern part of the site was not used for the keeping of horses. Furthermore, within the photograph highlighted by the Council, what appears to be a horse, can be seen beyond the fence line, supporting the contention that the entire site was used for the exercising of horses.
24. While I note the name of the premises suggests it may have at one time been a farm, I have seen no evidence of other animals grazing in the field, or any indication that the land has been used for agricultural use. There is nothing in the layout or design of the buildings which leads me to believe they have not been constructed for the stabling of horses.
25. Indeed, the horse stalls have plainly been designed to accommodate horses and whilst other buildings could have been used for agriculture, given their limited height, I consider this is unlikely, since they would have difficulty accommodating farm machinery. Even if the buildings were originally constructed for purposes other than the keeping of horses, the evidence shows that this is how they been used for a period well in excess of 10 years.
26. The Council suggest the presence of an office indicates a commercial use. However, I do not agree that an office can only be used for commercial uses or that it could not be used ancillary to an activity which is carried out as a hobby. While there is a room labelled as an office in one of the buildings, it is modest in size and there is nothing to suggest that it was used for anything other than activities ancillary to the keeping and breeding of horses.
27. While the appeal site only accommodated one horse following the death of the previous occupant in 2014, I consider it highly likely, on the balance of probabilities, that the use of the site for the keeping and exercise of horses had already accrued lawfulness through the passage of time. Lawful use rights can only be lost by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use. A use which was merely dormant or inactive can still be considered as ‘existing’, so long as it had already become lawful and not been extinguished in one of those three ways².
28. The Council posits that the condition of the buildings suggest that they have not all been used for many years. However, it is clear from the appellant’s evidence that the use has not been abandoned and while there was only one

² *R(Ocado Retail Ltd) v London Borough of Islington* [2021] EWHC 1509 (Admin) cited.

horse stabled at the site for a significant period of time, this would not have resulted in a material change in the use of the land.

29. I am satisfied, on the balance of probabilities, that the stables were substantially completed more than 4 years before the date of the LDC application and have been used for the non-commercial stabling, breeding and care of up to 5 horses more than 10 years before the date of the LDC application. I am also satisfied that it has been shown that the land has been used for the non-commercial keeping and exercise of up to 5 horses more than 10 years before the date of the LDC application.

Conclusion

30. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of stables and the non-commercial use of the aforementioned stables for the stabling, breeding and care of up to 5 horses and the non-commercial use of the land for the keeping and exercise of up to 5 horses was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Savage

INSPECTOR



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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 February 2021 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in blue on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been shown, on the balance of probabilities, that the stables were substantially completed more than 4 years before the date of the LDC application and have been used for the non-commercial stabling, breeding and care of up to 5 horses more than 10 years before the date of the LDC application. It has also been shown that the land has been used for the non-commercial keeping and exercise of up to 5 horses more than 10 years before the date of the LDC application.

Signed

M Savage

Inspector

Date: 28 March 2022

Reference: APP/R0660/X/21/3286936

First Schedule

The construction of stables, shown hatched red on the attached plan and the non-commercial use of the aforementioned stables for the stabling, breeding and care of up to 5 horses and the non-commercial use of the land shown edged blue for the keeping and exercise of up to 5 horses.

Second Schedule

Land at Woodmoss Farm, Gore Lane, Alderley Edge, Cheshire SK9 7SP

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 28 March 2022

by M Savage BSc (Hons) MCD MRTPI

Land at: Woodmoss Farm , Gore Lane, Alderley Edge, Cheshire SK9 7SP

Reference: APP/R0660/X/21/3286936

Scale: Not to Scale

