Appeal Decision

Site visit made on 29 November 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2023

Appeal Ref: APP/J0405/X/21/3287617
Three Corners Piece, Granborough Road, North Marston, Buckinghamshire MK18 3PP

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Simon Loft against Buckinghamshire Council.
- The application Ref. 21/01380/ACL is dated 15 March 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as: Conversion of part of former stable block for use as a single dwellinghouse (Use Class C3) as shown edged blue on the Ground Plan (existing) and Roof Plan (existing), together with ancillary residential use of outside hardstanding area; Equestrian use of manege and fields: Shared residential and equestrian use of the remainder of the site edged red on the site plan, including site entrance and turning area, and gravel strip separating fields from hardstanding area.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use and building operations which are considered to be lawful.

Application for costs

2. An application for costs was made by Mr and Mrs Simon Loft against Buckinghamshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal is made against the failure of the Council to give notice within the prescribed period for a decision on an application for a Certificate of Lawful Development (LDC).

4. The description of the application for the LDC set out in the banner heading above is taken from the application form. However, the Supporting Statement which accompanied the original application set out in greater detail what was being applied for[1]. It sought the grant of an LDC for: the converted dwellinghouse (Use Class C3); the associated residential use of the external hardstanding, defined as the area lying immediately to the east which is

[1] Supporting Statement prepared by Keystone Law, dated March 2021.

surrounded by a close-boarded perimeter fence; the 'extended' stable block (joining of the haybarn); and the siting of two steel storage containers, each of which is used for a combination of domestic and equestrian storage purposes; and, equestrian use of the fields and manege. The Statutory Declarations (SD) which accompanied the application also relate to the development described in the Supporting Statement and it is therefore that development which I have considered in this appeal.

5. In response to the appeal, the Council's submissions indicate that had they been in a position to determine the application they would have granted an LDC for: the conversion of part of the stable block to a dwelling; ancillary residential use of the outside hardstanding area immediately adjacent to and to the east of the dwelling up to the close boarded fence; and equestrian use of manege and fields (two paddocks). However, they did not take into consideration the storage containers or the extension of the stable block to link it to the hay barn, for reasons that those developments were not described as being applied for on the original application form. Furthermore, they considered that there was not sufficient evidence to indicate that there was a lawful mixed equestrian and residential use on the remainder of the site edged red as described on the application form and accompanying plans.

6. There is clearly some ambiguity regarding the extent of the mixed residential/equestrian use being applied for based on the description set out on the original application form, accompanying plans, supporting statement and statutory declarations (SD). From the evidence before me, the appellants are only seeking equestrian use of the manege and fields and not a mixed use. This was confirmed to be the case when I conducted a site visit, accompanied by the appellants' representative and a Council Officer. A new plan has subsequently been prepared and submitted by the appellants which identifies the different uses on the site which they consider to be lawful and to clarify their application[2]. The Council has had an opportunity to comment on the plan and has not therefore been prejudiced.

7. I have also afforded both parties the opportunity to identify the appropriate planning unit(s) for the site. I have taken into account their responses in my determination of the appeal.

Main Issue

8. The main issue is whether the Council's deemed refusal to grant a LDC of existing use or development was well founded. Section 191(4) of the Town and Country Planning Act 1990 as amended (the Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness <u>at the time of the application</u> of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the test is the balance of probability.

[2] Existing Use Plan, Drawing No. A-01, dated 01.12.2022.

Planning History and Background

9. Three Corners Piece (TCP) comprises a timber stable block with hay store which has been partially converted to residential use. Adjacent to this building is an area of concrete hardstanding, a drive/parking/turning area, muck store, some garden land, two storage containers, a manege and adjoining paddocks. Within the claimed garden area, a pergola and more recently a garden office have been constructed. However, these structures do not form part of the appellants application.

10. The stable block and adjacent hay barn, together with the adjoining concrete hardstanding and manege were granted planning permission and subsequently constructed in 2005. Mrs Loft (who was then Ms Reid) purchased the site in 2009. She moved onto the site in June 2011, initially living in her horsebox whilst part of the stable block was converted into a dwelling. The conversion works were completed in November 2011, at which point Mrs Loft moved into the dwelling and her new husband, Mr Loft joined her in 2016.

11. During the appellants occupation of the site, two containers have been brought onto the land for storage purposes. The two remaining stables have been linked by a small extension to the hay barn which provides an additional storage space for equestrian use. The concrete apron which adjoins the eastern elevation of the dwelling/stables is used in association with the dwelling and the gravel strip which was laid in 2012 between the hardstanding and paddocks and enclosed by a fence is also utilised for residential purposes.

Reasons

Material change of use of part of the stable building to a dwelling

12. Section 171B(2) of the Act states that where there has been a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. It is therefore necessary for the appellants to demonstrate, on the balance of probability, that the material change of use of the building took place on or before the 15 March 2017 with the use as a single dwellinghouse continuing for at least four years thereafter.

13. The original application is accompanied by SD from both appellants as well as SD from Mrs Loft’s farrier, a work colleague and a close friend, each of whom set out details relating to the site’s history and use. To support the SD a series of exhibits were also submitted including invoices, utility bills and other correspondence to corroborate the details set out in the SD in relation to the residential use.

14. The local planning authority now accept that based on the evidence submitted with the original application the stable building has been converted in part to a dwelling and occupied continuously as a single dwellinghouse since 5 November 2011. From the evidence before me I see no reason to disagree. The appellants’ evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the residential use is immune from enforcement action and therefore lawful.

Containers

15. Two containers have also been brought onto the land, one in 2010 and the second in 2014.

16. Section 55(1A) advises that for the purposes of the Act "building operation" includes, amongst other things: *(d) other operations normally undertaken by a person carrying on a business as a builder*. In this regard it is also necessary to consider whether the containers would be buildings. Section 336 of the Act says:

    "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

17. It is established case law that the tests to be considered when determining what constitutes *'a building'* relate to size, permanence, and physical attachment. Each container is approximately 6m long, 2.5m wide and 2.5m high. In their planning context they have an impact that is significantly noticeable, in terms of their size and physical presence. In terms of *'permanence'*, although the containers would be able to be moved with the right equipment, they have been in the same place for over seven years, are required for storage, and there is no evidence to indicate that this is a temporary requirement. In terms of *'fixation'*, although the containers may not be bolted or physically attached to the ground, the courts have held that such a unit can, simply by its own weight, be considered to be fixed to the ground.

18. With regard to the three tests, I consider that because of their size, physical presence and degree of permanence, in this particular location, a building operation has occurred within the meaning of development under s55(1) of the Act. The containers are buildings rather than chattels or moveable structures placed on the land and are not temporary structures.

19. S171B(1) states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years ending with the date on which the operations were substantially complete.

20. The appellants SD confirm that the first container was brought onto the land in 2010 following a grant of temporary planning permission for the siting of a container (albeit it was not sited in accordance with the details of that permission). The second container was brought on in 2014. The Council do not dispute the appellants' evidence in this regard, and I consider the SD to be sufficiently precise and unambiguous to determine, on the balance of probability, that the containers have been in situ for a period of four years prior to the relevant date and are therefore immune from enforcement action.

Extension to haybarn

21. The SD also confirm that building works to attach the stables to the haybarn and provide additional storage capacity were undertaken and completed in 2016. Again, those building operations are not disputed by the Council and the details in the SD are sufficiently precise and unambiguous to determine, on the balance of probability, that those building operations were substantially complete on or before the 15 March 2017 and consequently also immune from enforcement action.

Planning Units

22. When looking at whether there has been a material change in the use of the Land a starting point is to identify the planning unit, which is the most appropriate physical area to assess the materiality of change. It is established case law[3] that a useful working rule is to assume that the unit of occupation is the appropriate planning unit unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes.

23. The sales particulars (2009) described TCP as a private equestrian unit. It included a modern stable block with tack and hay storage, an all-weather manege, and a well fenced block of pasture land. The particulars indicate that the land functioned as two planning units. One comprising the stabling block, tack room, haybarn, yard and manege which were in use for the keeping of horses and a second planning unit comprising the enclosed pasture land which was used for grazing and thus in agricultural use.

24. When the appellant moved into the stable block in 2011 she introduced a residential use onto land previously utilised solely for the keeping of horses. Part of the stables were converted to residential use, and the adjoining land utilised in part for the parking of her vehicles and as garden area. During the next four years two storage containers were also brought onto the land and utilised as storage for both residential and equestrian purposes.

25. A factor to take into account is the 2005 planning permission. The permission was for the erection of a stable block, outdoor manege and relocation of an access. It did not grant a change of use of the whole appeal site to equestrian purposes. The paddocks, which are fenced off from the stables, haybarn, dwelling and manege, are currently, and indeed since the 2005 permission, have been in use for the turning out and grazing of horses. The use of land for grazing is agricultural. From the evidence before me the paddocks have been continually used for the grazing of horses, and agriculture is thus the primary use and purpose of the paddocks and not for the keeping of horses.

26. In terms of the remainder of the appeal site, it seems to me that since Mrs Loft moved onto the land in 2011 there has been a significant difference in the character of the activities and use when compared to what has gone on previously. The stables and manege are owned and utilised by the appellants for recreational purposes incidental to the enjoyment of their dwelling. Whilst I appreciate that the keeping of horses is not functionally dependant on the residential use of the land, the stables and manege are in the same ownership and occupation as the dwelling and are only in use for the hobby equestrian use of Mrs Loft who resides in the dwelling. No commercial equestrian use is undertaken within the site.

27. Since Mrs Loft moved onto the site and converted part of the stables to residential use, the character of the land changed. The yard is now used for the parking and turning of the residents' vehicles and a significant amount of the enclosed area around the dwelling and stables is utilised as domestic garden area with associated storage. The keeping of the horses and use of the manege is now incidental to a primary residential use of the land and a new planning unit has been formed.

[3] *Burdle v Secretary of State for the Environment [1972]* 3 All ER 240

28. I have therefore found that there are two planning units. The first is identified by a red line on the plan attached to the LDC certificate and comprises land used for the grazing of animals and is therefore in agricultural use. The second comprises the yard, the dwelling, stables, haybarn and the manege and vehicle circulation space which is now in a primary residential use. However, at the date of the application (March 2021) for the LDC the new planning unit which I have identified as being in primary residential use had not been in existence for ten or more years continuously as Mrs Loft is stated to have moved into the stable building which has been converted to a dwelling in November 2011.

Conclusions

29. For the reasons given above, I conclude on the evidence now available, that the conversion of part of the stable to a single dwellinghouse and use as a C3 dwellinghouse is lawful. The two storage containers and the extension linking the stables to the haybarn are also lawful and the paddocks remain in a lawful agricultural use.

30. However, for the reasons set out above, at the time of the application (March 2021), the remainder of the appeal site which I have found to be in a primary residential use, with the keeping of horse's incidental to that use, was not lawful.

31. The Council's deemed refusal to grant a certificate of lawful use or development for the material change of use of the building to a dwelling, the building operations undertaken to extend the stable and link it to the haybarn, and the siting of two storage containers was not well-founded. I conclude that subject to a modified description, as provided for by S194(4) of the Act, which sets out the use and operations that I have found to be lawful, the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR

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 15 March 2021 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and identified 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 reasons:

The conversion of part of the stable to a single dwellinghouse and use as a C3 dwellinghouse is lawful because the time for enforcement action has expired.

The building operations undertaken to extend the stable and link it to the haybarn, and the two storage containers sited on the land are lawful because the time for enforcement action has expired.

There has been no material change in use of the paddocks which retain their lawful use as land in use for agriculture and are in use for the grazing of horses.

Signed

Elizabeth Pleasant
Inspector

Date 6 January 2023
Reference: APP/J0405/X/21/3287617

First Schedule
The conversion of part of the stable to a single dwellinghouse and use as a C3 dwellinghouse on land shown cross-hatched in black on the plan attached to this certificate.
Building operations undertaken to extend the stable and link it to the haybarn, and the siting of two storage containers.
Use of paddocks for agriculture on land shown outlined in red on the plan attached to this certificate.

Second Schedule

Land at Three Corners Piece, Granborough Road, North Marston, Buckingham MK18 3PP

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 were lawful, on the certified date and, thus, 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 6 January 2023

by E Pleasant DipTP MRTPI

Land at Three Corners Piece, Granborough Road, North Marston, Buckingham MK18 3PP

Reference: APP/J0405/X/21/3287617

Scale: Not to scale