



Appeal Decision

Site visit made on 16 November 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 08 July 2024

Appeal Ref: APP/X1545/X/22/3313810

Brooks Farm Grange Road, Tillingham, Essex

- 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 Nigel Brooks against Maldon District Council.
 - The application ref 22/00315/LDE is dated 26 September 2022.
 - The application was made under sections 191(1)(a) and 191(1)(b) of the Act.
 - The use and development for which a certificate of lawful use or development is sought is described as 'construction of single storey building, formation of access and hardstanding area and associated works, and use of the building, private access and hardstanding area and land around it as a single dwellinghouse and its residential curtilage'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal arises from the failure of the Council to give notice within the prescribed period of a decision on an application for a LDC as described above.
3. The Council applied for a Planning Enforcement Order (PEO) prior to the submission of the LDC. The Council requested the appeal is held in abeyance pending the outcome of the PEO application, however, since an application for a LDC is concerned with whether the use or development would have been lawful at the date of the application, the outcome of the PEO is unlikely to have a bearing on the outcome of the appeal. Furthermore, during the appeal a judgement was issued in respect of the PEO. I have been provided with a copy of the judgement and the parties have been given the opportunity to comment on its implications for this appeal. I shall deal with this in my decision below.

Main Issue

4. Section 191(1) of the Act states that if a person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful, they may make an application to the local planning authority. Section 191(2) of the Act sets out that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. Section 191(4) of the Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. As the Council did not determine the application within the appropriate period, the application is deemed to have been refused. The planning merits of the development are not relevant in this appeal.
6. The main issue is whether the Council's deemed refusal to grant a LDC would have been well founded.

Background

7. Planning permission¹ was granted in 2008 (the "2008 Permission") by the Council for the erection of four timber framed stables, one open store and two tackrooms and a change of use from agricultural land to equestrian (the "Approved Stables"). The appellant advises that when he purchased the property, it included the foundations/trenches marking the footprint of the building approved by the 2008 Permission. The appellant states that the building that is the subject of this LDC application is in the location of the Approved Stables building.
8. Planning permission² was granted in October 2014 by the Council for a change of use of land from equestrian to residential and the construction of a two-storey dwelling (the "Approved Dwelling"). A subsequent application to vary a condition of that planning permission was approved in December 2016. The appellant purchased land which included the appeal site in 2016.
9. Towards the end of 2016, the appellant states that he continued to work on the Approved Stables building close to the eastern boundary of the site which comprised trench foundations. The appellant's evidence goes on to explain that he laid foundations for the Approved Dwelling in August 2017. However, he undertook no further works on the construction of that building.
10. At the time of my site visit, I observed an area of hardstanding was present in close proximity to the point of access with Grange Road which may accord with the foundations laid by the appellant to the north of the appeal site for the Approved Dwelling. I note that there are planning permissions on the site which may or may not have been lawfully implemented but neither of which grant planning permission for the appeal scheme. There is no suggestion the appeal scheme would be granted by a planning permission, rather it has been submitted on the basis that it was too late to take enforcement action.
11. An application for a LDC³ (the "2022 LDC") was made by the appellant to the Council for the 'construction of a single storey building, formation of private access and hardstanding area and associated works, and use of the building, private access and hardstanding area and land around it as a single dwellinghouse and its residential curtilage'. The application was refused by the Council on the 5 August 2022. The reason for refusal indicates that insufficient evidence was submitted to substantiate the appellant's claim.

¹ Planning Reference: FUL/MAL/08/00627

² Planning Reference: 14/00456/FUL

³ Planning Reference LDE/MAL/22/00713

Reasons

12. There are two elements to this appeal: firstly, the operational development, namely the construction of a single storey building and the formation of an access, hardstanding area and associated works; and secondly, the use of the building, access and hardstanding area and land around it as a single dwellinghouse⁴.
13. The time limits for taking enforcement action are set out in section 171B of the Act. 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 for notices issued before 25 April 2024 or 10 years where notices are issued on or after 25 April 2024 beginning with the date on which operations are substantially completed.
14. In assessing the 2022 LDC application, the Council considered whether the material change of use of the land and buildings to residential use had been shown, on the balance of probabilities, to have occurred for four years. The appellant has advanced his case on this basis. In respect of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after a period of four years where notices are issued before 25 April 2024 or 10 years where notices are issued on or after 25 April 2024 beginning with the date of the breach.
15. However, although the appeal building may have been built upon foundations previously constructed in relation to the Approved Stables, notwithstanding the appellant may have intended to use the building for storage, it seems the appeal building was constructed unlawfully and used as a single dwellinghouse from the outset and has not been used for any purpose other than as a dwellinghouse. For example, the appellant's son advises '*in the middle of April 2017, the building was sufficiently advanced so that he moved into the building with his dog and he has lived there continuously since then to the present day*'. There has therefore not been a material change of use of the building and so section 171B(2) is not relevant in this case.
16. Section 171B(3) states that in the case of any other breach of planning control, no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach. Given the above, I consider section 171B(3) is relevant in respect of the use of the building and land. Therefore, in respect of the material change of use, this appeal will therefore turn on whether the use commenced on or before 26 September 2012 and continued without significant interruption for at least 10 years thereafter.

The residential use of the land and building

17. With respect to the use of the building, access, hardstanding area and land around it as a single dwellinghouse, even if I were minded to accept the appellant's evidence that his residential use of the site commenced in April 2017, this period would fall far short of the requisite ten year period. The appeal cannot therefore succeed in respect of the use of the building.

⁴ The applicant includes reference to the residential curtilage within their application form, however, residential curtilage is not a use of land.

Operational development

18. Turning to the operational development that has occurred, given the above this appeal will turn on whether the building, access, hardstanding and associated works were substantially completed on or before 26 September 2018 (the "Relevant Date"). In the case of building operations, the phrase '*substantially completed*' is taken to mean, the point in time when a fully detailed building of a certain character has been constructed.
19. A building could not be regarded as substantially completed for the purposes of s171B(1) even if outstanding works affected only the interior. Therefore, the appellant needs to show, on the balance of probabilities, that the building operations associated with the erection of the building, both internally and externally, provided a fully detailed building of a certain character. Similarly, on the balance of probabilities, the appellant would also need to show that operations in the formation of an access and hardstanding were substantially completed on or before 26 September 2018.
20. In a LDC appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities and the applicant's own evidence does not need to be corroborated by independent evidence. As established in *Gabbitts v SSE & Newham LBC* [1985] JPL 630, if there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
21. The appellant states within his application form that the building works were substantially complete on 15 April 2017. The appellant's evidence, which includes a statutory declaration made before a solicitor, and thus can be afforded due weight, sets out that he purchased the appeal site as part of a wider field parcel of land in 2016. At that time, the land he purchased had no postal address. He describes living in his motor home for a brief period of time at a caravan site in Kelvedon which is confirmed in a number of emails from the caravan site operator which affirms several periods of stay between 1 May 2016 to 21 July 2016.
22. The submitted bank statements show that several payments were made to the caravan site operator. Thereafter, the appellant states that he resided within a motorhome on the appeal site until the middle of April 2017 when he describes moving into the building.
23. The land was registered with the Council with the address of Brooks Farm, Grange Road, Tillingham and thereafter a letterbox was added to the site and the appellant notified various organisations of this change of address. A letter from the Council dated 13 April 2017 confirms the details of the registered address.
24. Letters have been provided which confirm a power and water supply were established at the appeal site from July 2016. Whilst the submitted electricity statements initially specify a temporary builders supply of electric to Brooks Farm from 20 July 2016, and a revised statement dated 16 May 2017 also refers to this, thereafter all other bills are estimated and make no mention of any temporary or builders' supply.
25. The appellant states he moved into the building in the middle of April 2017 and that when he moved into the building it was weathertight, with water and

power together with electric heating and bottled gas for warmth and cooking, which is well before the Relevant Date. However, the appellant does not explain what they mean by substantially completed. There is little detailed description about the physical extent of the building, both externally and internally, what facilities it contained, nor does the appellant identify what works had been undertaken prior to the Relevant Date.

26. For example, it is not clear to me whether, by the Relevant Date, any cooking and heating facilities within the building were permanent or temporary. Similarly, there is little information about whether the building contained a kitchen, a bathroom or a toilet or the extent of plumbing and lighting at that time.
27. The evidence regarding the formation of the access and construction of the hardstanding area is also limited. The appellant states that in 'August 2017 I had an access and hardstanding on the north side of the building constructed which remains to today'. However, the appellant does not explain in any detail what works were done and when. Furthermore, the appellant's suggestion that it was constructed in August 2017, which is some four months, approximately, after the date the appellant alleges to have occupied the property, contradicts his suggestion that the building works were substantially complete on 15 April 2017. Although August 2017 is before the Relevant Date, such a contradiction undermines the appellant's case.
28. Statutory declarations have also been provided by the appellant's sons, who confirm the appellant has lived at the site since April 2017. The sons advise that the building had certain facilities for heating, washing, cooking and toilet facilities by April 2017. However, both sons explain that, after moving into the building, the appellant continued to work on it by advancing from room to room. This suggests the building was not substantially completed by April 2017.
29. Both sons refer to helping the appellant on the building, with one of the sons stating they are a registered heating engineer, who describes assisting the appellant with work on the building, including the fixing of plaster boards, installation of a gas boiler and under floor heating pipe works and any other works. However, neither son has provided specific dates as to when works were carried out and it is therefore not clear what works had been completed by the Relevant Date.
30. To my mind, notwithstanding the accounts provided within the statutory declarations of the appellant and his sons, it is, in my view, plausible that a building may have reached a stage where it is capable of being occupied by a person whilst works of construction continue to be undertaken. However, this does not necessarily mean that the building, access and hardstanding areas could be properly regarded as substantially complete on or before the Relevant Date.
31. Several additional statutory declarations from friends and neighbours have also been provided in support of the appeal. In general, whilst these declarations attest to the appellant occupying the site for four or five years, there is limited detail contained within those declarations to explain the physical state of the building and the works that had been undertaken on or before the Relevant Date, such that their evidence is not sufficiently precise to demonstrate that

the appeal scheme had been substantially completed for the requisite four year period at the date of the application.

32. The appellant's statement of case and statutory declaration refers to photographic evidence. Whilst I am advised by the appellant that photographs were submitted as part of the LDC application to the Council, these have not been included for my consideration within this Appeal. Nonetheless, the appellant has submitted the Council's Officer Report which considers the 2022 LDC application.
33. Paragraph 6.4 of the Officer Report deals with photographic evidence submitted as part of that application. It states, among other things, that *'the internal photographs labelled April and October 2018 show only a small amount of the internal building and the small amount shows an unfinished building with no internal walls and very little furniture'*. The Council's description of what can be seen is an important indication of the physical extent of the building.
34. Importantly, the photographs taken in October 2018 would have been obtained at a date after the Relevant Date and to my mind, the Council's observation points towards a building that could not be properly regarded as being substantially complete at the Relevant Date, which undermines the appellant's evidence.
35. The appellant's evidence includes numerous invoices for materials, goods and equipment. However, there is limited information contained within those invoices to confirm that those items were used in the construction of the appeal scheme, and if so, how they were utilised and at what point in time. Although the invoices are in the name of Mr Brooks, several also refer to a business name of Tasty Food Company Ltd and there is nothing in these invoices to confirm that it relates to the construction of the appeal scheme.
36. Additionally, a number of invoices have been provided by the appellant which are dated after the Relevant Date and therefore less than four years before the LDC application. In particular, there is an invoice dated 6 February 2019 for Quinnterm in the sum of some £920.70 which appears to be for a large quantity of an insulation product.
37. In my experience, insulation is frequently used within walls, flooring and roofing and it would be installed at an early stage of the construction process before internal walls, flooring and roofing have been completed and before the building is internally fitted out with electrics, plumbing and facilities such as kitchens and bathrooms and this would be at a point when the building cannot be regarded as being substantially complete.
38. Similarly, a further invoice shows the purchase of an extractor fan (22 May 2019) and a number for shuttering pine ply and tubs of screws. There is no explanation as to how these and other items listed on those invoices were used in the construction of the appeal scheme, nor any specific dates that these items were included in the construction of the scheme.
39. There are invoices dated 9 October and 13 November 2018 which include plasterboard and ply materials or appear to be hand annotated with the words 'plasterboard'. A further invoice dated March 2019 is a poor copy of the original, and whilst it contains a number of unintelligible entries that cannot be discerned, it comprises a large total in the region of £3113. Again, there is no

information before me to explain what part of the construction these materials were used for particularly given their purchase after the Relevant Date and taking into account their likely inclusion in constructing a building would occur early on in the process before a building is likely to be capable of being considered as substantially complete.

40. An invoice dated 20 May 2019 from TEC Supplies has been provided, it appears to comprise a number of pages, however, only the first page of the invoice is supplied. It contains a considerable number of entries which are noted to be '*items to follow*'. These include items described as cupboards, clad-on end panels, worktop and basin which appear likely to be for a bathroom or kitchen. A subsequent invoice from the same business and dated 5 July 2019 includes sanitaryware including flush cistern, top fix seat and pan. In my view it would appear likely that these items would have been used in the installation of a bathroom and/or toilet.
41. Given that their date of purchase post-dates the Relevant Date by some way and in the absence of any detailed explanation, the evidence fails to demonstrate that the building contained toilet and bathing facilities prior to the Relevant Date. To my mind, in order for a building to be properly regarded as a dwelling and thus substantially complete, it would need to contain the facilities necessary for day-to-day living and this would include, among other things, toilet and bathing facilities.
42. Other invoices that are dated close to, or after April 2017, include:-
 - an invoice dated 29 March 2017 for ballast totalling some £322.75;
 - an invoice dated 19 July 2017 for kerb and cement;
 - an invoice dated 13 April 2018 in the sum of approximately £5532.00 for 'ecotherm ecoversal boards';
 - invoices dated 28 May 2018 and 12 June 2018 for damp proof membrane;
 - an invoice dated 3 July 2018 is hand annotated with the words 'plasterboard and ply' and includes a large amount of some £554.30;
 - an invoice dated 10 July 2018 from a business concerned with septic tanks is for the purchase of a 'Clearfox Organic Worm System'.
43. Taking the last item, which was purchased after the appellant's suggested date of substantial completion, on the face of it, it appears it could have been used in the treatment of domestic sewage. The appellant's statutory declaration refers to a sewage treatment plant being located to the south side of the building, however, it gives little detailed information about the date it was installed and capable of use.
44. Whilst a number of the statutory declarations refer to toilet facilities, the purchase of an item which appears to be for treatment of domestic sewage at the appeal site contradicts with the alleged date of substantial completion. Similarly, the other invoices for materials, as stated in the paragraph above, are materials that are likely to be used in an earlier stage of the construction process before a building is likely to be considered as substantially complete and thus given the timing of these purchases it fails to substantiate the

appellant's suggested date of substantial completion and the date upon which the appeal scheme was substantially completed remains unclear.

45. A number of bank statements have also been supplied. However, these add further ambiguity. In one statement a payment in the region of £1212.37 to PGR Builder and TI is made on the 6 February 2019. Little explanation has been provided to explain this payment, which is not inconsequential in value and is paid at a date which is less than four years before the LDC application.
46. An invoice dated 7 March 2018 from a building control services provider has been included. The limited information contained therein refers to '*initial notice, plan check and inspections*'. However, it is not clear from the invoice what the work refers to, nor what was inspected. Whilst it is dated before the Relevant Date, it occurs after the appellant's suggested date of substantial completion, and it provides little evidence in support of the appellant's case.
47. Letters from a home insurance provider have been submitted in support of the appeal. It shows that the property was insured from the 15 November 2019, however, this is a considerable period of time after the Relevant Date and thus shows that home insurance has been in place for only part of the requisite four year period prior to the LDC application. This does not therefore assist the appellant's case.
48. The appellant sets out that he moved into the building due to his financial circumstances at that time. He placed his belongings into storage. A number of invoices for storage have been supplied. The initial invoice dated 23 June 2017 refers to nine containers being in use by the appellant. The appellant continued to be charged for nine containers until approximately August 2019, a considerable period after the Relevant Date, when the charge was reduced and applied to seven containers. Thereafter, the appellant was charged for the use of seven containers until September 2019 when the charge was reduced to reflect use of two containers.
49. In the absence of any explanation, I find that the appellant's decision to continue to store his belongings for a considerable period beyond the Relevant Date conflicts with the appeal building being substantially completed and the appellant's difficult financial position. To my mind, I consider that it would be more likely than not that a person living within a substantially completed dwelling would want to furnish that property with their belongings and furniture rather than continue to pay monthly storage costs. The monthly cost of storage was not insignificant, costing approximately £288 to £302.40 for nine containers, and it occurred over a long period. This has to be set against the appellant's stated difficult financial position. The evidence in this respect is contradictory and no explanation is provided by the appellant to clarify this ambiguity.
50. Several letters and bills from Essex and Suffolk Water (ESW) have been submitted. A letter dated 12 July 2016 confirms details of an application made by the appellant for a temporary build supply of water and a rainwater harvesting system for a new house. A bill dated 10 October 2017 for the charge period of 10 April 2017 to 9 October 2017 refers to a '*temp supply adjacent Hereford Farm, Grange Road*' and subsequent bills addressed to the appellant and covering the period of 1 April 2017 to 31 March 2018 cite an address of '*Mobile Home adj Hereford Farm, Grange Road*'. Whilst I note that these bills are dated before the Relevant Date, references to a temporary

supply and supply to a mobile home suggest a permanent supply to the appeal building was yet to be installed, pointing towards works being outstanding during that period and calling into question the appellant's suggested date of substantial completion.

51. Furthermore, by letter of the 29 December 2020, ESW refers to a recent visit to the property having been undertaken and the meter reading being higher than usual. The ESW letter points out that this could have been as a result of a number of circumstances including, among other things, previous bills being estimated or as a result of building or redecoration works. It may be that building works were still ongoing at that time which generated a greater demand for water, however, no explanation has been given.
52. A number of letters addressed to the appellant at the appeal site have been provided, as well as emails confirming delivery of groceries to the property. The letters concern pet insurance, veterinary invoices, boarding kennels booking forms, mis-sold PPI, jewellery insurance, premium bonds, private pensions, banking, HMRC (tax payment and tax codes), DWP (entitlement to winter fuel payments, state pension and increases in state benefits). However, these documents simply confirm that postal correspondence and groceries were delivered to the appeal site. They provide no actual evidence about the extent of the works which had been carried out at the appeal building, or the works to the access and hardstanding as at the Relevant Date.
53. Various medical letters covering a period from May 2017 to November 2019 have been provided in support of the appeal. These are addressed to the appellant at Brooks Farm and confirm registration with Family Doctor Services on the 24 October 2016, registration with a dental practice from October 2019 and a prescription request form. Similarly, these documents and letters are evidence of postal correspondence being sent to the appeal site, however, they do not provide any evidence of the appeal scheme being substantially completed at the Relevant Date.
54. A television licence was purchased in January 2018. However, there is little information to explain whereabouts the appellant watched television and, in any event, a licence would have been required irrespective of where the appellant viewed television, whether that be within a building, motorhome or a caravan. The availability of a tv licence and mobile phone bills do not point to the appeal scheme being substantially completed at the Relevant Date. Whilst the appeal site has had a broadband internet service, since June 2021, this is only for a short period of time before the date of the LDC application.
55. The inclusion of the appellant upon the electoral register at the appeal site and having provided his address to DVLA for driver licensing purposes is not conclusive evidence of the appeal scheme being substantially complete at the Relevant Date. Neither is the existence of a Wayleave Agreement at the appeal site and correspondence relating to the purchase and insurance of vehicles, warranty of a tractor and written queries regarding the ownership of an access track.
56. Reference has been made to a visit by the Council's enforcement officer in September 2020 and a number of letters sent by the Council including a letter dated 10 September 2020 which, albeit a poor quality copy of the original, requires the removal of an unauthorised dwelling. The letter is not accompanied by a plan identifying the location of the unauthorised

development, however, it is the appellant's case that it relates to the appeal dwelling. There is little information about what the Council observed at any visit and in any event, the Council's visit and correspondence do not assist the appellant in demonstrating that the building was substantially completed by the 26 September 2018.

57. This is a situation where the local planning authority has provided limited evidence of its own to contradict the submitted evidence of the appellant or make his version of events less than probable. However, I find that the appellant's evidence is not sufficiently precise and unambiguous on its own to show, on the balance of probability, that the construction of a single storey building, formation of access and hardstanding area and associated works was substantially completed on or before 26 September 2018. Therefore, the appellant has not discharged the burden of proof that falls upon him.
58. I note the Council applied for a Planning Enforcement Order (PEO) on the basis that the appellant concealed the development. However, since I have found that the appellant has not shown, on the balance of probabilities that the development was substantially completed by 26 September 2018 or that the use had commenced on or before 26 September 2012, it is not necessary for me to consider whether there was concealment of the operational development or change of use by positive deception so as to deprive the appellant of the benefit of the limitation periods in section 171B of the Act.
59. Moreover, the Council had applied for the PEO by the time of the LDC application. Section 191(3A) of the Act states in determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if (a) the time for applying for an order under section 171BA(1)(a "planning enforcement order") in relation to the matter has not expired, (b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn. Since a PEO had been applied for and had neither been decided nor withdrawn at the date of the LDC application, the time for taking enforcement action had not expired by virtue of section 191(3A).
60. Thus, I find the construction of a single storey building, formation of access and hardstanding area and associated works, and use of the building, private access and hardstanding area and land around it as a single dwellinghouse and its residential curtilage was not lawful at the date of the LDC application, and the appeal must fail.

Conclusion

61. For the reasons given above I conclude that the Council's deemed refusal to grant a certificated of lawful use or development in respect of the construction of a single storey building, formation of access and hardstanding area and associated works, and use of the building, private access and hardstanding area and land around it as a single dwellinghouse and its residential curtilage was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

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INSPECTOR