



Appeal Decision

Site visit made on 6 January 2026

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21st January 2026

Appeal Ref: APP/A0665/X/24/3356072

Hunters Retreat, Cassia Green Farm, Cassia Green, Marton, Winsford, CW7 2PZ

- 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 and development (LDC).
- The appeal is made by Ms Dianne Whalley against the decision of Cheshire West and Chester Council.
- The application ref 23/0241, dated 6 July 2023, was refused by notice dated 14 March 2024.
- The application was made under sections 191(1)(a)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
- The use and development and failure to comply with any condition or limitation for which a certificate of lawful use and development is sought is use of 'the land, stables and equestrian facilities at Hunters Retreat have and continue to be use as part of a livery yard, for a period in excess of 10 years. In addition, a hardcore track has been in place from the yard area to the muck heap to assist with the collection and removal of the muck all year round.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made to ascertain whether the claimed livery use of the land and installation of a track are lawful as described in ss191(2) and 191(3) of the Act. Section 191(2) provides that '...uses and operations are lawful at any time if - (a) no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force'. Section 191(3) relates to the circumstances where the use or operations fail to comply with any condition or limitation subject to which planning permission has been granted.
3. The relevant periods for the purposes of an assessment under ss191(2) and (3) are prior to the time of the application. According to the Council's Decision Notice, the application was submitted on 6 July 2023.
4. For operational development substantially complete prior to 25 April 2024, the relevant period under former¹ s171B(1) was four years from the date of substantial completion. For use/breach of a condition, the relevant period is 10 years. As there is little before me to indicate that the formation of a track is in breach of the terms of any planning permission, the relevant dates are on, or before, 6 July 2019 and 6 July 2013, respectively.

¹ For operational development substantially completed before 25 April 2024, the amendment of s171B(1) by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 extending the time limits for enforcement action from 4 years to 10 years does not apply. The relevant period is 4-years on, or prior to, the relevant date.

5. The description in the banner heading above is taken from the application form. The LDC application sought to demonstrate that the use of the land included commercial livery in breach of Condition 4 of planning permission ref. 11/05152/FUL, dated 23 February 2012, for a period of 10 years or more prior to the date of the application, and, that a hardcore track has been installed for a period of 4-years or more such that recent works undertaken by her were merely an act of maintenance.
6. The burden of proof in satisfying the requirements of s191(1) falls to the appellant. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
7. The Planning Practice Guidance² reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

Main Issue

8. The main issue is whether or not the Council's decision to refuse the LDC was well founded.

Reasons

9. The appellant's evidence highlights that the site of some 1.73ha was acquired by her in 2022 following prior ownership by a Mr & Mrs Clarkson since June 2007. The appellant's evidence includes an unsigned letter from the former owners stating that their understanding was that prior to their own ownership from 2007, the site was used for livery purposes.
10. Notwithstanding, Condition 4 of planning permission 11/05152/FUL granted in February 2012 states: "The stables hereby permitted shall be used for personal and private use only. They shall not be used in whole or part, for any commercial livery, equestrian or other use." At the time the stables were constructed, the Condition would have started the clock on a new breach on the first date that livery occurred thereafter, or at the time construction began if livery continued.
11. Although the former owners suggest there 'has always been liveries' there is little detail to demonstrate that use consistently took place over a period of ten years or more and has continued to take place without a material break since. Although the Council acknowledge livery was advertised at the site both around 2011 and 2022, it is the appellant's burden to demonstrate that this took place consistently without any significant breaks.
12. This is because the condition has continuing effect such that if it is breached and then the offending livery use is ceased such that the condition is complied with once more, the breach of planning control will have ended and the ten-year clock restarted if and when the condition is breached again. On its own, a sign at the entrance merely suggests the availability of livery rather than any active or continuation of such use.

² Paragraph: 006 Reference ID: 17c-006-20140306

13. Notwithstanding that the advertising in 2011 predated the date of Condition 4, aside from the unsigned statement of the former owners, the only confirmation of use is provided in statements of existing clients. Only one gives dates of livery use, being between April 2020 and the summer of 2021. Those unsigned statements add little to the claim for continuous use over a period of 10 years or more.
14. The appellant highlights that the site has been rated for business use. However, the supporting evidence covers the limited period for 2023/2024 with reference only to a self-catering holiday unit. If a livery business is included, it is not referenced in the documentation. Although claim is made of business rates being paid by the former owner since 2013, this has not been specified or provided in evidence. Furthermore, I note that it would roughly coincide with the time that a holiday lodge was permitted on the site (ref.12/05461/FUL).
15. Evidence of livery invoices numbered 0001 to 0003 are all dated 1 January 2023. They do not specify any period to which the charges relate.
16. The former owners' statement claims that they installed the track, however, they provide little detail of any actual date or method of construction. Nor is there significant evidence submitted of its presence during any intervening times prior to works carried out by the appellant. Although the Council acknowledge that past aerial photos show a track, they are unable to corroborate whether this was a created surface or otherwise. In the substantial absence of evidence to demonstrate an engineered track existed to be resurfaced, or detail of when those more recent works took place, I find the appellant has failed to discharge the burden of evidence to demonstrate that the track was lawful such that either the works amounted only to maintenance or were lawful in their own right.
17. Taking all of the above together, I find the evidence provided by the appellant lacks sufficient detail. It is ambiguous and imprecise. While I have little doubt that livery has probably taken place on the site, there is little to demonstrate that it persisted continuously for a period of 10-years, or more, prior to the date of the application. Similarly, the evidence that a track existed prior to the appellant's surfacing, or when that was, does not demonstrate on the balance of probability that the operational works were lawful on the relevant date.

Other Matters

18. I acknowledge the appellant's reference to personal circumstance. However, these are not relevant to the considerations in this appeal.
19. The objections of some third parties are also noted, however, in the absence of firm evidence to support their claims, they are also of little weight in the appeal.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use and development for use of the land, stables and equestrian facilities at Hunters Retreat as part of a livery yard and the formation of a hardcore track is well-founded and that the appeal should fail.
21. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

R Hitchcock

INSPECTOR