



Appeal Decision

Site visit made on 3 January 2026

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 26th January 2026

Appeal Ref: APP/B5480/X/24/3345114

Small plot with stables, East side of Heath Drive, Romford¹

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (“the 1990 Act”) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Glynis Hillier against the decision of the Council of the London Borough of Havering.
 - The application Ref E0010.24, dated 4 March 2024, was refused by decision dated 25 April 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The proposed development for which a certificate of lawful use is use of land for equestrian purposes.
 - An application for costs is made by the appellant against the Council and that decision is attached at the end of this Decision.
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Decision

1. The appeal is dismissed.

Reasons

1. The burden of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence 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 refuse the application, provided the appellant’s evidence alone is sufficiently precise and unambiguous on the balance of probability [emphasis added].
2. I pause here. I have detected a fundamental misunderstanding requiring my attention. In this appeal, concepts like immunity and lawfulness are crucial: an incorrect approach, misunderstanding, or a misdirection can have drastic consequences. Additionally, the submitted information needs to be considered, reviewed and analysed by the decision-maker in the round, and they need to grapple with the issues in totality applying the correct tests as set out in the law and relevant judicial authority. Planning merits has no role in the determination.
3. The word “lawfulness” has a specific meaning. A use may be lawful at any time if no enforcement action may then be taken in respect of that specific use. This may be because the time for taking enforcement action has expired, and the use does not constitute a contravention of any requirements of an enforcement notice then in force. In the context of an LDC application, the relevant date for ascertaining whether the existing use is lawful is the date of the LDC application. Another key concept is loss of existing use rights. One of the ways a lawful use right can be extinguished is through the operation of law. For example, abandoned or a new material change in the use of the land.

¹ I have taken the details from the application form.

4. Time limits are set out in s171B of the Act and the recent change to the law is of no consequence in this case. Sub-section (3) of the provision explains: where there has been a breach of planning control consisting in the carrying out of a material change in use, *no enforcement action may be taken after the end of the period of 10-years beginning with the date of the breach* [emphasis added]. Judicial authority has, consistently, held that any 10-year continuous period can count for immunity purposes. The relevant period is therefore 10-years from the date of the breach, not the 10 years before the LDC application.
5. Now then, the LDC application site is part of a large parcel of agricultural land, but the appeal before me relates only to the area outlined red on the submitted LDC plan. The appellant's claim is a simple one, namely, that the existing equestrian use is immune from enforcement action, due to the passage of time. The nub of the Council's argument is that insufficient evidence has been provided to demonstrate the continuous use of the land for equestrian purposes for 10 years. A previous LDC application² was also refused because the evidence covered July 1992 to September 2003. The Council held that the period is not within the 10-years prior to the first application - 19 December 2023. As I have already said elsewhere, the relevant period is 10-years from the date of the breach, not the 10 years before the LDC application.
6. The LDC site has a long history of agricultural or horse-related uses going back to the post war period, but the appellant's own evidence suggests an intervening unauthorised storage of building material use during the 1980s. In any event, the appellant claims the existing equestrian use started in July 1992 and there is no disagreement between the appeal parties that the character of the claimed equestrian activity was different to agriculture. This is because of the nature and type of activity, which included stabling horses in a building. Feed, hay and supplements, was imported off the site and the activity was supported by a horse trailer/horsebox. The horse-related activities were clearly visible from the highway.
7. The key question to answer is this: when did the equestrian use begin and did it continue for a period of 10-years without significant interruption?³ Essentially, the claim is that the appellant has not provided sufficient evidence to demonstrate 10 years of continuous equestrian use. There is not first-hand evidence from the previous occupiers nor neighbours. Be that as it may, as the Planning Practice Guidance (PPG) indicates, anyone with an interest in the land, or neighbours, may have evidence which is relevant to the application. If that evidence supports the application, it is up to the applicant to produce it, if they choose to do so, in support of the case. If it might tend to disprove the case, the applicant risks prosecution, and revocation of any LDC granted, if they withhold it.
8. On the other hand, if the Council consider that a person with an interest in the land, or a neighbour, may be able to disprove a claim made in an application, it is open to them to canvass that evidence, if they wish, before determining the application. In this case, it seems notifications of the application and appeal were issued, and I have seen the representations made by interested parties.
9. The quantum of the evidence presented, including the 1994, 1998 and 2002 aerial images, does not, to my mind, sufficiently contradict the appellant's clear, precise and unambiguous version of the events. This is found in sworn testimony, including statutory declarations and correspondence from legal representatives submitted to the County Court, about the nature, duration and extent of the LDC site's equestrian use between 1992 and 2003. That type of

² Council ref: E0047.23 officer report indicates that application was received on 19 December 2023 and the report is dated 13 February 2024.

³ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226; [2002] JPL 1278, *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886 and *Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin); [2020] JPL 532 and *Rona (Ocado Retail Limited) v London Borough of Islington and others* [2021] EWHC 1508 (Admin).

activity continued for a period of 10 years and the Council could have taken enforcement action at any time during the relevant period. Having said all that, a point raised by a neighbour is that since they moved into their property in September 2015, they have not witnessed any equestrian related activity on the LDC site. That is an individual's observation, but it has been raised and addressed by the appeal parties. Moreover, I am grateful to the agent who has attempted to address this matter by reference to case law⁴.

10. Once the 10-year period has passed, the use becomes lawful as at that point in time. Even if the case is that the existing equestrian use was time-barred there might be other reasons as to why the LDC cannot or should not be issued. It should be kept in mind that the lawfulness is not permanent if the use later ceases in such a way that it meets the legal tests for abandonment. If a use of land or buildings is temporarily discontinued, the resumption of that use is not development. If, however, a use is permanently discontinued, the resumption of that use is probably development. There is a difference in planning terms between the cessation of a use and its abandonment. Merely to cease exercising a use will not, by itself, generally amount to an abandonment of that right. Where a use right exists, it may continue even though the land is not actually being put to that use.
11. The judgment in *Ocado* confirms that once the relevant enforcement period has passed there is no need for the unlawful use to be continuing at the date the LDC application is made. However, there must not have been a further material change in the use between post-lawfulness and pre-application. Simply put, no application can be made if the use has been lost by abandonment, a subsequent change of use or a creation of a separate planning unit. There is considerable body of judicial authority regarding the concept of abandonment or loss of use rights⁵. The judgments and the findings contained therein indicate that each case needs to be considered upon its individual circumstances. That said, the courts have consistently required decision-makers to take account of the following factors: physical condition, period of non-use, intervening uses and owner's intentions. In terms of the latter, the test should be objective and not subjective – intent might be established both from direct evidence and from the conduct of the occupier.
12. The appellant's assertion that they did not intend to abandon the use is not sufficiently clear nor backed up by specific or detailed evidence. Although the appellant refers to future intentions and use of the LDC site for their family, there is very little, if any, direct evidence of the LDC site's equestrian use from 2003 onwards. The appellant simply says in about 2004 the stable was used to store some equestrian equipment like jumping poles, wings and cavalliti, and has supplied photographs of horse jumping activity. However, it seems that use stopped because of a theft and security concerns. On the contrary, the appellant's own testimony indicates there was a long period of non-use because the LDC site was left until around 2022 when the land had been cleared.
13. Turning to the evidence about the physical condition of the stable, I observed the building has fallen into significant disrepair. There is no information to show the state of the property prior to the appellant or anything of substance showing how the building has been maintained over time. Arguably, untended or overgrown grass does not necessarily mean an equestrian use had been ceased, but the building's fabric, floors, roof and overall structure, both externally and internally, indicates to me advanced stage of disrepair. I consider that considerable

⁴ *Panton & Farmer v Secretary of State for the Environment, Transport and the Regions & Vale of White Horse District Council* [1999] 78 P. & C.R. 186.

⁵ For example, *Hartley v MHLG* [1970] 1QB 413 (*Hartley*), the *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40 (*Castell-y-Mynach*) and *Hughes v SSETR* [2000] 80 P&CR 397, *Pioneer Aggregates (UK) Ltd v SSE* [1984] JPL 651 and, recently, in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30.

renovation and remedial work would need to be undertaken to reuse the building for stabling purposes given the period of non-use and overall condition.

14. Based on the available evidence before me about the timeline, sequence of the events, nature and scale of the previous equestrian use combined with the use of the building for stabling purposes, it seems the latter had ceased in about 2004. That cessation of the equestrian use was in such a way, and for such a time, as to give the impression to a reasonable onlooker, applying an objective rather than a subjective test, that it was not to be resumed.
15. Drawing all the above threads together, a reasonable person might have assumed that the equestrian use had, for all intents and purposes, been abandoned given the physical condition of the stable building and the significant period of non-use. On the other hand, I attach limited weight to the evidence regarding the owner's intentions because it is imprecise, lacking in detail and insufficient to show that they did not intend to abandon the lawful use of the site in around 2004 when they ceased using the stable building to store equestrian-related items despite continued ownership. Therefore, albeit for different and other reasons, I conclude that the Council's decision to refuse the LDC was well-founded, because the quantum of evidence presented does not clearly show to me that the claimed previous use has not been abandoned.
16. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me, irrespective of the Council's muddled approach. Nonetheless, as the PPG says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented. The latter is relevant in this case because of the extent, nature and quality of the evidence presented.

Costs application

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Glynis Hillier for a full award of costs against the Council of the London Borough of Havering.
 - The appeal was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for use of land for equestrian purposes.
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Decisions

1. The applications for an award of costs are refused.

Reasons

2. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant alleges the respondent refused, without good reason, the LDC application causing an appeal. The claim is that the respondent repeatedly misapplied and misinterpreted relevant case law and statutory provisions. For example, it applied the wrong tests when assessing immunity and continuity by focusing on the 10-year period prior to the date of the LDC application. In addition, there is a failure to grapple with the evidence presented for instance, focussing on immaterial matters like the height of the stable.
4. It should, however, be kept in mind that the purpose of this application process is not to resolve by investigation every allegation of unreasonable behaviour. Rather it is to decide if

an award of costs in respect of the appeal is justified on the available evidence in a particular case.

5. My appeal Decision explains why the appeal is dismissed. Sufficient to say that at application stage the respondent seems to have misapplied the correct tests as set out in law and judicial authority: not once but twice. For example, the reports clearly refer to the 10-year period prior to the LDC application date but, as I have already said elsewhere, the correct test applies to any 10-year continuous period of use from the date of the breach. The respondent seems to brush this error under the carpet referring to it as a simple discrepancy, and they refer to evidence dating from 1994 to 2002, which had been included in the officer's report. Nevertheless, lack of attention to detail and clarity has led to significant confusion.
6. Acting contrary to, or not following, well-established case law can amount to unreasonable behaviour, but at appeal stage, the respondent appears to have realised their error. The respondent readily accepted imprecision in the application of the legal test. Nevertheless, based on the evidence before me, I am not persuaded that an appeal was totally avoidable. The submissions indicate to me that there has been a total breakdown of communication between the appeal parties: that is a matter for them to consider. Having refused the LDC application twice, the applicant exercised their right of appeal. Although the handling of applications or behaviour prior to determination might be indicators of unreasonable behaviour, the respondent submitted sufficient arguments to support its approach and contradict the applicant's case. It seems the respondent came to a materially different conclusion to the applicant based upon the evidence they presented.
7. As I have already found elsewhere, the applicant's evidence did not, on this occasion, lift the burden because insufficient evidence has been submitted to demonstrate that the existing equestrian use has not been abandoned. Irrespective of how much weight the respondent applied to the applicant's evidence, the issues raised in the LDC application and on appeal required independent assessment.
8. The applicant is concerned about the lack of a site visit by officers, and they feel the height of the stable building could have been verified. Be that as it may, such visits would not have confirmed the historic use of the LDC site, which is dependent upon the quality and strength of the applicant's evidence. I remind the appeal parties that planning merits has no role to play in these kinds of applications. I attach limited, if any, weight to the alleged procedural failures.
9. I have carefully considered this application but come to an inescapable conclusion. The respondent's repeated lack of clarity as to which legal tests they are applying to the evidence was unreasonable. That said, an appeal was totally unavoidable given the matters in dispute. I find that the unreasonable behaviour did not, on this occasion, result in unnecessary or wasted expense as described in the PPG. It has not been demonstrated that an award of costs, full or partial, is justified in the circumstances.

A U Ghafoor

INSPECTOR