



Appeal Decision

Site visit made on 2 January 2024

by Gareth Symons BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 12 January 2024

Appeal Ref: APP/V4630/X/23/3323631

Woodside Stables, Longwood Lane, Walsall WS4 2JT

- 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 Mrs Julie Yardley against the decision of Walsall Metropolitan Borough Council.
 - The application ref 22/0238, dated 15 February 2022, was refused by notice dated 23 March 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is stables and manège.
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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 operations which are found to be lawful.

Preliminary Matters

2. The LDC application as submitted was for "Existing building works" which were described as stables and manège. Such works are operational development and so the application was made under 191(1)(b) of the 1990 Act. However, when considering the application, the Council reached the view that the land had also undergone a material change of use for equine and business purposes. In responding to the Council's consideration of the application, the appellant confirms that the appeal is made under s191(1)(a) and (b) of the 1990 Act and that if I am minded to find that evidence is required to demonstrate the land has been used for equine purposes for a 10 year period, there is information such as a Google Earth image of the site dated 1999 which shows the stables and manège.
3. I have the power under s191(4) of the 1990 Act to modify the description of the application and issue a certificate to that effect if I am satisfied about the lawfulness of the development at the time of the application. Given the above, I will consider the lawfulness of the buildings and the manège as operational development and whether the land has an equine use.
4. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may then be taken against them, whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason.
5. The relevant time limit related to the stables and the manège (the building operations) comes under s171B(1) of the 1990 Act, which is the period of four

years beginning with the date on which the operations were substantially completed. For the use of the land within the red line on the site location plan, the relevant time limit under s171B(3) is the period of ten years beginning with the date of the breach. The appellant therefore needs to show that the building operations were substantially completed for no less than four years by the date of the application, which was 15 February 2022. Regarding the equine use of the land, this must have started at least no later than 15 February 2012. Moreover, the use must have continued substantially uninterrupted over the ten years period.

6. An application for a LDC does not involve considering any matters of planning merit. It is restricted to considering whether, in this case, specific buildings and the use are, as a matter of fact and degree, lawful. Given this background and because the outcome of the appeal involves looking back at the history of the site from 22 February 2022, there was no benefit to either party, or myself, in seeing the site as it is now. The photographic and other documentary details provided sufficient evidence to determine the appeal and neither side has been prejudiced by this approach.
7. The burden to make out the case rests firmly with the appellant and the test of the evidence is the balance of probability.

Main Issue

8. The main issue is whether the Council's decision was well founded.

Reasons

Stables and manège

9. A series of Google Earth images of the site across the years 1999, 2018, 2019, 2020 and 2021 consistently show the same arrangement of buildings and the distinct rectangular manège distinguishable by its different colour surface from the surrounding grass fields. Moreover, photographs of the buildings taken in 2023 show that they have clearly been in place for a considerable time and more than four years by the date of the application.
10. It may be the case that no consultees or neighbours have provided evidence to show that the buildings and the manège have been there for more than four years. However, by contrast there is no evidence from any source to undermine what the various photographs show or what the appellant says in their written evidence about the time the buildings have been there. I am satisfied that the evidence from the appellant is sufficiently clear and unambiguous to demonstrate on the balance of probability that the stable buildings and the manège were substantially completed for at least four years by the date of the LDC application. Consequently, no enforcement action can be taken against them in terms of operational development, and they are thus now lawful. I shall grant a LDC for them on this basis.

Equine Use

11. On its face, given the timescale I have set out above, it could be concluded that the land at Woodside Stables has been used for equine purposes for more than the required ten years. I am also satisfied that the buildings were built as stables and not for agricultural purposes. Furthermore, the buildings may have horses in them now. However, regardless of what any former land use might

have been, in terms of whether the equine use has been substantially uninterrupted over any ten-year period, I only have records such as the income and rental accounts for 2017 to 2020 with confirmation from the appellant's accountant that those records relate to the stables. These might indicate a continuity of use but for only four years. I also note that the accountant has acted for the appellant since 2015, but this statement sheds no substantial further light on the site activity and any equine/business use at the appeal site.

12. There is, for example, no other information such as letters or statements from persons such as previous owners/operators of the stables, customers of the stables/manège or further accounts or business tax and services records. There could have been times when the stables and manège were not being used and thus no enforcement action could be taken against the use.
13. In view of the above, I find that the appellant has not discharged the burden on them to show, on the balance of probability, that the use of the land for equine purposes has continued for a substantially uninterrupted basis for at least ten years by the date of the application. Therefore, I cannot issue a LDC for the use of the land. My finding does not preclude the appellant from resubmitting another LDC application to the Council for further consideration.

Conclusion

14. 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 stables and manège 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.

Gareth Symons

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 February 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined in bold 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:

The stables and the manège had been substantially completed for at least four years by the date of the LDC application and so the time for enforcement action had expired. Accordingly, as operational development under s191(2)(a), they were lawful.

Signed

Gareth Symons

Inspector

Date: 12 January 2024

Reference: APP/V4630/X/23/3323631

First Schedule

Stables and manège

Second Schedule

Land at Woodside Stables, Longwood Lane , Walsall, WS4 2JT

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 12 January 2024

by Gareth Symons BSc (Hons) DipTP MRTPI

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Scale: Not to Scale

