



## Appeal Decision

Inquiry held on 15 October 2024

Site visit made on 14 October 2024

**by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 1<sup>st</sup> November 2024**

**Appeal Ref: APP/F2415/X/23/3330809**

**Langton View Stables, Thorpe Langton Road, East Langton, Market  
Harborough LE16 7WD**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ruth Kitchen against the decision of Harborough District Council.
- The application ref 23/01162/CLU, dated 10 August 2023, was refused by notice dated 4 October 2023.
- The application was made under section 191(1)(a) of the 1990 Act.
- The use for which a certificate of lawful use or development is sought is existing use for the primary and permanent residential (C3) occupation of an existing building associated with Langton View Stables, Thorpe Langton Road, East Langton, Leicestershire, LE16 7WD.

### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

### Preliminary Matters

2. The Inquiry sat for one day and all oral evidence was affirmed at the Inquiry. At the request of the main parties, I carried out an accompanied site visit on the 14 October 2024. This appeal relates to an application for an LDC therefore my decision rest on the facts of the case, on relevant planning law and judicial authority.

### Background

3. The appeal building, as outlined in green on the location plan submitted with the LDC application, forms part of an 'L' shaped building. There is no dispute that the whole building was in use as stables and included groom's quarters prior to 2018. Those stables formed part of a small-scale livery business with 12 stables in total, a menage, horse walker, storage buildings and paddocks.
4. Planning permission for the erection of 6 stables and store was approved in 1995. Planning permission for additional buildings, extensions, the menage, floodlighting and commercial equestrian use was subsequently granted through several applications between 1996 and 2005. In 2012 the appellant submitted a planning application<sup>1</sup> for the siting of a temporary occupational caravan. It appears that the caravan had been stationed near to the appeal

<sup>1</sup> Ref No: 12/01457/FUL

building from 2007 for residential use by the appellant. That application was refused in 2013 and 2 further applications<sup>2</sup> relating to the siting of the caravan were also refused in 2014 and 2015. A related planning appeal<sup>3</sup> was refused in 2016 (the 2016 appeal).

5. In 2014 an enforcement notice (the 2014 notice) was issued covering the whole of the land associated with the equestrian business at the appeal building's location. The breach of planning control cited in the enforcement notice was "*Without planning permission, the change of use of the land from equestrian use to a mixed use equestrian and the stationing of mobile homes sited in the...*". The requirements of the 2014 notice are "*a) Cease the use of the land for the stationing of mobile homes and b) Remove the mobile homes and any associated fixtures and fittings from the land*".
6. Both parties were given the chance to make oral submissions as to whether the requirements of the 2014 notice have any implications, or not, in relation to this appeal. It is apparent that the requirements are targeted specifically at the stationing of mobile homes. Therefore, with regard to section 191(2)(b) of the 1990 Act the existing use that forms the LDC application cannot constitute a contravention of any of the requirements of the 2014 notice. I have dealt with the appeal on this basis.
7. In 2016 planning permission<sup>4</sup> was granted for the change of use of the stables to form rest room, kitchen and office facility. Attached to that planning permission (the 2016 permission) was a condition that stated that "*the conversion hereby approved shall be used as an ancillary rest room associated with the use of the wider site as Langton View Stables and shall not be occupied as a permanent dwelling*". A planning application<sup>5</sup> to change the use of equine stables to residential accommodation was refused in 2017 and the associated appeal<sup>6</sup> was dismissed on 10 January 2018 (the 2018 appeal). On the 25 January 2018 the Council utilised its powers under section 70A of the 1990 Act and refused to determine a planning application to remove the condition, cited above, attached to the 2016 permission.
8. The 2014 notice came into force on the 15 February 2014 and its requirements had not been complied with by the beginning of 2018. On the 15 May 2018 the High Court issued an Order that "By 4pm on 15 September 2018 the Defendant shall permanently remove the mobile home from Langton View Stables..."(the 2018 Order). The appellant has stated that the mobile home was removed from Langton View Stables on the 10 September 2018.

## **Main Issue**

9. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

## **Reasons**

10. The LDC application was submitted on 10 August 2023, and refused by the Council because it considered that "*Sufficient evidence exists to demonstrate that the activities of the applicant, on the balance of probability, represent a*

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<sup>2</sup> Ref Nos: 14/00042/FUL & 14/01054/FUL

<sup>3</sup> Ref No: APP/F2415/W/15/3070022

<sup>4</sup> Ref No: 16/00489/FUL

<sup>5</sup> Ref No: 16/02101/FUL

<sup>6</sup> Ref No: APP/F2415/W/17/3183759

*deliberate act of concealment such that the applicant has lost the immunity from enforcement action that they would otherwise have benefited from through the passage of time under Section 171B of the Town & Country Planning Act."*

11. The Council's Application Report states that "*While evidence exists to show that the applicant has resided within the building for in excess of 4 years and the use has become lawful as a matter of fact, this use has, on the balance of probabilities, been undertaken with: knowledge of its unlawfulness; deception in matters integral to the planning process; direct intention to undermine the planning process; consequence that the deception has undermined the planning process; and the applicant would profit directly from the deception if the normal limitation period were to enable them to resist enforcement ('profit' / benefit includes the avoidance of enforcement action).*" The Council had therefore indicated that it accepted that a residential use of the appeal building was lawful because the time for enforcement action had expired but the appellant had deliberately concealed that residential use.
12. I observed at the site visit that the elevations, floor plan and use of each of the rooms in the appeal building is currently as shown on the submitted drawing titled 'Plan and Elevations'. There is a kitchen and shower room in what was cited as the 'groom's quarters' in the previous planning applications and appeals. In addition, there are 2 bedrooms one with an ensuite bathroom and a lounge/dining area. A walkway constructed under the overhanging eaves provides access between the rooms.
13. A statutory declaration submitted by the appellant states that "*Langton View Stables has formed my primary place of residence since 8 September 2018*". Under cross examination the appellant stated that during the summer of 2018 her furniture and belongings were moved from the mobile home into the appeal building. The three areas within the appeal building where the items were stored had been previously used as stables associated with the livery/equestrian use. She also stated that repairs were undertaken to the shower to ensure it worked, kitchen units, a fridge, cooker and washing machine were replaced/installed in the groom's quarters. A single bed was also in those quarters and the appellant indicated that she initially lived in the groom's quarters from 8 September 2018.
14. Given that the mobile home, which she had lived in, was removed from Langton View Stables by the 15 September 2018 it is more likely than not that the appellant moved into the groom's quarters by the 15 September 2018. There is no evidence before me to indicate that the groom's quarters did not contain all the facilities necessary for day-to-day living. Moreover, the Inspector in the 2016 appeal decision stated that '*the groom's quarters within the stable block could, with some refurbishment, provide suitable temporary overnight sleeping accommodation*'.
15. Whilst the LDC application was being determined the Council did not request details of when the walkway had been constructed and the rooms laid out and used in connection with the residential use. The appellant had not provided any of those details until cross examination at the Inquiry. The appellant's oral evidence went onto indicate that; by April 2019 the first bedroom was in use and the walkway had been constructed; in the summer of 2019, the second bedroom and lounge area had been completed and that by Dec 2019

full central heating had been installed; prior to that central heating being installed storage heaters and oil-fired heaters were used.

16. The east facing elevation of the walkway has a different arrangement of windows and doors than that approved by the 2016 permission. Moreover, the floor plan layout has been designed to facilitate residential use as a single dwellinghouse. As such, there is no dispute that at the date the LDC application was submitted the time limit at section 171B(2) of the 1990 Act stated that "*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*" and that it applies in this case.
17. In my opinion, given the protracted planning history on the overall site from 2012 it is more likely than not that the appellant would have gained a reasonable amount of knowledge in relation to whether planning permission had been granted to use the appeal building as a single dwellinghouse. In response to my questions the appellant stated that she expected a knock on the door from the enforcement officer once the mobile home had been removed and she was living in the groom's quarters. She also stated that she hadn't planned what she would do when that happened. Her responses to my questions indicate that she anticipated that the Council may check whether she was living in the appeal building and may commence enforcement action.
18. Therefore, the appellant's oral evidence with regard to the works that were carried out initially and then carried out in 2019 is totally plausible given that she expected that knock on the door. As such it is more likely than not that she would have initially gone to little expense on the expectation of the knock on the door. Yet when that didn't happen, she then initiated further works to increase the habitable space associated with the residential use. Nevertheless, on the balance of probabilities, it is more likely than not that the change of use of the appeal building to use as a single dwellinghouse had commenced prior to 10 August 2019.
19. The appellant has stated that she has lived in the appeal building continuously since 8 September 2018 and that evidence is precise and unambiguous. I acknowledge that the Chairperson of the Parish Council stated at the Inquiry that the Parish Council nor local residents including regular dog walkers were not aware that the appellant was living within the appeal building. However, she has been on the Electoral Roll at Langton View Stables, domestic wheelie bins have been collected from that site and the appellant has continued to pay Council Tax since September 2018.
20. When viewed in totality, as a matter of fact and degree the evidence presented indicates that on the balance of probabilities that the change of use of the appeal building to a single dwellinghouse took place before 10 August 2019 and that the use as a dwellinghouse (Class C3 of The Town and Country Planning (Use Classes) Order 1987 (Class C3)) then continued for 4 years after the date of the change without significant interruption.

*Positive deception/concealment*

21. The Supreme Court found in *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* [2011] UKSC 159 (*Welwyn Hatfield*) that Mr Beesley's conduct was sufficient to deprive him of the

immunity from enforcement action normally granted by section 171B of the 1990 Act. In that case:

- there was positive deception in the planning process;
- the deception was intended to undermine the planning process;
- the deception did undermine the planning process; and
- Mr Beesley stood to profit directly from the deception.

22. However, the Courts have since held that the four matters identified in *Welwyn Hatfield* are a sufficient set of factors for the principle to apply, but not necessary tests. In *Jackson v SSCLG* [2015] EWHC 20 (Admin) (Jackson) Holgate J cited *Fidler v SSCLG* [2011] EWCA Civ 115910. He noted that the *Welwyn Hatfield* principle applied, even though Mr Fidler had made no false representations during the planning process. Mr Fidler's positive deception concerned the concealment behind straw bales of a building erected without planning permission. In the circumstances, Holgate J said that the "*decisions of the courts to date have been fact-sensitive and there is some uncertainty as to the overall range of circumstances in which the public policy principle may be applied.*"

23. Against that background, the Council contends that there are a number of examples of deception in the present case. The first relates to the High Court hearing associated with the 2018 Order. Miss Zacharia, on behalf of the Council, attended that hearing and her evidence states that she recalls the appellant saying to the judge that she did have somewhere else to live beyond the site in response to the judge's questions. The appellant stated in cross examination that she could not remember saying that. In my judgement, it is highly likely that the judge would have been concerned with the future living arrangements of the appellant given that the mobile home was to be removed and would have asked the appellant questions in that regard. The appellant admitted in cross examination that she considered it was a waste of time trying to join the Council's housing waiting list and that there were no properties in proximity to the stables that she would be able to rent/buy and that she intended to temporarily move into the groom's quarters. Against that background it is more likely than not that she would not have wanted to draw attention to her intention to move into the groom's quarters and answered the judge's questions in an inaccurate and misleading way.

24. A second example relates to the address of the property and the payment of Council Tax. The appellant maintains that on 21 August 2018; she rang the Council asked to speak to the domestic rates team; told them the mobile home was being removed on the 10 September 2018; that she would be living in the stables and her accountant had advised her to change the address with the Council Tax department. There is no dispute that the phone call was made and that from the 11 September 2018 the Council Tax bills were addressed to the appellant at Langton View Stables and not the Mobile Home at Langton View Stables. It transpires that the appellant actually spoke to someone in the Customer Services Team rather than Council Tax as that is/was the Council's protocol in dealing with Council Tax enquiries.

25. Nevertheless, the memo of that enquiry states "*Customer has called as she has stated the address on her bill is oncorect and her accountant has picked this up*

*and she needs it changing – The address should be Langton View Stables, Thorpe Langton Rd, East Langton MH LE16 7WD- Please can this be amended a new bill be sent out.”* That memo is not a transcript of the conversation, and the appellant may have cited the removal of the mobile home on the 10 September 2018. It may have been coincidence that the new bill with the amended address is dated the 11 September 2018. In addition, given my findings above in relation to the High Court hearing it is more likely than not that the appellant did not want to draw attention to the fact that she was moving into the groom’s quarters and would not have expressly informed the customer services personnel that was her intention. I have no doubt that she would only have stated that the address needed amending without saying why the amendment was required.

26. Moreover, the evidence submitted in support of the LDC application did not accurately describe the initial area of the residential use and the expansion of the habitable space associated with that use. The appellant was waiting for the knock on the door from the enforcement officer as she would have been aware that she did not have planning permission to live in the appeal building given the planning history cited above. There was no specific attempt to bring the change of use of the appeal building to a single dwellinghouse to the attention of the local planning authority. The orientation and design of the appeal building means that its appearance from Thorpe Langton Road would have been similar even when the appellant was living within it.
27. Moreover, I acknowledge that the walkway elevation would have appeared similar to that approved by the 2016 permission. Nevertheless, the construction works to erect the walkway would have been clearly visible from certain points when walking along the public footpath, A82. This is because the metal panels next to the muck heap do not preclude or screen all views of the eastern elevation of the appeal building from that public footpath. I have no evidence before me to indicate that local residents reported those works to the Council. Given the protracted planning history it is surprising, in my experience, that local residents including the regular dog walkers did not make enquiries with the Council about those construction works.
28. Nonetheless, that footpath is a reasonable distance from the appeal building and it is difficult to identify that the appeal building has been converted to a single dwellinghouse when walking along it. Yet in the autumn or winter on a late afternoon when internal lights would be visible from that footpath the residential use would have been more discernible. Moreover, the domestic wheelie bins were regularly collected and would have been visible adjacent to the highway. There is little evidence before me to indicate that the change of use was physically concealed. It is more likely than not that if an Enforcement or Planning Officer had knocked on the door unannounced, at any time after 15 September 2018, the change of use would have been clearly apparent.
29. Additionally, even though it is more likely than not that the change in the address associated with the Council Tax bill was not expressly notified as the appellant moving into the appeal building, a cursory examination of the records would have indicated that Council Tax was still being paid at that address. Furthermore, she was on the electoral register at that address. Both of those factors are normally taken as providing evidence that a person is residing at that given address.

30. I note that the Council's enforcement service is reactive in nature responding to complaints received and that no specific complaints were received in respect of the residential use of the appeal building. In addition, there are the appellant's answers to the judge's questions at the court hearing. However, the appellant had engaged in a protracted planning history of failed attempts to retain the mobile home on the site and convert the appeal building to residential use. In addition, the groom's quarters were known to exist and that the 2016 permission was in place for the welfare facilities which included a kitchen, shower room and toilet. Therefore, in my experience, those factors would more likely than not lead a Planning/Enforcement Officer to carry out at least one unannounced spot check to ensure that when the mobile home had been removed that the appellant had not moved into the appeal building. In this case, a Council Officer appears to have viewed the site from the public highway confirming only that the mobile home had been removed.
31. Whether there has been positive deception/deliberate concealment is a fact sensitive question. A spectrum of wrongdoing exists, ranging from cases where an appellant is simply unaware of the need for planning permission to at the other extreme those who carry out a deliberate, elaborate, and sustained plan to deceive the Council from first to last. In this case the appellant's conduct has been shown to be inaccurate and misleading. It is more likely than not that she knew she did not have planning permission to live in the appeal building and there was no specific attempt to bring the material change of use of the appeal building to the attention of the Council.
32. However, the evidence does not demonstrate that the change of use to a single dwellinghouse was deliberately concealed or that there was a planned course of deception designed to circumvent planning control and escape enforcement. The appellant appears to have mostly pursued deliberate inaction rather than taking sustained or actively deceptive steps. Overall, in my judgement the appellant's conduct did not amount to the degree of deception necessary to engage the principles set out in *Welwyn Hatfield*.
33. I conclude therefore on balance, that there was no concealment of the change of use of the property to a single dwellinghouse by positive deception in matters integral to the planning process. The *Welwyn Hatfield* principle is not engaged, and the appellant is not deprived of the benefit of the 4-year limitation period in section 171B (2) of the 1990 Act.

## **Conclusion**

34. 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 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.

*D. Boffin*

INSPECTOR

## APPEARANCES

**FOR THE APPELLANT:**

He called:

Ruth Kitchen Appellant

## FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth Counsel instructed by James Felton – Solicitor-Harborough District Council (HDC)

He called:

Storme Coop IRRV (Hons) Partnership Manager

Christine Zacharia BTP PGDip MRTPI Team Leader, Planning Enforcement

Nicholas White BA(Hons) MA MRTPI Planning Officer

## INTERESTED PARTIES:

Rosalind Folwell Chairperson – East Langton Parish Council

## DOCUMENTS

## Copy of the 2014 Enforcement Notice



## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 10 August 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in green and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the part of the building, edged in green and hatched in black on the plan attached to this certificate, to a single dwellinghouse took place before 10 August 2019 and that the use as a dwellinghouse (Class C3 of The Town and Country Planning (Use Classes) Order 1987) then continued for 4 years thereafter without any significant interruption. The *Welwyn Hatfield* principle is not engaged, and the appellant is not deprived of the benefit of the 4-year limitation period in section 171B (2) of the 1990 Act.

Signed

*D Boffin*

Inspector

Date: 1<sup>st</sup> November 2024

Reference: APP/F2415/X/23/3330809

### ***First Schedule***

The existing use for the primary and permanent residential (C3) occupation of an existing building associated with Langton View Stables, Thorpe Langton Road, East Langton, Leicestershire, LE16 7WD.

### ***Second Schedule***

Land at Langton View Stables, Thorpe Langton Road, East Langton, Market Harborough LE16 7WD

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



## Plan

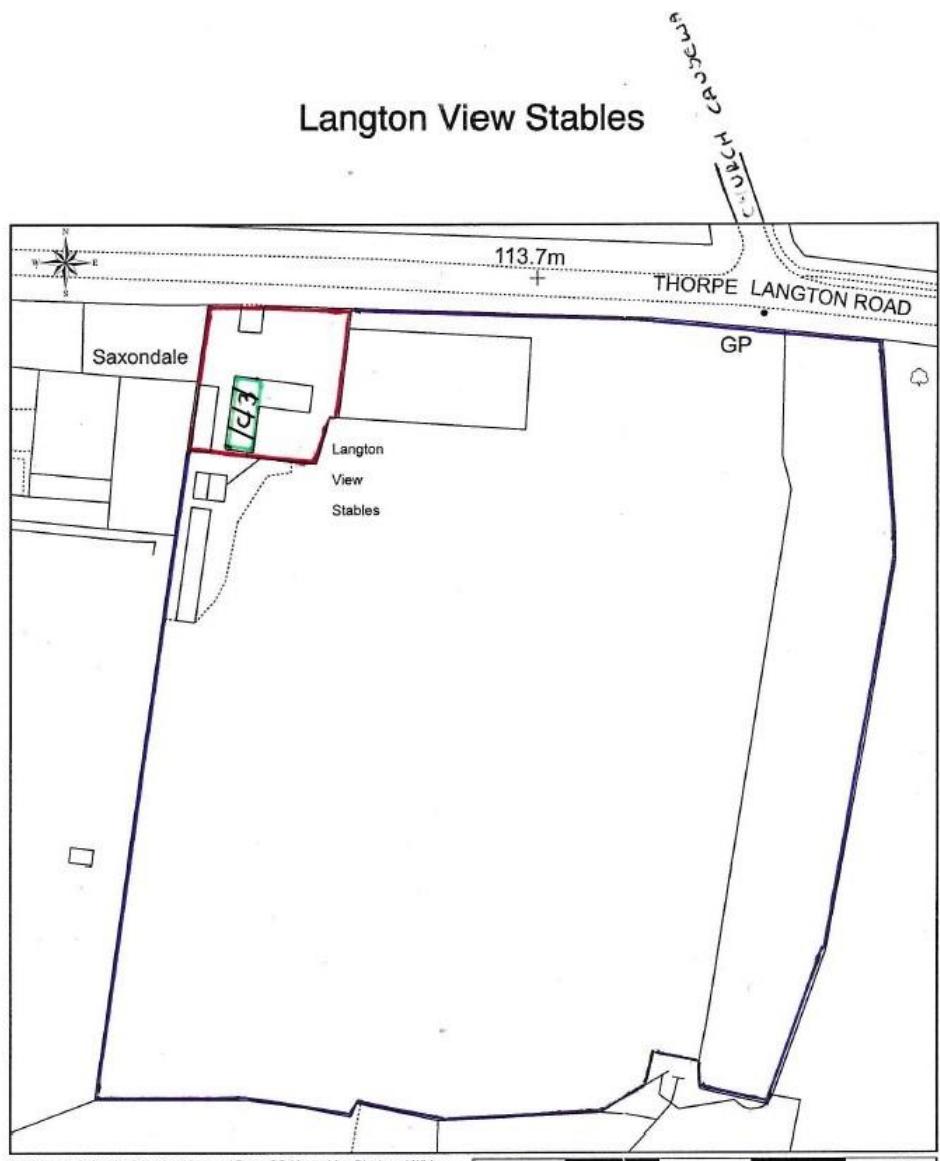
This is the plan referred to in this decision dated: 1<sup>st</sup> November 2024

by D Boffin

**Land at: Langton View Stables, Thorpe Langton Road, East Langton, Market Harborough LE16 7WD**

**Reference: APP/F2415/X/23/3330809**

Scale: Not to Scale



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Scale: 1:1250, paper size: A4

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