Planning Inspectorate

Appeal Decision

Site visit made on 4 November 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2026

Appeal Ref: APP/K2420/X/25/3373915
Trilogee Stud, Whittington Lane, Leicestershire LE67 1AL

- 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 Ms Melanie Brewster of Thortonbury Limited against the decision of Hinckley and Bosworth Borough Council.
- The application ref 25/00490/CLE, dated 15 May 2025, was refused by notice dated 8 July 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 use as a single dwellinghouse.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address from the site location provided on the application form. The appellant also described the site as 'Land at Thornton Lane/Reservoir Road, Thornton, known as 'Thortonbury' but previously known under business name of 'Trilogee Stud' and identifies it as 'Whittington Stables, Whittington Lane, Thornton, Coalville, LE67 1AL' on their appeal form.

3. The appellant ticked 'an existing use' and identified the relevant use class as C3 dwellinghouses on their application form. The grounds for the application are 'The change of use to use as a single dwelling house began more than four years before the date of this application.' The application description refers to the Planning Statement, which describes the application as 'for a certificate of lawful existing use or development (CLEUD) for an existing residential property at Thortonbury Limited ('Thortonbury'), Thornton Lane, Thornton, Leicestershire, LE67 1AL'. It states that the evidence presented within the application demonstrates that part of the existing consented stables building at the above premises changed use to a single dwellinghouse (Use Class C3) more than 4 years prior to 25th April 2024 [sic]. I have therefore used 'use as a single dwellinghouse' in the banner heading above.

4. The block plan draws a red line around a substantial area, which includes buildings, a manège and fields. The statement sets out that the stables are comprised of two buildings: Stable 1, a converted agricultural building and Stable 2, a later addition purpose-built stables block which lies to the north-west of Stable 1, between Stable 1 and the manège. The dwelling subject to the application is stated to be contained within a single storey side extension on the north-eastern side of Stable 2. It is clear from the submissions that it is the use of the single

storey side extension as a single dwellinghouse that the appellant is seeking a certificate for and I shall consider the appeal on that basis.

Main Issue

5. The main issue of the appeal is whether the Council's decision to refuse the application is well-founded.

Reasons

6. An application under section 191(1)(a) of the Act[1] seeks to establish whether any existing use of buildings or other land is lawful. Section 191(4) sets out that if on application under this section, 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.

7. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) 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 for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law.

8. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would have been lawful at the date of the 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.

9. The appeal site comprises a substantial area, with stables constructed of breeze block, wooden cladding and corrugated metal roof sheets with roof lights. The main building is used as a stables, with a manège to the rear. The dwellinghouse comprises an extension which is accessed from the stables, with double doors to the rear, opening out towards the manège. The residential accommodation comprises a bathroom, with shower, two bedrooms, a sitting room (by the front door) and an open plan living area with kitchen and dining table. The accommodation affords the occupant the facilities needed for day to day living and, in my judgement, is a dwellinghouse.

10. The main thrust of the appellant's case is that the change of use of the extension to a single dwellinghouse occurred from at least November 2019, meaning that by November 2023, the use of the stable as a single dwellinghouse was lawful and immune from enforcement action.

Immunity period

11. Section 171B of the Act sets out time limits for the taking of enforcement action:

    - Section 171B(1) concerns operational development, which is not relevant to this case;

[1] Town and Country Planning Act 1990 (as amended)

- Section 171B(2) sets out that, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years;
- Section 171B(3) sets out that, in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

12. The Levelling Up and Regeneration Act 2023 (the LURA), changed the time limits for taking enforcement action set out in section 171B of the Act so that the time limit under sections 171B(1) and 171B(2) is now ten years, rather than four years. However, these changes are subject to transitional provisions, meaning that the ten year immunity period only applies where the development took place on or after 25 April 2024. Where the development took place before 25 April 2024, the relevant immunity period is four years.

13. The appellant states that in November 2015, planning permission was granted under 15/00820/FUL to convert and extend an agricultural building to create stables and for the construction of a manège along with hard surfaced car parking and turning areas and the change of use of land for the keeping of horses. It is stated that it is this permission that established the equestrian use of the site and that it is the side section on the north-eastern side of Stable 2 which was constructed for use as residential accommodation.

14. Section 171B(2) is disapplied in cases where the building was constructed unlawfully and used as a single dwellinghouse from the outset, meaning that there was no change of use. However, in August 2019, a retrospective planning permission was granted for the side extension to the stables. Retrospective applications for the single storey side extension, reference 18/00594/FUL and 18/00921/FUL were both refused, prior to the grant of permission 19/00715/FUL (the 2019 Permission) due to the provision of overnight accommodation.

15. While I do not have full details of application 19/00715/FUL, within the Delegated Report, it is stated that '*the details submitted indicated that the applicant no longer proposes overnight accommodation*.' The Officer goes on to explain '*From the site visit, the applicant has now removed all evidence of the extension being used in a residential capacity. The fitted kitchen units, fridge-freezer, hob/oven and washing equipment have been removed and the glass patio doors replaced with a steel roller shutter security door*…'. It is further stated that *'All of the rooms during the site visit were seen to be used for storage associated with the permitted use of the building*…'.

16. Although it appears that the extension was originally constructed with the facilities required for day-to-day living, even if it was used as a single dwellinghouse from the outset, the 2019 Permission has since been granted. On the Council's evidence, the residential use of the extension had ceased by the time that permission was granted, and an alternative use begun. The subsequent use of the extension as a single dwellinghouse would therefore have constituted a change of use to a single dwellinghouse, which would indicate that section 171B(2) would apply.

17. Where there has been positive deception in matters integral to the planning process which are directly intended to and did undermine the regular operation of

that process, an individual cannot rely on the time limits for taking enforcement action in section 171B. Part of the Council's case is that even if the building has been continuously occupied for a period of four years, there has been concealment of the change of use to a single dwellinghouse by positive deception, so as to deprive the appellant of the benefit of the four year limitation period in section 171B(2) of the Act.

18. Given the above, this appeal will turn on:

- Whether the appellant can show on the balance of probabilities that the material change of use of the building began on or before 15 May 2021[2] and, if so, whether it continued without significant interruption for at least 4 years thereafter.
- Whether there has been concealment of the change of use to a single dwellinghouse by positive deception, so as to deprive the appellant of the benefit of the four year limitation period in section 171B(2) of the Act.

19. A lawful use must be 'affirmatively established'. To succeed in this regard, it is not necessary for the appellant to provide daily proof of occupation over the entire immunity period. The test is whether the **use** continued throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. Use is not the same thing as occupation, however, significant periods of non-occupation, are likely to be an important consideration and may result in the immunity clock starting again.

20. Within their application form, the appellant states that the use or activity was begun on 1 November 2019. Within their Planning Statement, it is stated that the side extension has been used as a residential dwelling since 2019. Within their Final Comments, the appellant suggests that 'it has been known to the LPA and the Parish Council that the site has been used for equestrian purposes with workers living on site in various ways since at 2015 [sic], with this becoming formal and permanent after the construction of the single storey side extension around 2017.'

21. Within correspondence to the Council, the appellant states that 'there has been no change in use since 2015'. They refer to permission being granted in approximately 2015 for an extension to the side of the stables and that, '*Since then, the building has been in use'*. It is stated that '*there is a kitchen which was installed immediately after the construction and along with a bathroom. There has also been a caravan (not static) on site for sleeping*.'

22. The Council suggests that the structure was not built until after 20 April 2016, as confirmed by historic satellite imagery. A signed statement of an individual, whom I shall refer to as JH, suggests the extension was built around 2017. Although these dates are well before 15 May 2021, I find the appellant's evidence as to when the material change of use of the building occurred to be contradictory and imprecise.

23. The appellant has provided me with a lease, dated 1 November 2017, between the appellant and an individual (and another), whom I shall refer to as AN. Within the lease, the permitted use is identified as 'use as an agricultural building Sui Generis under The Town and Country Planning (Use Classes) Order 1987.' The term of the

[2] Namely 4 years prior to the date of the application.

lease is 4 years, starting on 1 January 2018 and ending on 31 December 2021. Although the lease shows that AN had the right to occupy the site, it does not show that they used the extension as a dwelling. Indeed, the lease included a clause which provides that the Tenant must not use the Property other than for the Permitted Use.

24. The appellant states within their Planning Statement that it is known that AN and their children occupied the side extension (residential element) [sic] during 2019, whereas within their appeal statement, they state that AN occupied it from at least 2018. However, the appellant does not state how they know that AN and their children occupied the side extension, nor do they explain how they occupied it. If the extension was used by AN and their children for welfare purposes during the day, for example, but they stayed elsewhere at night, whether within the appeal site or not[3], it is unlikely that the Council could have taken enforcement action at that time.

25. A further lease has been provided, dated 1 April 2019, between the appellant and an individual, whom I shall refer to as SG. The term of the lease is '*6 months commencing 1st April 2019. Fixed term pending*' and, as with the previous lease, it identifies the use as an agricultural building and includes a clause that the Tenant must not use the Property other than for the Permitted Use. Although the lease shows that SG had the right to occupy the site, it does not show that they used the extension as a dwelling.

26. The appellant states that SG began running their business from the site in April 2019 in accordance with the lease and that by November 2019, they were using the premises as their permanent residence. It is suggested that the premises was used as an equestrian facility and permanent dwelling by SG and their partner, whom I shall refer to as TC, until they were evicted from the property by the appellant on 17 October 2024, following the issue of an eviction notice.

27. In support of their case, the appellant has provided a claim form, dated 25 October 2024, and associated court documents, including a witness statement. Within the claim form, it is stated that they (the Claimant, SG) have been unlawfully removed from their residential and business address. They state they have been a 'tenant at will' since the termination of their lease on 1 April 2024. Within the witness statement, SG states that they resided at the property since April 2019 and, on 10 October 2024, they received an email from the appellant advising they should vacate the property on 16 October 2024. It seems the locks were change on 17 October 2024, preventing SG from accessing the property.

28. Although the submitted documents support the appellant's case that the appeal site has been used for residential purposes, SG does not specify within the documentation precisely where within the site they resided from April 2019. An email from one of the previous tenants, TC, states that from late November 2019, they lived in their horsebox at the site, with the appellant's consent, until they purchased a touring caravan. They state that they then lived between the touring caravan and sofa surfing at other houses until November 2021, when they moved into the main building, which, up until this point (was) being used solely as a storage area for tack and equipment.

[3] In a caravan, for example.

29. I recognise that the email from TC is not signed or witnessed and no sanctions[4] apply and so this limits the weight that I afford the document. Nonetheless, the use of the building for storage is consistent with the Council's observations during its visit referred to in the delegated report for application 19/00715/FUL.

30. The appellant suggests that it would make no sense that SG and TC would live in a horse box on the site when they had a fully functioning dwelling that had been vacated by the original tenant, AN. However, SG's tenancy commenced in April 2019. Application 18/00921/FUL was refused on 4 December 2018 and application 19/00715/FUL was approved on 21 August 2019. The Council advise that its site visit was undertaken between 26 June 2019 and 21 August 2019. At some point between its refusal of the application in December 2018 and its visit to the site in the summer of 2019, kitchen facilities and washing equipment were removed and the rooms used for storage. It would therefore make sense that, if SG had resided at the site since April 2019 (as stated in SG's witness statement) that they lived elsewhere within it, since the extension did not (at least when the Council visited) possess the facilities needed for day-to-day living.

31. An email, stated to be dated 8 November 2021 from the appellant, refers to the kitchen still being in storage, and points towards there being no floor covering, as well as a window roller shutter. The appellant does not dispute the date of the email but rather suggests that it related to potential changes to the kitchen and wider living area that would be required if the free-standing kitchen was to be removed and the original fitted kitchen was to be installed. However, this explanation appears inconsistent other evidence.

32. In their Statement of Case, for example, the appellant states that SG and TC had requested to use their own free-standing kitchen (presumably to avoid needing to store it elsewhere) and therefore the applicant [sic] had removed the fitted kitchen and placed it in storage when the tenants moved in in November 2019. However, the reference in the email dated 8 November 2021 to there being 'no barrier to fitting this on the planning consent' is a curious one, if there was already a kitchen in situ.

33. The planning permission was granted in August 2019 without a kitchen in situ (as detailed in the Delegated Report). Within their Statement of Case, the appellant advised that prior to SG and TC moving into the property in November 2015 (which presumably is meant to refer to November 2019), there had been a fitted kitchen, used by the first tenant, AN. If the appellant's account of this is correct, it would mean they had already reinstated the fitted kitchen following the approval in August 2019 (or at least following the Council's visit to the site between June and August 2019). It makes no sense for the appellant to be concerned about the planning consent if they had already reinstalled the fitted kitchen.

34. Furthermore, a photograph provided by the appellant, dated April 2024, shows the free-standing kitchen, not the fitted kitchen in place. If the email dated 8 November 2021 referred to replacing the free-standing kitchen with the fitted kitchen, the appellant has not explained why this was not carried out '*before Christmas'* in line with the email. I do not find this to be a plausible explanation and consider it more likely that the kitchen was simply not present on 8 November 2021, having been removed in order to secure the 2019 Permission.

[4] As they would to a Statutory Declaration made under the provisions of the Statutory Declarations Act 1835, for example.

35. The appellant advises that there is animosity between the appellant and their former tenants SG and TC. They suggest that, whether the former tenants had a somewhat ad-hoc lifestyle or not does not disprove that the dwellinghouse was their main residence that they paid rent and utility bills on. However, details of rent payments and utility bills have not been provided. Furthermore, payment of rent and utility bills alone is unlikely to demonstrate the extension was being used as a dwellinghouse during a tenant's occupation of it because the site was being used for the keeping of horses. The keeping of horses is likely to require water and electricity, and so utility bills would have been generated whether the extension was used as a dwellinghouse or not.

36. Rent would also have been payable in respect of the permitted use of the site, which in the case of the agreements with AN and SG was agricultural (notwithstanding evidence that the site has been used for the keeping of horses) and in the case of JT is equestrian. If the tenants were not occupying the extension as a dwellinghouse, whether because they were living off-site or using facilities elsewhere within the site, for example, in a horsebox or caravan, even if they were paying rent and bills, this could have interrupted the use. How the tenants actually used the site is therefore of importance.

37. Following their eviction in October 2024, TC states that significant works were carried out the property. Photographs of the property have been provided which show the extension without a kitchen or flooring. The appellant does not dispute that works were required after SG and TC vacated the site but states that a new tenant signed a lease to operate a livery and horse breeding business from the site and live permanently on the site in the residential property from 1 January 2025.

38. A lease has been provided, dated 1 January 2025, between the appellant and an individual, whom I shall refer to as JT. The term of the lease is 1 year, commencing 1 January 2025. The Permitted Use is identified as 'Use as an equestrian business Sui Generis under The Town and Country Planning (Use Classes) Order 1987' and includes a clause that the Tenant must not use the Property other than for the Permitted Use.

39. The appellant states that JT signed a lease to operate a livery and horse breeding business from the site and live permanently on the site in the residential property from 1 January 2025. The appellant states that they (JT) have been in situ since that time. However, it is not clear what they mean by the term 'in situ'. It seems unlikely (though of course not impossible) that the tenant would have signed the lease and moved in on New Year's Day. It is also not clear how the appellant knows how JT used the site once they had signed the lease, or how often they visited the site.

40. It is therefore not clear whether the gap in occupation between SG vacating the extension and JT using the extension as a dwellinghouse would have been significant, resulting in a significant interruption to the use, such that the immunity clock would have started again. While the appellant does not rely on this period in support of their case, it is less than four years before the date of the application and so it could be of relevance, if I find the use had not already become lawful by 1 January 2025.

41. Within the signed statement of JH, they state that they were involved in the construction of the side extension built around 2017 and that '*the property has*

been used as a residence by tenants for many years, definitely since 2018 or even before this'. JH states that AN, SG and TC were former tenants and used the property known as Whittington Stables for their equestrian businesses and residences and that they know this as they regularly attended the property on business and for social purposes. It is also stated that AN used the fitted kitchen supplied and SG and TC used their own free-standing kitchen during their tenancy.

42. However, as set out above, their suggestion that the extension was built around 2017 appears inconsistent with the appellant's assertion that the use (of the site) has been unchanged since 2015 which when [sic] the extension was built, fitted out for residential use and tenanted by AN. Furthermore, they describe 'the property' as Wittington Stables, which suggests that they are referring to the entirety of the site, rather than just the side extension.

43. Although JH states they 'regularly attended' the property, it is not clear what they mean by 'regularly', or the frequency with which they saw inside the extension. Their suggestion that the property has been used as a residence since 2018 (or before) is also contradicted by the Council's evidence, which indicates that kitchen facilities and washing equipment were removed at some point in 2019 and the extension used for storage in association with the permitted use of the building.

44. A signed statement by an individual, whom I shall refer to as NG, provides details of who they believe occupied the property and when. They state that, aside from short periods of maintenance, the property has been used for residential and business purposes continuously since 1 November 2017. Although the details of who occupied the premises when are broadly consistent with the appellant's case, it is not clear how NG knows who occupied the premises or when, in such detail. While NG may believe the contents of their statement to be true, it is contradicted by the Council's evidence of the use of the extension in 2019, which was for storage associated with the permitted use of the building.

45. The statement by JH is not witnessed and, while the statement by NG is witnessed, neither statement is sworn and so no sanctions would apply. Given this, the imprecision in the statements and contradictory evidence provided by the Council, I afford these statements very limited weight.

46. There is limited evidence as to how any of the tenants have actually used the premises. While the nature of the businesses being operated from the site may have necessitated round the clock care of the horses at certain times, this is not itself evidence that tenants have lived in the extension. Tenancy agreements show that the appeal site was rented out to the named individuals (albeit not all of the documents provided are signed). However, none of the agreements are for residential use (though I note the 2025 agreement includes an ANNEXURE with a Schedule of Condition, identifying the condition of kitchen units, the hob, cooker, bathroom and so on).

47. While there is evidence that the appeal site has been used for residential purposes in some way, I find the appellant's evidence regarding the extension unclear and contradictory. It is not clear how often the appellant, or others[5] visited the appeal site or the extension during a tenant's occupation of it and therefore the extent to which they know how the appeal site has been used. Furthermore, evidence provided by the Council and an interested party contradicts the appellant's case

[5] JH and NG

and points towards there being some reliance on a horsebox and/or caravan during the relevant period.

48. The appellant has not discharged their burden of proof and has not shown, on the balance of probabilities, that the material change of use of the building occurred on or before 15 May 2021 and continued without significant interruption for at least four years thereafter. Given my findings above, it is not necessary for me to consider whether there has been concealment of the change of use to a single dwellinghouse by positive deception, so as to deprive the appellant of the benefit of the four year limitation period in section 171B(2) of the Act.

49. Thus, for the reasons given above, the appeal must fail.

Conclusion

50. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a single dwellinghouse is 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).

M Savage

INSPECTOR