



Appeal Decision

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th May 2024

Appeal Ref: APP/U1430/X/22/3304543

Land Opposite Chitcombe Road TN31 6EX

Grid Ref Easting: 581549, Grid Ref Northing: 120287

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) 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 Jake Angol against Rother District Council.
 - The application ref RR/2022/1244/O is dated 13 May 2022.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is described in the appeal form as 'rebuilding horse stables'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. No site visit has been carried out as there is no essential need for me to see the site and its surroundings to determine the appeal on legal matters¹.
3. The application form is clear in stating that an LDC is sought under section 191 of the Act for existing building works. The description of the existing building works claimed to be lawful in the application form is ambiguous, as it appears to relate to a proposed building to replace existing stables. I have therefore referred to the description provided in the appeal form by the appellant, which is clearer. To avoid confusion, I shall address the lawfulness of what are referred to as pre-existing stables and rebuilt stables in the application.
4. The Council failed to issue a decision within the relevant timeframe and has confirmed that had it determined the application it would have refused to grant an LDC. In accordance with section 195(5) of the Act, I shall consider the appeal on the basis that the Council decided to refuse the application.

Main Issue

5. The main issue is whether the Council's deemed refusal to grant an LDC was well-founded.

Reasons

6. Minimal information has been provided by the appellant as part of the application and the appeal to support their claim that the development is lawful. For example, I have not been provided with detailed plans or descriptions of any stables to confirm their size(s) and location(s).

¹ Certificate of lawful use or development appeals: procedural guide (December 2022). Paragraph 7.2.11.5. states: A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one.

7. Section 57 of the Act sets out that planning permission is required for the carrying out of development of land. The meaning of development is provided at section 55 of the Act, which includes the carrying out of building operations on land.
8. The photographs provided show the pre-existing and rebuilt stables are buildings which have significant size, degree of permanence, and physical attachment to the land they are situated on. There is no evidence to lead me to conclude differently. The erection of the stables shown in those photographs appears likely to have comprised development requiring planning permission, and so would the rebuilding of the stables referred to by the appellant.
9. I have been provided with copies of the decision notice and plans relating to planning permission reference RR/2003/2596/P. That planning permission authorised development described as 'erection of stable block and alteration to existing access' at 'The Platts - Land Opposite, Chitcombe Road, Broad Oak, Brede', subject to conditions.
10. Other than planning permission reference RR/2003/2596/P, I have not been referred to, and I am not aware of, any planning permissions which the stables may benefit from. There is no evidence before me which suggests that the pre-existing or rebuilt stables accord with planning permission reference RR/2003/2596/P, or that the rebuilding of the stables accords with that planning permission. On the very limited information provided, the location of the pre-existing and rebuilt stables appears to be inconsistent with the location of the stables approved by that planning permission.
11. The development may have been lawful on the date the LDC application was made if it was substantially completed more than 4 years before that date. It has been claimed in the application form that building works were substantially completed on 29 July 2004; however, there is no evidence to support this.
12. The very limited evidence provided by the appellant does not show that the rebuilding of any horse stables at the site does not comprise development requiring planning permission, benefits from any planning permission, or that such works were substantially completed more than 4 years before the date of the LDC application. The onus is on the appellant to show that the development is lawful. The appellant has failed to provide sufficiently clear and unambiguous evidence to demonstrate, on the balance of probabilities, that the development is lawful. I am therefore unable to issue an LDC as sought.

Conclusion

13. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of rebuilding horse stables was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR