

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 10th January 2024

Appeal Ref: APP/C1570/X/23/3330932

Home Pasture Stud, Top Road, Wimbish, Essex CB10 2XJ

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Lucian Evers against the decision of Uttlesford District Council.
 - The application Ref UTT/23/0830/CLE, dated 27 March 2023, was refused on 8 August 2023.
 - 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 the creation of a dwelling.
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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 considered to be lawful.

Procedural Matters

2. During the course of the appeal, the Council confirmed that it was no longer resisting the issue of the LDC. That was because it had come to a position (as reflected in its backdated council tax billing in respect of the land) that the part of the stable block within the red line of the LDC plan had been used as a dwelling by the appellant since the end of August 2018.
3. The appellant withdrew his costs application during the course of the appeal.
4. Due to the nature of the appeal, with the decision turning on the historic use of the land up to the time of the LDC application, it was not necessary to undertake a site visit to determine it.

Main Issue

5. The main issue in the appeal is whether or not the Council's decision to refuse to issue the LDC was well-founded.

Reasons

6. Section 191(2) of the Act provides that a use is lawful at any time if no enforcement action may be taken in respect of it, including because the time for enforcement action has expired. Where there has been a breach of planning control consisting in the change of use of any building (or part of any building) to use as a (single) dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach¹.

¹ Section 171B(2) of the Act.

7. Therefore, the appellant must show with sufficiently precise and unambiguous evidence to the required standard of proof (the balance of probabilities) that the use of the 'sitting-up area' within the stable building has been in use continuously as a dwelling since at least 4 years before the date of the LDC application – 27 March 2019 being thus the 'relevant date'.
8. The appellant says that such use commenced on 29 August 2018 due to the 'dilapidated' condition of the caravan on the site (permitted temporarily for occupation under previous consents) and the effect of mould within the 'decaying and leaking' caravan on his documented asthma condition².
9. Having viewed the photographs submitted with the appeal of the exterior and interior of the unit, I would myself not find the word 'dilapidated' to be unfairly applied to the condition of the temporary caravan. Indeed, the Council's Revenues Manager has formally classed the caravan as 'uninhabitable' following a site visit by officers³. It is of course more challenging to come to a view as to its condition before the 'relevant date' which, as the appellant states in his statutory declaration, led to the move to occupy the stable block as asserted. However, I do place significant weight on what has been solemnly declared as true before a solicitor under the Statutory Declaration Act 1835 by the appellant and his wife (and by several third parties whose declarations detail use of the stable block as a home for more than 4 years). I am also mindful of the inevitable aging of caravan accommodation exposed to the elements and occupied for many years since originally given permission for siting on the land in 2007. Accordingly, I am persuaded on the balance of probabilities of the appellant's central assertion that unsuitability of the caravan for his and his wife's habitation caused them to set up residency in the 'sitting-up' area of the stable block – affording as it did the facilities required for day-to-day private domestic existence in the *Gravesham*⁴ sense - before the relevant date⁵.
10. I also find, to the same standard of proof, residential use to have been continuous to the point of application for the LDC (and beyond) as I find it unlikely in consideration of the nature of the equine undertaking (notwithstanding 'cover' provided by friends during periods that the appellant and his wife may have been away from the stables) that any significant break in residential use occurred during which it would not have been possible for the Council to take enforcement action⁶.
11. The third party representation made by Janette Mawson to the Council dated 6 July 2023 ('The applicants, Mr and Mrs Eysers, have never lived in the caravan...Indeed, I believe comments were made by members of the planning committee some years ago that the Eysers were clearly living in the stables and not the caravan') is helpful to the appellant's case yet somewhat inconsistent with the contents of another (undated) letter she sent suggesting otherwise.

² Letter from Dr Pugh.

³ Letter dated 11 September 2023.

⁴ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

⁵ The Inspector determining APP/C1570/A/13/2201820 in 2014 found on his site visit that "What is referred to by the parties as a "sitting-up" room within the stable buildings contained an equipped kitchen, bathroom/wc and a sitting area." (Decision letter of 19 March 2014; paragraph 7). I have seen photographs of more recent occupation of the room which also contains a bed and an office area, together with what could be reasonably described as levels of significant domestic paraphernalia and possessions representative of longstanding daily residence.

⁶ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

Due to the inconsistency, I give limited weight overall to the representations and they do not affect the outcome of my decision.

Conclusion

12. 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 creation of a dwelling 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.

Andrew Walker

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 27 March 2023 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:

No enforcement action could then be taken in respect of the use because the time for enforcement action had expired.

Signed

Andrew Walker

Inspector

Date: 10th January 2024

Reference: APP/C1570/X/23/3330932

First Schedule

Use as a dwelling.

Second Schedule

Land at Home Pasture Stud, Top Road, Wimbish, Essex CB10 2XJ.

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: 10th January 2024

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Land at: Home Pasture Stud, Top Road, Wimbish, Essex CB10 2XJ

Reference: APP/C1570/X/23/3330932

Scale: Do not scale

