



Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 03 March 2026

Appeal Ref: APP/J1860/X/25/3374452

Temeside Meadow, Worcester Road, Newnham Bridge, Tenbury Wells WR15 8LN

- 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.
 - The appeal is made by Mr and Mrs Neil and Dianne Jackson against the decision of Malvern Hills District Council.
 - The application ref M/25/00222/CLE, dated 10 February 2025, was refused by notice dated 10 April 2025.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
 - The development for which a certificate of lawful use or development is sought is described as the construction of a C3 dwellinghouse not in accordance with the approved drawing GC/77/03c on reserved matters 77/01096/TEN
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, planning merits of the matters applied for do not fall to be considered. The decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority. In this case, it has not been necessary to visit the site. This is because the required information is included with the presented documents, and a decision can be reached on the papers. Both parties were given the opportunity to comment on this approach and no objections were received.
3. Section 191(4) of the 1990 Act states that if 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; and in any other case they shall refuse the application.
4. The onus of proof is firmly upon the applicant (now appellant) to make their case. If a local planning authority has no evidence to contradict the appellants' version of events or make it less than probable, there is no reason to refuse the application, provided the evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
5. The appellants seek to establish that the dwellinghouse was built without planning permission but is now lawful, albeit not subject to the agricultural occupancy condition. Section 191(1)(b) of the Act, as stated in the application form, is the relevant section, and I will consider the appeal on that basis.

Main Issue

6. The main issue is whether the Council's decision to refuse a certificate of existing lawful use or development was well-founded.

Reasons

7. Planning permission 76/00209 granted outline consent on appeal dated 12 July 1977 reference T/APP/5244/A/76/10854/G9 for the erection of a new dwelling. The permission was subject to conditions for the approval of the details of the siting, design and external appearance of the building. The approval was also subject to an agricultural occupancy condition. A reserved matters application 77/01096/TEN for the erection of an agricultural worker's dwelling was approved on the 24 April 1978 (the 1978 permission). The permission was subject to a condition which required the development to be carried out in accordance with drawing no. GC/77/03c.
8. There is no dispute that the building as originally erected on the site corresponded to the approved development in terms of height, design and appearance. The case for the appellants is that as the dwellinghouse is not in the position shown on the approved site plan and as such, it does not have the benefit of planning permission. It is thus submitted that the building was unlawful development. Insofar as it was development without planning permission, it is now lawful by virtue of section 171B(1) of the 1990 Act, but not subject to the conditions imposed.
9. The appeal property is described as a modest farmstead with some ancillary agricultural buildings set in 40 acres of farmland. Aerial images show the property is in a rural location, some distance from the main road situated to the north and close to the River Teme to the south. Agricultural buildings sit to the east and fields surround the site. The closest neighbouring property is some 100m away and on the opposite side of the main road.
10. To demonstrate the deviation between the approved and as built positions, an overlay plan is provided by the appellants. The plan demonstrates that the average displacement between the two positions is 6.1m to the north, with a 3.5-degree difference in orientation and an overlap of 24.98%. Due to the discrepancy with the 1978 permission, the appellants consider that the development deviates materially from the original permission in so much as the building was unlawfully constructed and the 1978 permission was not implemented.
11. The Council disputes the degree of variance from the approved plans. However, from the evidence provided, they concur that the dwelling, as a matter of fact and degree, is in a different location to that approved. The degree of difference is a matter of a few metres and there remains overlap with the position of the development as originally proposed by the 1978 permission.
12. The appellants have drawn my attention to guidance produced by the Council concerning amendments to both live planning applications and approved plans for recently determined proposals. This advises that amendments seeking to move development more than 1m in any direction 'could not be accepted' by the Council as a non-material amendment. While this appears to be general local guidance, the appellants have also referred me to relevant case law which addresses the question of materiality in a judicial context.

13. The appellants refer to *Handoll & Suddick v Warner & Goodman & Streat & East Lindsay DC* [1995] JPL 930 and *Sage v Secretary of State for the Environment Transport and the Regions* [2003] UKHL 22. In *Handoll* it was held that a building erected some 27m from its approved position amounted to a materially different siting and therefore did not implement the permission. A deviation of such magnitude was considered plainly material. The established principle is equally applicable to situations where the built and approved footprints partially overlap. What must be considered is whether the differences are so significant as to be material. This consideration is inherently a matter of fact and degree.
14. In *Sage* it was held that where a building operation is not carried out fully in accordance with the permission, both internally and externally, the whole operation is unlawful. Notwithstanding *Sage*, it is generally recognised that a margin of tolerance exists, as conveyed in *Handoll*, meaning that there is a degree of flexibility in assessing whether what was built can properly be regarded as authorised by the permission.
15. The appellants further refer me to *Commercial Land Ltd v SSTLR & Kensington and Chelsea RBC*, [2003] EWHC 92 Admin; [2003] JPL 358. The judgement established that when determining whether a material operation is “comprised in the development” for the purposes of section 56(2) of the 1990 Act, it is not enough simply to identify the differences between the works carried out and those approved. Consideration must be given to the similarities, the overall degree of compliance with the approved plans, and the extent to which the works undertaken are substantially usable in implementing the planning permission.
16. I have also been referred to the judgements in *Silver v Secretary of State & Others* [2015] EWHC 1836 (Admin) reaffirmed in *Atwill, R (On the Application Of) v New Forest National Park Authority* [2023] EWHC 625 (Admin). In *Atwill*, the Court held that works cannot amount to lawful implementation where the built development differs materially from what was approved. Where the differences are so significant in matters such as location, footprint and dimensions, the permission cannot be said to have been implemented. The judgment reinforces that where the built form diverges materially from the approved scheme, the developer is deemed to have implemented something else, not the planning permission.
17. There is, however, no statutory definition of what constitutes a change that is ‘non-material’. This is because an assessment will be dependent on the context of the overall scheme; an amendment that is non-material in one context may be material in another. In determining materiality, it is necessary to consider the effect of the change, whether viewed alone or cumulatively with any previous alterations, on the planning permission as originally granted.
18. The relevant caselaw establishes that a material difference is one that alters the nature or scope of the authorised development. In this case, the as-built dwelling retains a substantial footprint overlap with the approved position, and the surrounding rural land contains no notable features that would make the modest shift in siting noticeably different, either in physical or functional terms. Furthermore, no explanation has been provided for the change in position, and there is nothing apparent from the evidence to indicate why this divergence occurred. I note that the plans condition was imposed solely ‘for the avoidance of doubt’.

19. Had the development been constructed in a more urban context or tightly developed area, where clear visual and spatial comparisons with neighbouring properties could be made, the difference in siting would likely be more readily perceivable. Given the spacious rural setting of the plot, surrounded by agricultural land and characterised by sporadic development, the difference between the approved and as-built siting would be difficult for 'the man on the street' to distinguish in practice. This would be particularly so where the dwelling accords with the approved plans in all other respects.
20. Overall, there is no evidence that the as-built development gives rise to any different planning effects, including visual amenity or living conditions. Nor is likely that the development would have attracted objections had it originally been proposed in its present location. I have been referred to summaries of other lawful development certificate decisions issued by the Council and by a neighbouring authority concerning discrepancies in the siting of dwellings. While such examples may offer general context, I have not been provided with the full circumstances surrounding those cases. I am therefore unable to determine the extent to which they are comparable to the appeal before me.
21. Notwithstanding this, on the presented evidence, and as a matter of fact and degree, the current siting does not alter the nature or scope of the development or result in any materially different impact compared with the approved plans. The siting shift and orientation change fall within the accepted margin of tolerance, and the built structure remains closely related spatially and substantially to that as authorised. Accordingly, the development can be regarded as having been carried out in accordance with the 1978 permission. It follows that the agricultural occupancy condition continues to apply.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a C3 dwellinghouse not in accordance with the approved drawing GC/77/03c on reserved matters 77/01096/TEN 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.

S A Hanson

INSPECTOR