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## Appeal Decision

Site visit made on 7 July 2026

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19 August 2026**

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**Appeal Ref: APP/D3125/X/24/3355154**

**Windy Hill Farm, Swerford, Chipping Norton OX7 4AS**

- 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 Mrs Jaynie Ford against the decision of West Oxfordshire District Council.
  - The application ref 24/01352/CLE, dated 15 May 2024, was refused by notice dated 24 September 2024.
  - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
  - The development for which a certificate of lawful use or development is sought is the retention of an open market dwelling as built.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The description of the development for which an LDC is sought is generally taken from the application form. However, the relevant section of that form states "*Please see enclosed Planning Statement for full details*". The front page of the planning statement indicates that the application relates to the "*Retention of an open market dwelling*". That description, with the addition of "*as built*", has also been used by the appellant when completing their appeal form and by the Council in its decision notice. Therefore, I have used that description in the banner header above.

### Main Issue

3. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the dwelling was built in accordance with planning permission W89/1153.

### Reasons

4. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. The onus is firmly on the appellant to demonstrate, on the balance of probabilities, that the development was lawful at the time of the LDC application. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. Section 191(2)(a) of the 1990 Act provides that uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether

because they did not involve development or require planning permission, or because the time to take enforcement action has expired or for any other reason.

6. Planning permission (ref W89/1153) was granted on 4 August 1989 (“the 1989 permission”) for the “*Conversion, alteration & extension of barn to form dwelling*”, subject to conditions. Condition 3 limited occupancy to Miss J E Horwood and thereafter to a person solely or mainly employed or last employed in the locality in agriculture, forestry, the breeding of horses, or a dependant of such a person residing with him or her, or a widow or widower of such a person.
7. The appellant does not contend that there has been a breach of condition 3 for a period of ten years or more, as Miss J E Horwood lived in the property until shortly before the appellant’s purchase of it. Instead, the appellant’s case is that the “as built” development was constructed so materially different to what was approved that it did not implement the 1989 permission and therefore its conditions do not bite. Consequently, it is argued, that having been built without planning permission it became immune from enforcement action four years after it was substantially completed in 1990.
8. The appellant has provided the plan approved under the 1989 permission which shows the elevations and the internal floor plans. The differences between the existing development and the approved plans are:
  - Conservatory is located on the south-east corner, and not the south-west corner as approved;
  - Timber porch has been constructed over the front entrance on the south-west corner, where the conservatory was shown on the approved plans;
  - Timber canopy has been constructed on the north-west corner;
  - Chimney installed on the incorrect part of the roof;
  - An additional roof light inserted into the north facing roof slope;
  - Pitch of the gable on the north elevation is shallower than approved; and
  - Changes to the internal layout
9. The appellant has referred to various case law including *Handoll*<sup>1</sup>, where the Court held that what has to be considered is whether the differences between what was granted approval and what was constructed on site are so significant as to be considered material. Each case is therefore different and has to be assessed individually on a fact and degree basis. Advice in the Planning Practice Guidance<sup>2</sup> also sets out that there is no statutory definition of “non-material” as it will be dependent on the context of the overall scheme. It further sets out that an amendment that is non-material in one context may be material in another.
10. The case of *Commercial Land*<sup>3</sup> also assists in this context as it was held that a material operation comprised in the development should be considered both in

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<sup>1</sup> Handoll and Suddick v Warner & Goodman & Street & East Lindsay DC [1995] JPL 930

<sup>2</sup> Paragraph: 002 Reference ID: 17a-002-2014-0306

<sup>3</sup> Commercial Land Ltd v SSTLR & Kensington and Chelsea RBC [2002] EWHC 1264 (Admin), [2003] JPL 358

terms of the differences and also the significance of those differences. Similarities and the degree of compliance with the approved plans were also relevant.

11. The appeal site is located in a rural location where development is sporadic with very few buildings in the immediate vicinity. The property is accessed from the highway via a narrow track and there are several tall trees within and immediately adjacent to the appeal site. Consequently, the dwelling is well screened from view from outside the appeal site as well as from areas within the site itself.
12. The appellant concedes that the changes comprising the additional roof light, position of the chimney, pitch of the gable on the north elevation, and internal alterations are not as significant as the other differences listed above. I concur with this view and find that these changes, either individually or cumulatively, are far from being significant and could not reasonably be considered as being material.
13. Turning firstly to the conservatory, whilst there are no dimensions shown and it is not possible to accurately scale the from drawing approved under the 1989 permission, the as-built conservatory is the same shape and approximately the same size as that which was approved. It is also still located on the southern elevation. The only change therefore is its siting towards the eastern end of the southern elevation, accessed from the sitting room, and not around the door into the kitchen at the western end of the elevation.
14. Whilst there is no doubt that the conservatory is not in the approved position, I do not find that its location at the opposite end of the southern elevation to be so significant as to be considered material. The same can also be said for the small timber canopy that has been erected around the door into the kitchen on the southern elevation, given its limited impact on the visual appearance of the property.
15. The final difference highlighted by the appellant is the open sided timber canopy located towards the western end of the northern elevation. This canopy very much appears as an external addition to the building, akin to an external log store. The structure amounts to an open sided timber frame with a tiled roof that is supported by two timber posts. In my judgment it does not have a significant impact on the overall development to convert the existing barn to a dwelling.
16. As set out in *Commercial Land*, as well as highlighting any differences and the significance of those differences, the similarities and the degree of compliance with the approved plans must also be considered. The 1989 permission authorised the “*conversion, alteration & extension of barn to form dwelling*”. It is clear that the barn was converted to a dwelling and that the alteration and extension of it was also carried out in relation to that conversion.
17. Those alterations and extensions amounted to the erection of a conservatory, the addition of a gable to the north elevation, addition of a chimney, and three roof lights on the south elevation. Those works have all been carried out, albeit with the conservatory being re-positioned and very minor changes to the chimney, gable, and rooflights. There is also no dispute that the dwelling is in the correct location nor that there has been any increase in the internal floor space.
18. In my view, despite the aforementioned changes the ordinary person “in the street” would still identify the development as that which was approved by the 1989 permission. As a matter of fact and degree, the dwelling still retains its overall

external appearance and is of the same size and in the same location. Overall, it remains identifiable from the approved drawings. It therefore follows that I find that the differences between the approved scheme and the development that has been undertaken are not material. This is the case whether the differences are assessed individually or cumulatively. The development undertaken could have been held to have fallen within the terms of section 96A of the 1990 Act, had it been relevant at the time.

19. Having regard to all the circumstances and matters raised, I conclude, as a matter of fact and degree, that the development accords with what was approved under the 1989 permission. It follows that condition 3 of that permission which limited the occupancy of the dwelling remains in force.

### **Conclusion**

20. 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 retention of an open market dwelling was well-founded and that the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*David Jones*

INSPECTOR