

Appeal Decision

Inquiry held on 15 November 2023 and 12 September 2024

Site visit made on 12 September 2024

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal Ref: APP/N1920/X/22/3302059

Winfield Mobile Home Park, Hartspring Lane, WATFORD, WD25 8AG

- 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 M Wenman against the decision of Hertsmere Borough Council.
 - The application ref 22/0567/CLE, dated 31 March 2022, was refused by notice dated 24 June 2022.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is existing use of stables granted permission APP/N1920/A/06/2007841 (TP/05/1007) has operated in breach of condition for a period in excess of ten years.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr M Wenman against Hertsmere Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application for the LDC was made under s191(1)(c) of the Act and sought confirmation that a condition on an implemented planning permission is no longer enforceable. The description for which the LDC was originally sought is:

"Existing use of stables granted permission APP/N1920/A/06/2007842 (TP 05/1077) has operated in breach of condition for a period in excess of ten years."

4. However, the Council varied the description to reflect a change of use and determined the application on the basis of an amended description as follows:

"Retention of existing commercial use and office space following appeal decision APP/N1920/A/06/2007841. Certificate of Lawful Development (Existing)."

5. That is not the same as the matter for which the appellant sought the LDC and indeed he did not provide evidence to support. The LDC was subsequently refused by the Council and the appellant argues that the variation made to the description of the development was unlawful; there being no power to amend the description as the Council did, and then subsequently refuse the application. The appellant contends that the variation to the description was self-serving as no evidence was provided to support the grant of a LDC for the varied description. Therefore, the refusal was an inevitable consequence of the Council's decisions and actions.

6. Planning permission for the erection of stables for private use was granted on appeal on 30 May 2006 subject to conditions, including condition 2 which reads:

"The stables hereby permitted shall only be used for occupation by horses kept on the land and not for livery or commercial equestrian enterprise and shall be removed from the land on the cessation of the use of the land for grazing by horses."

7. S 191 of the 1990 Act provides for the submission of LDCs and states that:

191 – Certificate of lawfulness of existing use or development.

(1) If any 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; or*
- c) Any other matter constituting failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

he may make an application to the local planning authority specifying the land and describing the use, operations or other matter.

8. S191(4) goes on to state that

"If, on an application 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 matters described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect, and in any other case they shall refuse the application; "

9. Case law¹ directs that an applicant's own evidence does not need to be corroborated by independent evidence to be accepted. If the local planning authority (LPA) has no evidence of their own, or from others, to contradict or make the applicant's version of events less than probable, there is no good

¹ F W Gabbittas v SSE and Newham LBC [1985] JPL 630

reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguously justified to grant the LDC on the balance of probability.

10. An LDC application may be made under one of three separate limbs; for a material change of the use of land (s191(1)(a)), for operations (s191(1)(b)) or for a breach of planning control that is immune from enforcement action being taken (s191(1)(c)). The application the subject of this appeal was specifically made under s191(1)(c) on the basis that a condition has been breached for a period in excess of ten years. The application form specifies that the reason for the LDC is "*an existing use, building work or activity in breach of a condition*"; that the grounds of application for a LDC is "*The use, building works or activity in breach of condition began more than 10 years before the date of the application*"; and that a LDC should be granted because "*The condition has been breached for in excess of ten years*". Therefore, in my judgement the purpose of the LDC could not be clearer.
11. S191(4) allows the LPA to modify the description of the existing use, operation or other matter. However, the description should be modified with care because the power given under s191(4) is discretionary. It should not be read as empowering the grant of an LDC for something totally different to what is applied for or as justifying the verification of something obvious. The appellant also contends that such powers should not be used when the Council is refusing to grant an LDC, stating that if the LPA is not satisfied that the description would be lawful, then the application should be refused. S191(4) does not expressly impose such a limitation, but this does seem to be consistent with the provisions set out above.
12. In this case the Council unilaterally amended the description of what is sought to be confirmed by the application. In my judgement the new description used does not at all reflect what was being sought by the applicant in submitting the LDC. Indeed, the description has been so varied that it changed from an LDC under s191(1)(c) relating to a breach of condition involving a stable building to an LDC pursuant to s191(1)(a); the material change in the use of land (existing commercial and office space) following the grant of planning permission, conditionally.
13. The description of the development for which an LDC is sought should not be a subjective exercise where the description of a proposal can be changed to reflect what the decision-maker presumes is being sought or indeed what is perceived to be the purpose or wider objective of the submission. Rather, it is made for what an applicant seeks to be confirmed and is supported by their evidence upon which the decision-maker determines the application (or appeal) through either refusing to grant the LDC, varying the description to better match the evidence submitted by the applicant and grant that varied LDC or refuse the LDC. Those are the only options.
14. The appellant's evidence relates only to a breach of condition, but the Council argues that this approach should be rejected because he cannot seek a general declaration that condition 2 is no longer enforceable and the appellant's attempt to reconstrue the condition is unconvincing. If it is the Council's view that the appellant cannot seek a general declaration that condition 2 is no longer enforceable, they should have just refused the

application on that basis if the evidence submitted by the appellant was insufficient to discharge the burden of proof placed upon him. Secondly, irrespective of the appellant's interpretation of the specific wording of condition 2, it was incumbent on the Council to determine the LDC on the basis of the description used by the applicant, or an agreed variation of that description reflecting the purpose of the applicant submitting the LDC in the first place.

15. Consequently, in the light of the evidence before me, including that which was presented at the Inquiry, the current appeal shall be determined on the basis of the original description of the development for which the LDC was sought relating to the use of the stables in breach of condition for a period in excess of ten years.

Main Issue

16. In the light of my conclusions with respect to the description of the matter for which the LDC is being sought, the main issue is whether the Council's decision was well-founded. That falls on whether the appellant has demonstrated on the balance of probabilities that the stables granted planning permission under the terms of the application ref APP/N1920/A/06/20077841 dated 30 May 2006 has operated without compliance with condition 2 for a period in excess of ten years.

Reasons

17. The appellant's case is that the stables building has been used as an office for operating his businesses and other activities and therefore the relevant planning condition has been breached for the entire period when part of the stables have been used for purposes other than in accordance with the condition. It is submitted that if part of the stables is used for an office in connection with the vehicle sales business that constitutes a continuous breach of the condition. The test that should be applied is whether at any point during the alleged period of breach the Council could have taken enforcement action. Given that there is no suggestion or evidence that once converted to an office the relevant part of the stables building returned to use as stables in accordance with the condition and was then re-converted or refitted as an office at a later date; once the stables were first converted to office use in breach of part of condition 2 of the planning permission the Council could indeed have taken enforcement action. The primary evidence is provided by the appellant and is supported by other evidence relating to the nature of the commercial uses taking place on the wider site which provides some context.
18. It is clear from the evidence submitted and my own site observations that an office use exists in one of the stable bays and appears to have been established for some time given the condition of the walls, floor, ceiling and other features which are not new. However, that is not sufficient to demonstrate a continuous breach for a period in excess of ten years.
19. The building was constructed following the grant of planning permission on appeal in 2006. The precise date of the completion of construction is not known but the Appellant's evidence is that the ground works and preparation for the construction started shortly after the grant of planning permission. No

detailed evidence such as invoices for the works is available. Within the stables one bay was installed as an office for customers visiting the vehicle sales business or for viewing and purchasing vehicles. Staff would use the office which is also used to store items such as paper records of vehicle sales. Vehicles sold from the site were stored on the hardstanding area around the stables, the area around the appellant's mobile home and on the adjacent field and aerial photographs support this. However, the office has not been used solely for selling vehicles stored on or adjacent to the site, but according to the appellant as a general purposes office since 2009 and it has never stopped being used for the appellant's car sales and all of his businesses and other activities.

20. The appellant's witness confirmed that one of the stable bays has been converted to an office and he supervised the works and assisted some of the conversion. He states that "the stables would have been converted to provide the offices towards the end of 2008" and adds that there are no records for the work as a lot of the staff were casual contractors and that basic materials for repairs to the mobile homes were always being purchased and these were the same type of materials used in the conversion of the stable. On oath the witness gave evidence that he installed a "normal" door, raised the floor, fitted carpet and installed a window, telephone line, computers and storage. These works are consistent with the conversion of a stable bay into an office and indeed the door shown on photographs dated 24 August 2011 is consistent with the evidence given. That is not evidence of use, though.
21. It is my understanding that in 2009 the Council received a complaint that the stables were being used for office purposes, but the enforcement case was closed on 27 April 2009, concluding that no breach had taken place and noting that at the time the stables were being used as stables. The appellant states that he does not know how thorough the enforcement investigation was in 2009 and does not know what specific enquiries were made and what evidence was sought. He also speculates that there are numerous reasons why an enforcement investigation may be closed and that it is not possible to conclude that the closure of the file must mean that no breach was taking place. Despite the appellant's evidence which seeks to undermine confidence in the Council's investigations, I find no good reason why the investigation may not have been thorough.
22. Much of the Council's evidence focuses on the use of the land for vehicle storage and sales which is not a specific matter concerned with the current appeal. Indeed, the appellant has stated that the office was used for a range of activities, including the operation of all of his businesses. Furthermore, there is a degree of inference and speculation drawn from the limited evidence submitted by the Council. The appellant has also commented that the Council's evidence is limited to a single enforcement note from February 2009. However, that must not distract from the main consideration in this case which is whether the appellant's evidence meets the *Gabbitas test* of being sufficiently precise and unambiguous.
23. As I have stated above, the appellant's evidence is imprecise, confirming in his statutory declaration that "not long after we obtained the approval we started the groundworks for the stables" and "the stables were erected shortly after the hardstanding was completed but not straight away". He then goes

on to state that "within the stables we installed in one of the bays an office so that customers coming to visit and view or purchase the vehicles did not have to come into the mobile home on the park itself". No particular dates are specified and there is a notable lack of supporting evidence. The vagueness of the timeframes stated is of some concern and perhaps telling.

24. The only written date provided is by the appellant's witness who states that "the stables would have been converted to provide the office towards the end of 2008". This is also imprecise and seems to me to be speculation of when the work may have been done rather than confirming when it was actually done. In any case, the LDC seeks confirmation of the use of the offices for a period in excess of ten years when the date provided relates to when the works may have been carried out rather than when the use started. In oral evidence the appellant did state that he started using the office in 2009 and has never stopped using it but this is contradicted by the Council who assert that during the period 2011-2013 it was not being used. The Council's reasoning for this assertion is somewhat diversionary; speculating that the use of adjoining land and the storage of vehicles on the wider site correlates with the use of the stable. However, it does introduce an element of doubt with respect to the continued use of the stable as an office over a period of time for which there is little evidence from the appellant.
25. I do not dispute that the appellant and his son are in the best possible position to know about the works undertaken to the stables and how the stable bay in question has been used over time. However, their evidence is imprecise and there is a notable lack of supporting documentation.
26. I am also mindful of whether evidence from the local planning authority contradicts or makes the applicant's version of events less than probable. The Council has submitted some evidence of their own relating to a previous enforcement investigation, which is material in the determination of this appeal. They have also sought to introduce other evidence relating to the use of the stables and relating land and the extent or otherwise of the planning unit in question, but I find this a little obtuse
27. Nonetheless, the appellant's own evidence in this case is not sufficiently precise and unambiguous to demonstrate on the balance of probabilities that the stables granted planning permission under the terms of the application ref APP/N1920/A/06/20077841 dated 30 May 2006 has operated without compliance with condition 2 for a period in excess of ten years.

Conclusion

28. For the reasons given above and taking account of all the evidence submitted I conclude that the Council's decision to refuse to grant a certificate of lawful use or development in respect of use of the stables granted by permission APP/N1920/A/06/2007841 in breach of condition for a period in excess of 10 years 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).

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

M Rudd Counsel for the appellant

He called

Ben Eiser BSc (hons) PG Dip MA MRTPI Agent for the Appellant

M Wenman Snr Appellant

M Wenman Jnr Appellant's witness

FOR THE LOCAL PLANNING AUTHORITY:

Dr Alex Williams Counsel for the LPA

He called

Georgia O'Brien MA Senior Planner

Matthew Dennis MA Planning Enforcement Officer