Planning Statement

8 January 2026

Address:
Land to the North of
Meadowlea Close
West Drayton
Hillingdon
UB7 0AF

Applicant: MR P DELANEY

Proposal:
A certificate of lawful use to confirm the Material Change of use of the land to a commercial Equestrian Use, including the erection of a field stable for the keeping of horses, storage buildings used for equestrian storage, caravan for day use, under Section 191 (a) of the Town and Country Planning Act

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There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that:

(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990; or

(b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.

Legislation

1. The evidence supplied by an application for a Certificate of Lawfulness of Development (existing) must be sufficiently precise and unambiguous, on the balance of probabilities, to demonstrate that the change of use of the land has occurred more than 10 years prior to the date of submission.
2. As such, in order to determine whether the change in land use is immune from enforcement action, the 10-year limitation period needs to be applied pursuant to Section 171B (3) of the Planning and Compensation Act 1991. (transition period)
3. Section 191 of the Town and Country Planning Act (as amended by S10(1) of the Planning and Compensation Act 1991) states:
4. If any person wishes to ascertain whether

(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 than in force

If the local planning authority are provided with the information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted, they shall issue a certificate to that effect.

In any other case they shall refuse the application. Under Section 171B (3) of the Town and Country Planning Act 1990, a lawful development certificate can be granted where there has been a breach of planning control consisting of a breach of a planning condition.

No enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach of any given condition of a planning permission.

191(1) Certificate & Timeframe

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

F1[171B Time limits.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Subject to (levelling up Act 2023) changes to the 4 year rule.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

Levelling-up and Regeneration Act 2023

The bill recently received Royal ascent and became an Act of parliament and subsequently carries the weight of law.

Within the Act is the eventual removal of the 4 year rule with all lawful development becoming immune from enforcement after a 10 year period.

Transition Period

Advice from Counsel January 2024, was that whilst the bill has become and Act, there is a transition period with secondary legislation required to be passed before the complete abolition of the current 4 year period, Stephen Cottle of Garden Court Chambers wrote,

"4 yr rule still lives - because s 115 is in Pt 3 and provisions in Pt 3 not specified in s 255, not introduced by s. 255(3)(b) until regulations"

In addition a property becomes immune through the passage of time, not the issuance of a Certificate of Lawfulness, and so the legal advice is that where a property or use was immune from enforcement through the passage of time elapsed, at the point the bill passed in to an Act, then it will not suddenly become open to enforcement and will remain immune going forward under the Act. Section 255

SINCE THIS ADVICE, the effective date by which a breach would have been required to commence under the 4 year rule, is the 25 April 2024, becoming immune 4 years thereafter. If however the breach commenced on 26 April 2024, then it would require a 10 year use period to become immune from enforcement.

Section 15. Levelling-up and Regeneration Act 2023

Time limits for enforcement-

(1)In section 171B of TCPA 1990 (time limits), in subsection (1), for the words from "four years" to the end substitute—

"(a)in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and

(b)in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed."

(2)In that section, in subsection (2), for the words from "four years" to the end substitute—

"(a)in the case of a breach of planning control in England, ten years beginning with the date of the breach, and

(b)in the case of a breach of planning control in Wales, four years beginning with the date of the breach."

Planning History

There are no relevant planning application files listed on the Councils planning portal.

Enforcement Notices

There are no relevant planning application files listed on the Councils planning portal.

Evidential Test

The evidential test on which applications are judged, is the test of ‘balance of probability’.

The burden of proof lies solely with the applicant, and it is required to be precise clear and unambiguous, but only to the standard of ‘balance of probabilities’.

This burden of proof being significantly lower than the criminal standard of proof, being ‘beyond reasonable doubt’.

If a Local Planning Authority has **no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable,** there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

It is for the Local Planning Authority to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. The planning merits are not relevant at any stage in this particular application.

What is Evidence

Evidence, must be capable of cross examination and scrutiny and not be that of a personal opinion, unsworn anonymous objector offering unsubstantiated opinion and should not be a selective interpretation of partial evidence or implying negative inference where submission eveidence has a gap.

A Local Authority are at risk of a Full Application for Costs in any resulting appeal against the refusal to issue a certificate because they have acted unreasonably or unfairly in their assesment of the evidence or the burden of proof, or raised points on which they rely but have no evidence themselves to substantiate their adopted position, a mistake often made because the Council have misunderstood the burden of proof and the relevant legal test.

Legal Test - Balance of Probabilities

In another family case (*In re H (Minors) [1996] AC 563 at 586Opens in a new window*), Lord Nicholls explained that it was a flexible test:
"*The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the*

seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

Google Earth Imagery

The inclusion of the available Google Earth Imagery, is offered to substantiate the written statements made.

It is not intended to act as stand alone evidence, as it is recognised that Google Earth Images has limitations and can only speak to that specific moment in time.

Case Officers often try to assert that because there was no available Google Earth Image for a particular year, that this in someway undermines the years where there are available images, clearly this a flawed approach to examining the available evidence and whether there is any actual evidence that competes with the stated version of events, evidence meeting the test requirements.

Council Tax & Utility Bills

Local Planning Authorities regard the lack of registration for Council Tax or differing arrangements in relation to matters such as postal delivery or utility arrangements, incorrectly, as evidence against the use as a single dwelling house, a topic that has been addressed by numerous Planning Inspectors at appeal.

Mr Ascott has not registered the cottage for the purposes of Council Tax and does not pay separate Council Tax and offers no explanation in relation to his election not to register to pay council tax.

Council tax or the lack of payment of Council Tax is often mistakingly used by LPA to refuse S191 applications, I submit for the LPA consideration, two Inspectorate decisions where the non registration of Council tax and how bills are paid or arranged does not fall to confirm that a use has not occurred.

Appeal Ref: APP/L3245/X/19/3222768 Clematis Cottage, 4 Rudge Heath Road, Rudge Heath, Claverley WV5 7DJ

10. The Council confirmed that the property is not registered for Council Tax or electoral registration and no address is listed with the Royal Mail.

14. With regard to continuous residential use, the appellant has provided a statutory declaration describing his use of the property from 20 February 2008. There are no separate utility bills, which would provide evidence of use, as there are no separate meters from Clematis Cottage. However, the appellant has produced evidence from his Sky television bills. His partner pays a monthly subscription and the bills show she has an account, so it would appear that these are not one-off payments. The earliest bill is dated 28 June 2014, so this is before the relevant date.

15. The Council submit that the lack of an official correspondence address and no registration for Council Tax or for electoral purposes means that the property has only been used as ancillary

accommodation to Clematis Cottage. However, they have no evidence to demonstrate that this is the case, other than pointing out there are no separate utility meters, and the appellant states he has his own curtilage and his own parking area. In any event, it does not follow that non-payment of Council Tax and relying on another property for post means that the stables were not in residential use. It simply means the appellant chose, for whatever reason, not to pay tax and carry out these requirements. Furthermore, payment of rent in some accommodation often includes utilities but that does not mean that the use of the accommodation is not self-contained.

16. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by independent evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate, provided that it is sufficiently precise and unambiguous.[1]

17. From all the material before me it is concluded, on the balance of probabilities, that the use of the stables as a self-contained residential unit took place more than four years before the date of the application. There is no evidence to contradict the appellant's statutory declaration and the proving of relevant facts is precise and unambiguous.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the stables as a dwelling and the erection of a carport to the rear of the stables was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

The Full Decision is submitted.

Appeal Ref: APP/B3410/X/19/3239498 Annexe/Water Lodge, Lodge Hill, Tutbury, Burton-on-Trent, Staffordshire DE13 9HF

The inspector sets out the case and at

11. To ascertain the lawfulness of a material change of use, it is necessary to address whether the change of use has occurred as a matter of fact and degree. There is no dispute that Waterhouse and the appeal site are all owned by the appellant and that the overall site was in use as one dwelling house with its associated grounds prior to the conversion of the appeal building.

12. According to the appellant's Statutory Declaration (SD), she acquired Waterhouse in 2012 and at that time the word 'annexe' was used to describe the appeal property. In my experience, the difference between ancillary residential accommodation (an annexe) and the creation of a separate dwelling is often a fine line, depending crucially on-site specific factors, which in this case I consider to be as follows.

13. There is no dispute that the appeal property contains all of the facilities required for day-to-day private domestic existence, including a living area/bedroom, a shower room and kitchen…

14. **In this case the appeal property and Waterhouse sit on opposite sides of a parking area and access drive and that provides a degree of physical separation** even though they are in relatively close proximity…..

16. In addition, **the appeal property does not appear to have a separate electricity or water supply.** According to the AST, the rent was inclusive of all bills including Council Tax, therefore, there are no separate utility bills. Nevertheless, those arrangements are entirely typical of landlord/ tenant relationships. **How the landlord chooses to have the services supplied or charge for bills does not influence the fact that the building has been let out as a self-contained unit of residential accommodation.**

The Full Decision is submitted.

It is clear that PINs take a less onerous view when it comets the formal arrangement of utility bills and council tax for a property, preferring to correctly judge whether the material use has actually occurred in law.

It is clear that for the purposes of a use being lawful, it is not a requirement to register for Council tax or to have separate postal addresses or utility services/bills for that matter.

Deliberate Concealment

The are a number of leading Judicial judgements which have set out circumstances whereby lawfulness cannot be obtained through the passage of time, being centred upon the criminal act of deliberate concealment.

This is a very nuanced legal argument and is not as simple as carrying out operational development without telling anyone, namely the Council.

In the following cases, I shall set out the overriding principles around deliberate concealment, and carry out an assessment as to whether this application falls to be considered as such.

Welwyn Hatfield BC v SoS, UKSC (2011)

In this instance the landowner applied for an obtained planning permission for an agricultural barn.

It was judged that from the outset, the landowner had no intention of building the agricultural barn and deliberately set out to deceive the Council, by building what looked like a barn, but creating a house from the outset.

The principle this judgement set, known and referred to as the Welwyn principle, sets out how the Courts view deliberate deceit, not just a simple act of building something without planing permission. The deception being deliberate in the intent to subvert the planning process and fraudulently benefiting from that deceit.

Had Welwyn held an honest intention of building an agricultural barn, and at some point after finishing it and using it as such, the circumstances changed creating the need to convert to a single dwelling, then it is accepted that deceit and deliberate concealment would not have arisen.

Key Point - False Planning Submission

The second case which focuses on deliberate acts of deceit is known as the Fiddler case.

Fidler v Secretary of State for Communities and Local Government (2011)

Mr. Fidler built a mock-Tudor-style “castle” without planning permission in Surrey. To hide it, he erected a 40-foot high straw bale wall covered in tarpaulin around the construction, intending to conceal it from the local planning authority for over four years

It should be noted, that at the time Mr Fiddler carried out these works, there was no prior legal ruling or framework which made anything he did unlawful, but the Courts subsequently ruled against Mr Fiddler.

The Court of Appeal held that Mr. Fidler’s conduct constituted *deliberate deception*—a deliberate and positive act intended to mislead the authority—and therefore he could not claim immunity from enforcement, even after four years

Key Point - even in the absence of False Planning Submission, conduct can be deemed deliberate concealment

Summary

The application sites use for the purposes of equestrian and the siting of the caravan/s for day use, erection of stables and permanent structures ancillary to the equestrian use, do not fall foul of the principles of ‘Deliberate Concealment’.

Evidential Submissions -
'Sufficiently precise and unambiguous to the balance of probabilities'

Statutory Declarations

(1) Ms. Gloria Patricia Adkin (former owner) - Consisting of 23 pages

(2) Mr. Oliver Thompson (property agent) - Consisting of 3 pages

Summary of Evidence

(1) Ms. Gloria Patricia Adkin (former owner)

a) The author clearly sets out at Page 1 point's 1, 2 & 3, the period of ownership and clearly and precisely identifies the piece of land within their Exhibit 1.
b) At page 1 point 4 and 5 the author briefly describes a historical separation of the land following the residential development of land on the north side of Holloway lane, within this she clearly identifies existing access points to the land with a second access point being described at point 6 and shown on exhibit 2. These accesses have been in situ since the early 1990s, significantly longer than the maximum 10 year lawful period for any S191 Application.
c) At point 7 further reference is made to exhibit 2 to show and identify where the two day use caravans have been sited together with the position of the stables and buildings which are on the land.
d) At point 8, the owner sets out a non private, namely commercial use of the land (equestrian tenants) for the purposes of equestrian use, through the rental to third parties.
e) At point 9 the former owner clearly sets pout the uses which amount to an equestrian use and not simply the grazing of the land and crucially for a period in excess of 40 years.
f) At point 10 the author sets out what the buildings and caravans have been used for.
g) At point 11 the author references exhibit 3 being annotated Google Earth Imagery for the available online years, whereby the identified structures, caravans etc have been clearly identified together with the corresponding years, this being comprehensive and found from page 7 through to 23.
h) Finally the Author sets out at point 12 that during the last 40 years, the use of the land has only ever been a commercial equestrian use.

Conclusion

It is clear that the former owner has been precise and clear as to;

Identifying the land

Identifying and evidencing the use of the land

Setting out the duration of use in excess of 40 years, significantly longer than the required 10 year lawful period

(2) Mr. Oliver Thompson (property agent)

a) The Author sets out his professional capacity as a land agent and the involvement he had with the former owner (1) at Points 1, 2, and at point 3 he references the exhibit that identifies the property to which he is speaking.
b) At point 4 he sets out his first hand knowledge of the site following a site visit in 2012, he conducted in the course of his appointment as a land agent to advise the former owner (1), and confirms that the presence of

2 touring caravans
1 field shelter
1 storage building used for storage and feed
further field shelter building

c) At point 6 he sets out that he identifies the site as an equestrian site through its use

Conclusion

It is clear that the agent holds first hand knowledge for a period greater than 10 years and has;

Clearly and precisely identified the same piece of land

Identifying and evidencing the use of the land

Setting out the duration of use in excess of 13 years, materially longer than the required 10 year lawful period

Consultee & Public Comments

It is often the case, that Certificate of Existing Lawful Use applications attract comments that are either based upon planning merits, which are not relevant to this type of application, or are based on personal opinion, that does not reach the evidential burden or proof.

In the event that the LPA receive any counter information that they consider reaches the evidential burden, and on which they consider casts a doubt upon the facts as presented, then I as planning agent for the applicant, would welcome the opportunity to review and test the evidence prior to any decision being issued.

Conclusion

The applicant could seek to rely solely upon the single sworn statement of the former owner (1), which in and of itself discharges the burden of proof, but we also have a second declaration from a professional firm/person (2) which serves a corroborating evidence.

On the balance of probabilities, I consider the applicant, has discharged the burden of proof in this case, and that the lawful use as set out within the description proposal, is made and respectfully request that the Council issue the certificate confirming the same.