

Delegated Report

Planning Reference 25/00490/CLE
Applicant(s) Ms Melanie Brewster
Ward Ratby, Bagworth and Thornton



Hinckley & Bosworth
Borough Council

Application Site Whittington Stables, Whittington Lane, Thornton

Proposal Certificate of existing lawful development relating to the partial change of use of stable building to single dwellinghouse

Case Officer Sullivan Archer (Senior Planning Officer)

1. Recommendations

1.1. Refuse Certificate of Lawful Existing Use

2. Planning Application Description

2.1. This is an application for a Lawful Development Certificate for an existing use to confirm, on the balance of probabilities, that the side extension to a block of stables at Whittington Stables, Thornton Lane/Whittington Lane ('Whittington Lane'), Thornton (approved by planning application 19/00715/FUL) has been partially used as a three-bedroom dwellinghouse (Use Class C3) for a continuous period of more than four years before 25 April 2024. The site is now referred to as 'Thorntonbury' but was previously known under the business name 'Trilogee Stud.'

2.2. The following documents/information have been submitted to support the application:

- County Court Case Claim Form
- Google Earth Aerial Images
- Internal Photographs
- Planning Statement
- Signed Lease Agreements
- Site Location Plan
- Witness Statement

3. Description of the Site and the Surrounding Area

3.1. The application site is located in the designated open countryside, 1.3km east of Thornton and 600m to the east of Thornton Reservoir in Charnwood Forest and the National Forest. The site is wholly surrounded by agricultural fields.

- 3.2. The site is accessed from Whittington Lane on the eastern side of the site via a secure, gated access. The hedgerow fronting Whittington Lane to the east is identified as a Site of Importance to Nature Conservation (SINC). The site's vehicular access is 74m north of Whittington Lane's confluence with Reservoir Road. Both roads are adopted highways that are subject to the National Speed Limit. Public Footpath R78 runs east-to-west 150m to the north of the structures within site.
- 3.3. The site consists of two existing attached stable buildings, a manège and associated hardstanding. The first stable building was approved as an agricultural building for the keeping of livestock in 2009 via 09/00986/GDO. The agricultural building and the wider site have since been utilised for the keeping of horses since 2015 via planning permission 15/00820/FUL, which included the provision of the manège, and an extension to the existing building to create a second stable building. The second stable was granted retrospective planning permission for a 4.7m wide by 18.3m deep side extension via 19/00715/FUL.

4. Relevant Planning History

4.1 19/00715/FUL

- Single storey side extension to existing stables building (retrospective) (re-submission of 18/00921/FUL)
- Permitted
- 21.08.2019

4.2 18/00921/FUL

- Single storey side extension to existing stables building (retrospective)
- Refused
- 04.12.2018

4.3 18/00594/FUL

- Single storey side extension to existing stables building (retrospective)
- Refused
- 24.08.2018

4.4 16/00060/CONDIT

- Variation of condition 2 of planning permission 15/00820/FUL to increase the height of the stable building
- Refused
- 21.04.2016

4.5 15/00820/FUL

- Conversion and extension of agricultural building for stables, formation of manège, improvements to existing access, hard surfaced parking and turning area and change of use of land for the keeping of horses
- Permitted
- 18.11.2015

4.6 15/00375/FUL

- Siting of a mobile home
- Refused
- 22.05.2015

4.7 10/00811/FUL

- Erection of four stables and feed/tack room
- Permitted
- 05.01.2011

Page 4 of the Applicant's Planning Statement confirms that this planning permission was never implemented and has subsequently lapsed.

4.8 09/00986/GDO

- Erection of agricultural building to keep livestock
- Permitted
- 27.01.2010

5. Publicity

5.1. The application is for a Certificate of Lawful Existing Use and no publicity is necessary. Therefore, none was undertaken.

5.2. However, a member of the public objected to the application who provided evidence that the structure was not occupied until November 2021, and the building was completely emptied on 1 November 2024. The objector provided an email from the Applicant on 08 November 2021 that confirms that the kitchen was still in storage and that no flooring had been laid in the building by this date. This was supported by two dated photographs and four videos of the interior of the building.

6. Consultation

6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary. Therefore, none was undertaken.

- 6.2. However, an objection was received from Bagworth and Thornton Parish Council who stated that the Applicant is consciously breaking planning laws, depriving the electorate of the community their right to comment on such applications, and creating unlawful development in the countryside.
- 6.3. The Parish Council has referred to the deliberate concealment of this change of use through two refused planning applications 18/00594/FUL and 18/00921/FUL, and the permitted planning application 19/00715/FUL, which was objected to by the Parish Council. The Parish Council noted that Paragraph 2.3 of the Delegated Officer Report for the refused planning application 18/00594/FUL highlighted that the structure is:

“Completely separate (internally) from the existing stables and includes a bathroom, fully equipped kitchen and living area.”

7. Policy

- 7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and Section 191 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning Compensation Act 1991, provide advice and guidance in respect for applications for Certificates of Lawfulness of Existing Use.
- 7.2. Planning Practice Guidance confirms that the applicant is responsible for providing sufficient information to support the application. If the Local Planning Authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 7.3. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counterevidence. The Local Planning Authority provided the counterevidence provided by the Council's Planning Enforcement Department, Bagworth and Thornton Parish Council, and the member of the public on 25 June 2025.
- 7.4. On 30 June 2025, the Applicant contacted the Planning Enforcement Department and highlighted that it was important that they could live on the site as close supervision is essential for foals and young stock. Within the email thread of this conversation, the Applicant stated on 19 March 2025 that they lacked experience in the submission of a Certificate of Lawful Existing Use application.
- 7.5. On 01 July 2025, the Applicant submitted a three-page response to the third-party submissions who suggested that by 01 November, the residential use of the site would have been in excess of four years. The Applicant then referred to another tenant within the site, but it is noted that this other tenant has not been mentioned in any of the previously submitted evidence within this application.

- 7.6. The response confirms that the Applicant was aware of the need and the requirements for the submission of a Certificate of Lawful Existing Use in 2021. It is noted that this is at odds with the Applicant's email to the Planning Enforcement Department on 19 March 2025.

8. Appraisal

- 8.1. Section 191 of the Town and Country Planning Act 1990 (as amended) ('the Act') confirms that any person can make an application to the Local Planning Authority to ascertain whether any operations which have been carried out in, on, over, or under land are lawful. For the purposes of the Act, operations are lawful at any time if no enforcement action may be taken in respect of them.
- 8.2. The time limits for taking enforcement action are set out in Section 171(B) of the Act. Section 171(B) of the Act was amended by Section 115 of the Levelling-Up and Regeneration Act 2023, which increased the time limit for enforcement action to take place on a breach of planning control in England, with regard to certain matters including use as a single dwelling, from four years to ten years. These alterations came into force on 25 April 2024.
- 8.3. However, The Planning Act 2008 (Commencement No. 8) and Levelling-Up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 confirmed that the amendments to the Act do not apply to a breach of planning control whereby the operations were substantially completed before 25 April 2024.
- 8.4. Therefore, as detailed within National Planning Practice Guidance, development becomes immune from enforcement if no action is taken within four years of an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024.
- 8.5. The Applicant's assertion is that the change of use of the approved side extension to the stable to a single residential dwelling occurred by at least November 2019, meaning that the development was immune from any enforcement action prior to the amendments in National Legislation came into force in 2024.
- 8.6. It is against this legislative framework that the application is assessed.
- 8.7. National Planning Practice Guidance states that:
- "An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate."*
- 8.8. Within their Planning Statement, the Applicant has suggested that the Lawful Development Certificate only relates to the change of use of the side extension of the second stable building into a Use Class C3 residential property.

- 8.9. However, the title of the Planning Statement and the Application Form only seek a Lawful Development Certificate for, “*An existing residential property,*” and, “*The change of use to use as a single dwellinghouse,*” respectively. Furthermore, the submitted red line boundary includes the entire Whittington Stables site, including both stables and the manège. Furthermore, it is noted that none of the submitted Evidence documents include a Site Location Plan, which confirm where the residential property is sited, nor its size or scale or outdoor areas.
- 8.10. Therefore, the Applicant has failed to describe precisely what is being applied for and the precise land to which the application relates within the submitted details. On this basis, the Applicant has failed to demonstrate that the existing development is lawful and in accordance with National Planning Practice Guidance should be refused.
- 8.11. Notwithstanding this, the Applicant has submitted six evidence documents to demonstrate that the northern side extension of the stable adjacent to the manège at Whittington Stables, Whittington Lane, Thornton has been utilised as a primary and permanent Use Class C3 dwellinghouse continuously for more than four years prior to 25 April 2024.
- 8.12. Evidence A and B include historic satellite images prior to 2019 and undated internal photographs of the structure. It is not considered that the submitted historic satellite imagery, nor more recent historic satellite imagery since 2018 suggests that there has been a change of use of the site into a Use Class C3 residential use. It also cannot be determined through the undated images within Evidence B whether these images were taken within the side extension of the second stable block. The ambiguity in relation to the use of the site is also apparent from public views of the site.
- 8.13. Given the above, Evidence A and B are not considered to sufficiently demonstrate on the balance of probabilities that the side extension of the stable has been utilised for a primary and permanent residential use continuously for more than four years prior to 25 April 2024.
- 8.14. Evidence C and F are legal leasehold agreements associated with the wider site from 2019 and 2025, which both confirm at Clause 9.1(a) of the agreement that the site cannot be used for any other use than the Permitted Use, which is defined on Page 3 of each document as an agricultural building and equestrian business respectively.
- 8.15. In light of this, the submitted legal agreements do not demonstrate that on the balance of probabilities that the side extension of the stable has been utilised for a primary and permanent residential use continuously for more than four years prior to 25 April 2024. The legal agreement within Evidence F also contradicts the Applicant’s email to the Planning Enforcement Department on 30 June 2025, which states that they utilise site for breeding horses and that they require on-site residential accommodation as foals and young stock need close supervision.

- 8.16. Notwithstanding the inconsistencies within the Applicant's evidence, the justification within this email from 30 June 2025 does not demonstrate that the side extension of the stable has been utilised for a primary and permanent residential use continuously for more than four years prior to 25 April 2024.
- 8.17. Evidence D and E are two witness statements from a tenant that was evicted from the site. Whilst one of the witness statements are signed, there is a discrepancy between their stated initial occupation of the site. Furthermore, neither witness statement identifies the precise location of the residential use within the site, nor do they directly specify that the side extension of the second stable block was utilised for a primary and permanent Use Class C3 residential use continuously for more than four years prior to 25 April 2024.
- 8.18. The occupation of the site was clarified by a member of the public who confirmed that the structure itself was not occupied as a residential use until November 2021, which ceased on 01 November 2024. This evidence also includes an email from the Applicant, which confirms that as of 08 November 2021 the property did not have a kitchen or any flooring. Therefore, this information directly conflicts with the Applicant's submitted evidence and highlights that the side extension of the stable building has not been utilised as a primary and permanent residential property for a continuous period of more than four years prior to 25 April 2024.
- 8.19. The email from 01 November 2021 also highlights the requirements of applying for a Certificate of Existing Lawful Use.
- 8.20. Notwithstanding this, the Local Planning Authority's Enforcement Department have provided the Case Officer with an email from the Applicant to the Enforcement Department from 04 March 2025. The email from the Applicant to the Planning Enforcement Department states that, *"The site consists of 10 indoor stables,"* and, *"There has been no change in use since 2015,"* as well as *"You are welcome to visit the site although there are no changes to the site or use thereof since the last planning permission was granted."*
- 8.21. Notably, the Applicant did not submit this email as part of their application. The Applicant has since commented on this email response and suggested that:
- "The email does not say that the premises is not being used for stables and associated residential accommodation."*
- 8.22. It is important to note that National Planning Practice Guidance confirms that where there has been deliberate concealment of a breach of planning control, the courts have found that in these circumstances that the time limits in Section 171B do not engage until the breach has been discovered.
- 8.23. Bagworth and Thornton Parish Council have highlighted that the Delegated Officer Report for the refused planning application 18/00594/FUL noted that the structure featured a bathroom, kitchen, and living area at the time of the Case Officer's site visit on 03 July 2018.

- 8.24. The Case Officer's notes of this site visit state that the structure was being used by the client of the owner when they were looking after the horse within the site in between their travels to and from London and Lutterworth
- 8.25. Although this suggests that the furnishings of a residential use of the structure have existed for longer than four years, it has not been suggested that the extension was used as a dwelling, nor for a continuous period of time for more than four years prior to 25 April 2025. Moreover, this information contradicts the submitted detail from the Applicant within this application, their statement to the Council's Planning Enforcement Department in March 2025, and the statement of the member of the public.
- 8.26. Therefore, in light of the additional supporting evidence, it is not considered that the information within the Delegated Officer Report for the refused application 18/00594/FUL demonstrates that the side extension of the existing stable block has been utilised for a primary and permanent Use Class C3 residential use continuously for more than four years prior to 25 April 2025.
- 8.27. Given the above, the Applicant has stated in writing to the Local Planning Authority that the existing side extension of the stable building, nor the wider site has ever been utilised for a primary or permanent residential use. This statement directly conflicts with any of the submitted details within this application and fails to demonstrate that the claimed existing residential use of the side extension of the stable building is lawful.
- 8.28. In summary, in accordance with National Planning Practice Guidance, a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant at any stage in this particular application. The applicant is responsible for providing sufficient information to support the application.
- 8.29. The Applicant has failed to describe precisely what is being applied for and the precise land to which the application relates within the Application Form, the Planning Statement, and the Site Location Plan, and the submitted details. There is no Site Location Plan within any of the submitted evidence documents that precisely indicates the location of the residential property within the site and it is not considered that the details within the submitted Evidence Documents sufficiently, precisely, and unambiguously confirm that on the balance of probabilities the side extension of the second stable block has been utilised for a primary and permanent Use Class C3 residential use continuously for more than four years prior to 25 April 2024.
- 8.30. This is supported by the fact that, prior to the submission of this application, the Applicant submitted in writing to the Local Planning Authority that the side extension of the stable building, nor the wider site, had ever been used in association with a residential use, and the Applicant confirmed in writing to a member of the public that the property did not have a kitchen or any flooring by 08 November 2021.

- 8.31. On this basis, the Applicant has failed to suitably demonstrate on the balance of probabilities that the existing development is lawful and in accordance with National Planning Practice Guidance should be refused.

9. Equality Implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 9.3 There are no known equality implications arising directly from this development.

- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. The Applicant has failed to provide sufficient information in this application for a Certificate of Lawful Existing Use to precisely and unambiguously on the balance of probabilities demonstrate that the side extension of the second stable block at Whittington Stables, Whittington Lane, Thornton has been utilised for a primary and permanent Use Class C3 residential use continuously for more than four years prior to 25 April 2024. On the balance of probabilities, the use of the application site is not considered to be lawful in these site-specific circumstances, nor immune from Enforcement Action and therefore a Certificate of Lawful Existing Use is refused.

11. Recommendation

- 11.1 **Refuse Certificate of Lawful Existing Use.**