



Appeal Decision

Site visit made on 1 March 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 April 2023

Appeal Ref: APP/J1535/X/21/3288235

Nicholls Farm, Long Street, Waltham Abbey, Essex, EN9 3TQ

- 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 Mr Steve Crosby against the decision of Epping Forest District Council.
 - The application ref EPF/2336/21, dated 25 August 2021, was refused by notice dated 20 October 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is use of existing building as originally consented, which is as stables.
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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 which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant the LDC application was well-founded. The appellant argues that the use of the stables was implemented following the grant of consent EPF/1228/06 ('the 2006 Permission') and the construction of the buildings. The Council argue that the 2006 Permission was not implemented and LDC cannot be issued.

Planning History

3. The most relevant parts of the planning history in this appeal are:
 - a) EPF/1228/06 – Permission granted for demolition of existing stables and erection of new stable block (15/8/06);
 - b) EPF/0156/15 ('the 2015 Permission') – Permission granted for the retention of stable building with alterations to its design, materials and appearance including lowering of the roof; and
 - c) EPF/2181/16 – Permission granted for non-material amendment to EPF/0156/15.

Reasons

4. It is not clear on the evidence submitted whether the 2006 Permission was implemented but it was not substantially completed as the building constructed was materially different from that granted permission. The appellant states that

this consent was implemented in 2006 and the Council have not disputed this date.

5. The appellant has provided statutory declarations from himself and his wife that the building was constructed as stables and was used to stable 2 horses for about 6 months from November 2014. This is corroborated by a signed letter from the person who says she kept her horses at the stables between November 2014 and April 2015. The Council have not provided any evidence to contradict this version of events.
6. The 2015 permission was granted on 19 March 2015 and the use therefore predominantly pre-dates this time. It is also accepted by the parties that the final works undertaken following the 2016 non-material amendment were completed in 2017. The building which was being used to stable the horses from November 2014 was therefore not built with permission.
7. Caselaw holds that where a development is built without express permission regard should be had to the totality of the operations which the person originally contemplated and intended to carry out, and that regard should be had to the building's physical features and its design¹. The appellant intended the building to be used as stables and there is uncontested evidence that it was in fact used as stables for a period of approximately 6 months. It must therefore have had the necessary physical features for this use.
8. It is not the Council's case that the building as originally built was incomplete – the ongoing issues with the building were about the size and external appearance and it was these alterations which were eventually completed in 2017. There is also no evidence before me that the building was used for any other purpose, other than stables with ancillary storage.
9. The Council rightly concluded that the 2006 Permission had not been substantially completed and that the use associated with that express permission had not been proven. But Section 195 of the 1990 Act (the LDC appeal provision) refers to the 'refusal' itself being well-founded and the purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.
10. On balance, the evidence shows that the 2015 Permission (with the non-material amendment in 2016) was implemented and completed by February 2017. The email from the Council dated 27 February 2017 states that 'the alterations to the building are satisfactory and there is no longer a breach', and indeed the building that I saw during the site visit appeared to be the same as the building shown in the approved plans. The use as a stables must therefore have been lawful from at least that date as the only permitted use was as stables. The Council have not provided any details about how the building differs from those plans, and the pre-application advice issued dated 21 May 2020 also accepts that the 2015 Permission had been implemented (and therefore that Condition 3 which restricts the use to stables must be complied with).
11. Finally, as the LDC application was made on 25 August 2021, which is 4 years after the Council accepts that the final alterations pursuant to the 2015

¹ Sage v SSETR & Maidstone BC [2003] UKHL22

Permission were completed, even if the building was not built fully in accordance with the approved plans the time for any possible enforcement action in relation to the operational development has now passed.

12. Based on the evidence submitted with the appeal, on the balance of probability the building was constructed as, and has been used as, stables.

Conclusion

13. 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 use of building as stables 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.

Zoë Frank

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 25 August 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

There is sufficient evidence to show on the balance of probability that building was substantially completed as a stables and subsequently used as a stables.

Signed

Zoë Franks

Inspector

Date: [05 April 2023]

Reference: APP/J1535/X/21/3288235

First Schedule

Use of building as stables.

Second Schedule

Land at Nicholls Farm, Long Street, Waltham Abbey, Essex, EN9 3TQ

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 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 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: [05 April 2023]

by Zoë Franks Solicitor

Land at: Nicholls Farm, Long Street, Waltham Abbey, Essex, EN9 3TQ

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Scale: Not to Scale

