Planning Inspectorate

Appeal Decision

Site visit made on 12 August 2026

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2026

Appeal Ref: APP/D3125/X/25/3375634
Sturt Farm, Oxford Road, Burford OX18 4ET

- 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 S Fitzsimmons (Sturt Farm Burford Ltd) against the decision of West Oxfordshire District Council.
- The application ref 25/01131/CLE, dated 30 April 2025, was refused by notice dated 11 September 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is the use of the identified barn for agriculture.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by West Oxfordshire District Council against Mr S Fitzsimmons (Sturt Farm Burford Ltd). This application is the subject of a separate decision.

Preliminary Matter

3. The description of the development for which a LDC is sought is generally taken from the application form. However, the relevant section of that form states "*Please refer to covering letter*". The covering letter sets out that the purpose of the LDC application is to establish that the lawful use of the identified barn is agriculture. This is also repeated on the Council's decision notice. Consequently, I have used that description in the banner header above.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded.

Reasons

5. Section 191(1)(a) of the Town and Country Planning Act 1990 ("the 1990 Act") provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission

or because the time for enforcement action has expired or for any other reason), and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. 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 if sufficiently precise and unambiguous, it should be accepted.

7. The appeal relates to the existing use of a building located towards the centre of the wider site known as Sturt Farm. Many of the original farm buildings on the wider site have been converted into residential dwellings, resulting in there being very few agricultural buildings remaining. The appeal building itself is constructed in blockwork with an asymmetrical pitched roof. Both gable ends of the building are rendered. The appeal site also comprises a small parcel of land located immediately in front of the south-west facing elevation of the building which is enclosed at either end by timber post and rail fencing.

8. The appellant contends that the existing use of the appeal building is agricultural and is a livestock building having previously been used as stabling for deer. Although the use of the building as stabling for deer ceased in 2016 after the site was purchased by Sturt Farm Burford Ltd, the appellant states that the building has continued in agricultural use. This has included use as general agricultural storage of feed and bedding for animals kept on the land, in particular pigs, chicken, sheep and cattle. More recently, the appellant sets out that the building has been used for the storage of building materials and tools in relation to the conversion of adjoining buildings which benefit from planning permission.

9. The Council's single reason for refusing to grant a LDC as set out on the decision notice was "*The building falls within an area for which planning permission was granted under application 19/01515/PN56 which has subsequently been implemented. As such, a new "planning chapter" has commenced and any pre-existing lawful use has been extinguished*".

10. On 11 July 2019 prior approval[1] ("the 2019 prior approval") was granted for the "*Conversion of barns 8,10 and 12 to create four dwellings".* Barn 8 is the building immediately to the north of the appeal building. Although the application relates to the conversion of the adjacent building, the approved plans[2] detailed that the appeal building was to be demolished and that the approval would comprise part of the land on which the appeal building stands. The Council consider that as Barn 8 has now been converted and is in residential use, the 2019 prior approval has been implemented and a new planning unit created which effectively extinguishes any previous lawful use of that land.

11. However, planning permission[3] was subsequently granted on 22 November 2024 ("the 2024 permission") for the "*Conversion of barn to create dwelling with alterations to internal layout, fenestration and doors, and provision of associated*

[1] Council Ref: 19/01515/PN56
[2] Plans 005A and 006A
[3] Council Ref: 24/02076/FUL

garden and parking facilities (Retrospective)". The plans approved under the 2024 permission did not include the demolition of the appeal building, showed the garden area to be situated to the front (north-east) of Barn 8, and did not include the appeal building or the land on which it sits within its red line boundary.

12. From the available evidence and my own observations during the site visit, it appears clear that the 2024 permission has been implemented and built out. Put simply, I find that the conversion of Barn 8 was authorised by the 2024 permission, and as the appeal building falls outside of the red line area it is unaffected by it. Accordingly, the 2019 prior approval and 2024 permission are of no relevance when determining the existing use of the appeal building.

13. Through the appeal submissions, the Council has also raised a further matter which is that the appeal building is a new building. It is argued that the original stable building was demolished and subsequently replaced with the building that now exists on site, with that building not being used for, or being suitable for, agricultural purposes. The appellant argues that the works undertaken to the building amounted only to internal works, the blocking of openings, and re-roofing and therefore the original building remains.

14. I find no reason to disagree with the appellant's contention that the "original" building, that being the building prior to any works being undertaken to it, was in agricultural use for the stabling of deer and/or the storage of animal feed and bedding. This is further supported by the Statutory Declaration (SD) of John Patrick Mervyn Cook, the previous owner of the appeal site, dated 3 June 2016. In his SD Mr Cook set out that the appeal building was used as a livestock barn between August 1999 to the date of the SD. The building is also shown in some of the photographs[4] produced by the Council that were taken in February 2020. At that point in time the building was of modest height and is of a construction and appearance that is clearly conducive to an agricultural use.

15. It is the Council's position that at some point after February 2020 significant works took place which have resulted in the erection of a new building. It is clear when comparing the building in the Council's photographs from February 2020 to that which exists now, that the works go far beyond what could reasonably be described as the alterations or re-modelling of an existing building.

16. The height of the building has quite obviously been raised, along with the construction of an entirely new asymmetrical roof which bears no resemblance to that which existed previously. The building has also been extended slightly to its rear so that it is now physically attached to the residential property authorised under the 2024 permission.

17. Regarding the external walls, it appears from photographs[5] produced by the Council that, albeit raised in height, the original south-east gable wall and a small section of wall in the south-eastern corner of the building have been retained. However, from the evidence before me and considering my observations on site, in my judgment very little, if any, of the rest of the external walls of the building are original.

[4] Appendix 2c of the Council's Statement of Case
[5] Appendix 3g of the Council's Statement of Case

18. It was evident from my site visit that the walls were insulated and incorporated new openings, including a domestic style window frame and glazing in the north-western gable end. When viewed internally the external blockwork walls appeared newly erected and were distinctly different in appearance to parts of the original walls shown in the Council's photographs as described above. The available evidence indicates that very little of the "original" building remains.

19. Internally the building includes a toilet, sink, and electrics. Blockwork walls had also been erected internally and whilst they did not extend all the way up to the new roof, they nevertheless divided the building into different rooms or sections. As a result, the layout was not one which I would commonly associate with the keeping of animals or an agricultural use.

20. It was established in the case of *Oates*[6] that it was possible to conclude that there was a new building even where parts of the old building remained. For the reasons set out above I find, as a matter of fact and degree, that following significant works that took place post February 2020, the resulting building is physically a "new" building and the original building has to all intents and purposes ceased to exist, albeit some elements have been retained.

21. It was also held in *Oates* that lawful use rights attached to a building are lost when the building ceases to exist as such and is replaced. Consequently, any lawful use rights attached to the "original" building at the appeal site have been lost.

22. Both parties have referred to the case of *Jennings Motors*[7] in respect of whether the works have instigated a new planning chapter. In *Jennings Motors* Lord Denning MR suggested that the theory that a new building or change of use must create a new planning unit should be discarded in favour of considering whether a new chapter in the planning history is opened:

    "*This may take place where there is a radical change in the nature of the buildings on the site or the uses to which they are put – so radical that it can be looked upon as a fresh start altogether in the character of the site."*

23. It was therefore held in *Jennings Motors* that as a matter of fact and degree there would need to be a total change in the physical nature of the premises which was inconsistent with the preservation of the prior existing use. In other words, something significant must happen to extinguish existing development rights.

24. For the reasons I have already set out, I have found that the original building has ceased to exist and what exists on site now is a "new" building. Furthermore, in my planning judgment, the change in the physical nature of the premises is such that it must be looked upon as a fresh start altogether. The physical appearance and character of the building is markedly different to the building which previously stood on the site and, particularly given the domestic style window and other openings along with its internal layout, is in my view inconsistent with the prior existing use of the previous building.

25. In terms of the actual existing use of the new building, there is simply no evidence of any actual agricultural use of the building, and any agricultural activities seem to have ceased many years ago when the previous building ceased to exist. Beyond an acknowledgement that the building has been used to store building materials

[6] Oates v SSCLG & Canterbury CC [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251
[7] Jennings Motors Ltd v SSE & New Forest DC [1982] 2 WLR 131; [1982] JPL 181

and tools in association with the conversion of nearby buildings, there is scant evidence of any actual agricultural use of the "new" building which was constructed at some point after February 2020. The Council's records from site visits carried out in both February 2024 and June 2025, the latter being shortly after the submission of the LDC application, detail that the building was being used for the storage of such materials at the time.

26. Whilst the appellant argues that the storage of those materials was temporary, it remains the case that the appellant has not provided any compelling evidence to demonstrate an agricultural use of the "new" building. As a result, the appellant has not shown, on balance of probabilities, that there is an existing agricultural use of the current building.

27. The appellant has also referred to section 55(2)(e) of the 1990 Act which sets out that the following shall not be taken for the purposes of the Act to involve development of the land:

"*The use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used*".

28. Whilst by virtue of section 55(2)(e) you can always revert to an agricultural use, the building doesn't evidence any actual existing use for agriculture at the date of the LDC application. The Council's decision is therefore well-founded albeit for different reasons from that given on the decision notice, and the appeal should fail.

Conclusion

29. 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 existing use of the identified barn for agriculture 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