



Appeal Decision

Site visit made on 29 May 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 15 July 2024

Appeal Ref: APP/C1760/X/22/3309225

The Stables, Walnut Bungalow Wallop Road, Grateley, ANDOVER, SP11 7EB

- 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 John Schneider against the decision of Test Valley Borough Council.
 - The application ref 22/00517/CLEN, dated 24 February 2022, was refused by notice dated 20 June 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use as a private garden in association with the dwellinghouse 'The Stables', formerly known as Walnut Bungalow.
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Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the existing use which I consider to be lawful.

Applications for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate decision.

Reasons

3. The appeal concerns land to the west of The Stables, a former outbuilding or stable building granted planning permission¹ in 2016 for use as a dwellinghouse. The 2016 application site was land that had been occupied by the dwelling known as Walnut Bungalow for at least 40 years before it was demolished some time between 2000 and 2010 following a grant of planning permission² in 1997 for the erection of a replacement dwelling, outbuilding and access. From the evidence submitted it appears that the appeal site had been agricultural land that had come to be used as garden land associated with, or incidental to, the use of Walnut Bungalow as a dwellinghouse. Although the exact length of time it had been in that use is not entirely clear from the application and appeal submissions, which are inconsistent on that point, there does not appear to be any doubt that there had been at least 10 years continuous use as such, so that the use would have become lawful. The appellant's evidence on this point has not been disputed. The consequence, by

¹ Council Ref. 16/01530/FULLN

² Council Ref. TVN.1042/5

reference to case law³, is that the overall planning unit would have comprised the appeal site and the Walnut Bungalow site combined.

4. When Walnut Bungalow was demolished there was no longer any actual dwellinghouse use of the overall plot made up of the original residential land and the application site until the implementation of the 2016 permission. The evidence, in the form of statutory declarations, is that in this period the land continued to be maintained and used as garden, with the owners occasionally camping out there and carrying out works for the erection of the building that is now The Stables. Again, none of this is disputed. In the light of subsequent events, it does not matter whether the replacement dwelling permission was begun.
5. The Council refused the LDC because it considered that the 2016 planning permission was the start of a new chapter in the planning history of the original Walnut Bungalow land, creating a new planning unit subsuming the garden land that would have been associated with the approved replacement dwelling, but excluding the appeal site since it was not within the land to which the 2016 permission relates. It considered that since the appeal site could not be used as garden land associated with the residential use of The Stables for the requisite 10 year period it had not become lawful.
6. The appellant's argument though is that, by reference to the High Court judgement in *Ocado*, the lawful residential use of the appeal site that had accrued when Walnut Bungalow was in residential use had not been abandoned and therefore continued to be a lawful use of the land. However, it is well established in case law⁴ that lawful use rights can be lost in other ways, namely by the formation of a new planning unit or by being superseded by a further change of use. I am satisfied that implementation of the 2016 permission did include the formation of a new planning unit and amounted to a new chapter in the planning history of the former Walnut Bungalow site. In these circumstances, case law⁵ has established that where a planning permission is granted and implemented for a new building to be put to a new use, the previous use rights on the site will be expunged and the new planning unit will have no planning history. That would have resulted in the loss of the lawful use rights accrued by the appeal site land.
7. However, that is not the end of the matter. Notwithstanding the observations of an Inspector visiting the site in February 2021 for an appeal concerning an unrelated matter that the appeal site had few obvious incidences of residential use, I am satisfied that there is ample evidence in the form of aerial imagery, planting patterns and species, my own observations of the condition of the land, and the statutory declarations accompanying the LDC application, to justify a conclusion, on the balance of probabilities, that the land has been used as garden land for purposes incidental to the use of The Stables as a dwellinghouse since the planning permission was implemented. For the purposes of planning law this was a new use, but it would only be one that required planning permission if it was a material change of use of the land⁶. To be a material change of use there would have to be a change in the definable character of the use of the land. In reality, as is clear from the appellant's

³ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

⁴ *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461

⁵ *Petticoat Lane Rentals v SSE* [1971] All ER 310

⁶ Sections 55(1) and 57 of the 1990 Act

undisputed evidence of how it was being used even when there was no dwelling, the character of the use of the appeal site has remained consistent over many years. I conclude accordingly that the use of the appeal site as garden land associated with the use of The Stables as a dwellinghouse does not amount to a material change of use of the land and is not therefore development for the purposes of the 1990 Act.

8. Section 191(2) of the Act provides that uses or operations are lawful at any time if: a) 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The use of the land as described in this case does not involve development, and would not, as far as I am aware, be in breach of any enforcement notice. Since there is no development involved, lawfulness does not rely on immunity from enforcement. It follows that that the Council's refusal to grant a certificate of lawful use or development in respect of the use 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. I shall make minor changes to the description of the use applied for to more accurately reflect the actual use in planning terms.

Paul Dignan

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 24 February 2022 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:

The use of the land as garden associated with the use of The Stables as a dwellinghouse does not amount to a material change of use of the land and is not therefore development for the purposes of the Act.

Signed

Paul Dignan

Inspector

Date: 15 July 2024

Reference: APP/C1760/X/22/3309225

First Schedule

Use as a private garden in association with the use of 'The Stables' as a dwellinghouse.

Second Schedule

Land at The Stables, Walnut Bungalow Wallop Road, Grateley, ANDOVER, SP11 7EB

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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 15 July 2024

by Paul Dignan MSc PhD

Land at: The Stables, Walnut Bungalow Wallop Road, Grateley, ANDOVER, SP11 7EB

Reference: APP/C1760/X/22/3309225

Scale: Not to Scale

