

Appeal Decisions

Inquiry held on 10, 11 and 12 August 2016

Site visit made on 10 August 2016.

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 January 2017

Appeal Ref: APP/H0928/C/15/3141454

Land at Blencathra View, Gamblesby CA10 1HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is by Paul Dixon against an enforcement notice issued by Eden District Council.
- The notice was issued on 20 November 2015.
- The breach of planning control as alleged in the notice is:
 - (i) The erection of a fence in excess of 2 metres in height.
 - (ii) The erection of a stable block.
 - (iii) The change of use of the land to the mixed use of agriculture, and use for the schooling and exercising of horses and ponies.
- The requirements of the notice are to:
 - (i) Either remove the unauthorised fence from the land, or reduce its height to not greater than 2 metres measured from ground level.
 - (ii) Remove the stable block from the land.
 - (iii) Cease the use of the land for the schooling and exercising of horses and ponies.
 - (iv) Remove from the land any equipment, items or facilities (including horse jumps) associated with the use described in paragraph 4 (iii) of the notice – that is, allegation (iii).
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of decision: the enforcement notice is varied, the appeal is allowed in part and the enforcement notice quashed in that respect. The appeal is dismissed in part, except to a limited extent on ground (g), and the enforcement notice is upheld in that respect subject to a variation.

Appeal Ref: APP/H0928/X/16/3141604

Land at Blencathra View, Gamblesby CA10 1HR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Paul Dixon against the decision of Eden District Council.
- The application ref. 15/0144, dated, 16 February 2015 was refused by notice dated 14 April 2015.
- 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 a mixed use of the land for agricultural, and the schooling and exercising of horses and ponies.

Summary of decision: the appeal is allowed.

Application for costs

1. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The Inquiry

2. Evidence at the Inquiry was taken under oath or solemn affirmation.
3. It was confirmed that the enforcement appeal on ground (b) – which related to the stable block only - was withdrawn, and I have not therefore considered it further.

Preliminary matters

4. For the avoidance of doubt, I should explain that in an LDC appeal the planning merits of the claimed existing use or development are not relevant in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act). They are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
5. The Second Schedule in the LDC decision notice of 14 April 2015, states that:
‘The applicant has failed to prove.....that the use of the application site.....has been continuous for a period of ten years or more from the date the application was made’.

The Council acknowledged that this was a mistake in their letter to the appellant’s solicitor of 18 June 2015, and that the notice should state:
‘The applicant has failed to prove.....that the use of the application site....has been continuous for a period of ten years or more *prior* to the date the application was made’.
6. As a result, the April certificate was withdrawn for review, and a further certificate issued on 19 November 2015 confirming that ‘the use of agricultural land for the grazing of horses is recognised as a lawful use’. It is this latter certificate that is subject of the LDC appeal, albeit relating to the use actually applied for – that is, ‘a mixed use of the land for agriculture, and the schooling and exercising of horses and ponies’. The main parties agreed to this

approach, and that is the basis on which I have determined the LDC appeal. I do not consider any party to be significantly prejudiced by this.

The enforcement notice

7. The appellant claimed that the third allegation of the enforcement notice 'The change of use of the land to the mixed use of agriculture, and use for the schooling and exercising of horses and ponies', renders the notice a nullity, since a change of use in itself is not necessarily a breach of planning control – only a *material* change of use can constitute such a breach. 'Materiality' is not mentioned in the Council officers' reports, and there is every indication that the Council have misunderstood the nature the activities, and the correct test to be applied. The appellant cannot know from reading the notice what the matters are that the Council allege to be in breach. The Council could have withdrawn the enforcement notice and reconsidered their position. The entire notice should be regarded as a nullity.
8. The Council objected that this was the first indication that there was a claimed defect in the notice, and that they had been effectively ambushed at the 11th hour. It is clear that the appellant – advised as he is by Chartered Surveyor – had understood the meaning of the notice, and had in fact asked for additional time to respond to submit his proof of evidence.
9. I ruled that it was clear from the notice that the alleged development is in the Council's view contrary to development plan policy, and this makes it apparent that planning consequences flow from the alleged breaches. As such it can be inferred that the alleged change of use is material, since a non-material change would not have planning consequences. Furthermore, it is apparent from the material put forward by the appellant that he has fully understood what is alleged, and what needs to be done to remedy the breaches. Overall, I consider that allegation (iii) of the notice can be varied to include the word 'material', and that this can be done without causing prejudice to any party.

Background matters

10. Blencathra View is a substantial house with outbuildings to the rear. It stands on the eastern side of the main street through the village of Gamblesby. Immediately behind the outbuildings is a garden area, and behind that are two fields extending a total of some 375 metres to the east (Ordnance Survey parcels 396 & 400). There is a green lane running across the eastern boundary of the further field – known locally as a 'lonning'. At the western end of field 396, adjacent to the northern boundary, is a stone built stables building with a corrugated metal roof. Adjacent to part of field 396 to the north is the site of a bungalow called 'Brackenbank', owned and occupied by Mr Jackson the Rule 6 Party, and another dwelling called 'The Old Forge', also in his ownership. To the east of these is an extensive site in the same ownership, where there is a substantial agricultural/light industrial type building, used to store classic cars, and a manège for exercising the owner's horses.
11. The land subject of the enforcement notice comprises the western part of field 396, extending from the western end of the stone stables to the fence and gate across the field some 40 metres to the east. The larger part of this area shares its northern boundary with the site of Brackenbank.

12. It is common ground between the appellant and the Council that the stable block referred to in the notice has been moved from its earlier site to a position adjacent to the northern boundary of field 396 to the east of the area enforced against. I will deal with this matter in my consideration of the ground (c) appeal below.
13. Since the use enforced against is identical to the use for which the LDC is sought – albeit the area of land is different – I have treated the enforcement appeal on ground (d) and the LDC appeal together, distinguishing between them where necessary.

The alleged erection of a fence in excess of 2 metres in height.

14. It is common ground between the appellant and the Council that the fence subject of the enforcement notice has been altered, and that it is now at a height of less than 2 metres above the general ground level along that side of field 396 so that it now comes within the allowances for minor operations permitted under the provisions of Class A of Part 2 to Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). Mr Jackson disputes this, and claims the ground level adjacent to the base of the fence posts has been raised, rather than any reduction having been made to the level of the top of the fence.
15. On my visit I saw that the fence is a maximum of 1.9 metres above the present ground level adjacent to the fence posts. On the Brackenbank side the ground level is significantly higher by about 0.6 of a metre, so that the top of the fence is approximately 1.3 metres above ground on that side. The ground in field 396 is not particularly level, and has significant undulations. There may have been some small changes in the natural level, possible as a result of additional material when the fruit trees were planted. However, there was no obvious change in the contours, such as significant banking of soil towards the boundary. In my opinion any changes to the natural ground level have not been of such significance as to make a material difference to the height of the fence measured on the Blencathra View side.
16. The fence may now be no more than 1.9 metres above ground level, and come within permitted development limits. However, if I were to vary the notice by omitting allegation (i) and requirement (i), this would have the effect under s.173(11) of the Act of granting planning permission under s. 73A for the fence as originally constructed. I will therefore uphold the notice in respect of the erection of a fence in excess of 2 metres high, and make no variations in that regard.

The enforcement appeal on ground (c)

17. This ground is that there has not been a breach of planning control, and it is argued solely in respect to the recently erected stable block. The appellant maintains that the stable cannot be regarded as a building, and therefore its siting on the land cannot be regarded as development when looked at in terms of its size, the nature and degree of its attachment to the ground, and its degree of permanence. The Council say that irrespective of the stable block being moved to a new position it is a building for which planning permission is required.

18. The stable block has stalls for 2 horses. It is timber framed, clad in weatherboard, with a corrugated sheet roof, and stands on steel skids. The plan dimensions are approximately 7.3 metres wide by 3.5 metres deep, and the overall height is 3.1 metres.
19. The stable block is of substantial size, built of durable materials, and has all the appearance of being a building. While it is not actually attached to the ground, and remains in position by virtue of its own weight, it is not a structure that can readily be moved except by towing by tractor, and even then it must effectively remain within the fields within which it is located. It is effectively a permanent feature of the site, and this will presumably remain the case for as long as a significant number of horses are kept there.
20. The stable block has in fact been moved since issue of the enforcement notice, and now stands at some distance from Brackenbank close to the northern field boundary, but outside the area covered by the enforcement notice. Nevertheless, as a prominent and effectively permanent feature of the site its presence has planning consequences that need to be properly considered, and on the balance of probabilities I consider it should be regarded as a building requiring planning permission. This has not been obtained, and a breach of planning control has therefore occurred. The appeal on ground (c) therefore fails.

The enforcement appeal on ground (d) and the LDC appeal

21. In the ground (d) enforcement appeal the burden of proof is on the appellant to show that on the balance of probabilities the use has subsisted for a continuous period of at least 10 years prior to issue of the enforcement notice. In the LDC appeal the main issue is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is as for ground (d) appeal.
22. In the context of the 10 year period to be demonstrated the enforcement notice issue date of 20 November 2015, and the LDC application date of 26 February 2015 are not widely separated, and I will not differentiate between them unless the difference proves critical.
23. I understand that the appellant's great-grandmother Violet Hartness had bought Blencathra View in 1942, and that Paul Dixon, the appellant, lived there with his mother from the time of his birth in 1979 until 1995 when he moved away from the area for study/work reasons. His grandmother continued to live there until her death in 2007, and his mother, Teena Fowler (née Dixon) lived there until 2015 – save for periods from 1973 to 1975, and from 1994 to 1997. She now lives in a cottage adjacent to Blencathra View. The property had been left to Paul Dixon through a Will Trust, and he returned to live there in September 2015, after his mother became ill.
24. The appellant claims that schooling and exercising of horses and ponies has been a component of the use of the land since about 1965 and that this has continued without significant interruption. His grandfather – the late Joe Dixon – had bought foals and broken them in and ridden them on the two fields. He had continued to do this until about 2000, shortly before he died. He had owned an Arab stallion, which he had kept and exercised on the appeal site from about 1972 to 1975, as well as two or three ponies. The last he had

bought was 'Sherbet' - still kept on the land at the time of my visit. Various children were also taught to ride by him, and they practised for gymkhanas on the two fields. In 2001 there were 7 or 8 horses kept on the land.

25. Teena Fowler, as a young girl of 11, had started to ride in 1965. She rode competitively and continued to do so until about 2014/15, when she became too ill to compete. She had her own horses on the land. Photographs show Teena Fowler jumping at events in 1969, 1970, 1979, and 1980. In about 1983 she also started to teach others to ride – including her own son. A photograph from 1983 shows the appellant as a young boy standing against a gate, beyond which is a thoroughbred horse and with jumps set up in the background. During this period horses were kept in the stone stables and grazed on the two fields, as well as other separate fields nearby. Before 2002 the stables in the yard behind the house were used to keep 5 horses. This part of the outbuilding was then converted to use as a general workshop/storeroom.
26. Between about 1984 and 1995 Paul Dixon says he rode on the appeal site, as had several school friends, and there had been enough horses for 5 of them. He continued to visit Blencathra View regularly between the time when he left in 1995 and 2015. Several other witnesses said they had learnt to ride, and continued to ride on the land in their childhood between the 1980s and 1990s, starting in about 1984 or 1985 up until 1994. Others corroborated this history, and stated that their own children have been riding on the appeal site since the appellants' return there in 2015.
27. In the period from 1994 to 1997, I understand the two fields and the stone stables were used by Christian Hughes, a friend of the family. He kept 4 horses there, which he and his girlfriend schooled and exercised – riding the horses around the fields, and also lunging them in field 396. Mr Hughes had levelled this latter field to make it more usable for lunging, and two makeshift jumps were set up there. When he left the site he sold one of his horses to Mrs Fowler.
28. In 2013 I understand Mrs Fowler bought a horse – 'Bandit' - that was a competent jumper, and entered into a number of competitions. More regular use was then made of the jumps.
29. Photographs from 1972, 1975, 1976, 1983, 1987, 1989, 1999, 2001, 2013, 2014 show horses and riders in the two fields. Several of these – quite widely separated in time – show jumps set up or stacked in various parts of the fields, and several also show horses being lunged. Although the photographs submitted are widely spaced in time, it appears that the activities pictured were probably day-to-day occurrences that did not warrant extensive recording or careful collection of photographs, and that those submitted are those that have survived and could be found. Furthermore, much the greater part of this overall period was before the making video recordings and taking numerous digital photographs became commonplace, and I do not consider the appellant's evidence is weakened significantly by the relatively few images available.

30. It is clear – and not significantly disputed - that horses and ponies have been kept on the land for much of the time from 1965 until the present day. However, the 'keeping' of horses is not the same in planning terms as using them for recreational purposes, such as exercising and jumping. Indeed the LDC issued by the Council on 19 November 2015 confirms the keeping of horses as a lawful use of the land. Although aerial photographs have been submitted - apparently to show there are no horses in the fields at various times - these capture moments in time, and also do not show the entirety of the two fields.
31. The appellant has explained that equestrian activities do not necessarily have regular patterns, week-in, week-out, but they may alter according to the seasons, the weather, fitness of animals, ages of riders, and the uses to which horses are put. Activities might include recreational riding, lead rein training for riders, showing of horses, games, pony club activities, and show jumping. I note that for young animals there is always a period of being led, and schooling on a lunge rein. Nearly all activities include some degree of fitness training of the horses. For riders, there is a progression from being on a lead rein, to simple walk/trot/canter exercises, to more complex activities. It is also emphasised that uses are seasonal, that horses need to be rested, particularly if they are used in competition, and recreational ponies and horses have time off in winter when there are no shows, and Pony Club events tail off. In this context it is quite probable that there would be periods when horses would not be seen on the land.
32. From what I heard, the uses of horses claimed to have taken place mainly comprised competition, breaking of foals, teaching of children and adults, and recreational riding. Activities would have included schooling of animals on a lunge rein, general fitness training, leading of learner riders, and more advanced riding exercises.
33. Given presence of Joe Dixon's and Teena Fowler's horses and ponies on the land, it is probable that these animals included those used by Mrs Fowler in competition, and those being broken by Mr Dixon. Both these activities continued over long periods from 1965 onwards, and would necessitate schooling and exercising, as well as practice jumping. Furthermore, given the family's clear enthusiasm for equestrian activities, it also appears likely that Paul Dixon learned to ride on the fields, and that his friends would have been likely to take part as well.
34. It was argued that field 396 is too small to be of effective use for lunging and jumping, particularly as a result of the low spreading branches of the substantial lime tree close to the northern field boundary. However, I was shown recent video recordings of riders being led in the field, horses being lunged, and some jumping. These videos were taken in 2013 and 2014, and neither the lime tree nor the size of the field appeared to restrict its use unduly – although it is unclear whether the videos were made before or after crown lifting of the tree. Furthermore, I saw that fruit trees had been planted near the northern boundary to provide screening from Brockenbank. These were subsequently removed, but it was apparent that at the time they were used for riders to practice what was effectively a horse 'slalom', and they did little to prevent the animals being exercised there.

35. Overall I have come to the view that the two fields have a long history of use for breaking in young animals, and exercising them on the land. This has been both for recreational purposes, and occasionally for sale. In particular Joe Dixon, the appellant's grandfather, used the site for such purposes from 1965 until about 2001, as did Teena Fowler for the greater parts of this period.
36. I appreciate that the intensity of use has fluctuated, but it appears to me that this has coincided with phases of family life – first the use by the appellant's grandfather and mother and her friends from 1965 onwards. There may have been a reduction in activity when Teena Fowler lived elsewhere between 1973 and 1975, and between 1994 and 1997. Nevertheless, there does appear to have been continuity provided by Joe Dixon's activities.
37. Mr Jackson argues that the appeal site was not in the claimed use at least from 1987, when he and his family first lived at Brackenbank, until 2014 when there was a distinct change in the character of the use, and of the land itself. No equipment such as jumps or trotting poles had been seen in field 400 until 2015 or 2016.
38. However, intensity in itself is not the determinant of a particular use, it is the character of the use and the land that is critical. Mr Jackson claims that the character changed significantly in March 2014 when he saw Teena Fowler lunging a horse on field 396. However, it appears to me that the character of the land has changed little – the stone stables have been a permanent feature, jumping equipment has been apparent, as has the presence of the horses and ponies themselves. On the evidence available I do not consider that as a matter of fact and degree the character of the land changed significantly in 2015, but that it had probably remained of more or less the same character since the 1960s. Overall, it appears to me that the two fields have been used for schooling and exercise of horses, probably from about 1965 onwards.
39. The appellant and supporting witnesses were clear that horses were ridden over all parts of both fields, that lunging did not take place in the same spot, and jumps were moved around from place to place. Horses and ponies were schooled and exercised throughout both fields 396 and 400 rather than being restricted to a specific part of the fields. It appears to me that, given the two fields are connected and field 400 is accessed from Blencathra View *via* field 396, the two fields have almost inevitably been used together. Although there are fenced separations, these have changed position over time and in my opinion the uses of the two fields would not be readily distinguishable.
40. In this case virtually no evidence contrary to the appellant's was put forward for the years from 1965 to 1987. Photographs purporting to show sheep grazing on the appellant's land in 1985 and 1986 are barely decipherable. Aerial photographs submitted are either indistinct, or taken from such a height, that little meaning can be taken from them. Furthermore, I saw that the view of the appellant's land from Brackenbank is limited to a significant degree by the substantial lime tree and the stone stables, so that a relatively small section of field 396 can be seen.

41. Prior to 2014 there was an evergreen hedge along part of the field 396 boundary, on the Brackenbank side of the stone boundary wall. This was some 200-300mm higher than the close-boarded panel fence that then stood on the appellant's land, and about the same height as the highest part of the roof of the stone stables. I understand this was largely cut down in February 2014, leaving only a short section near the stone stables, which still remains. Although the land is some 600mm higher on the Brackenbank side, its height would have restricted views from the conservatory. Its removal resulted in there being a full view from the Brackenbank conservatory over part of field 396, where previously there would have been a limited view over the top of the hedge. There is nothing to show when the hedge reached maturity, but photographs from 1995 and 1999 show it to be at its full height. In this context I find it surprising that Mr Jackson purported to have such precise knowledge of activities on field 396.
42. The appellant submits photographs from 1985/86 – prior to the building of Brackenbank – that clearly show jumps in place in field 396. Photographs from 1998 and 2001 clearly show several horses on the fields, as well as jumping equipment. Further photographs from October 2013 show horses being lunged and ridden in field 396. In my opinion this casts a significant degree of uncertainty on the evidence of Mr Jackson and others that no schooling or exercising at all had taken place before March 2013.
43. The evidence of Mr Jackson is very specific that the use had not begun until 30 March 2014, and there had been no such use previously. I found this evidence to be somewhat absolute in nature – particularly in respect of the very specific starting date for the equestrian activities, and the entire lack of such activities previously. The presence of horses/ponies on the fields, and of jumping equipment indicates there was likely to have been some degree of equestrian activity. However, this situation was not acknowledged by Mr Jackson.
44. Others gave a similarly absolute view in written representations, including the claim that there had never been jumps on the land until 2013. However, none of these people appeared at the Inquiry to be available for cross-examination. Furthermore, Mr Jackson's evidence was inevitably based upon his somewhat limited view of part of the appellant's land, which I do not consider is realistically separable from the significantly larger remainder of the land in terms of use. Overall, I am more persuaded by the numerous people who presented a quite coherent and detailed account of equestrian activity on the land over many years.
45. Overall, I consider that the whole of the two fields have been used for purposes of agriculture and the schooling and exercising of horses and ponies for many years. The intensity of that use has clearly fluctuated along with the occupancy of the main house by different members of the family, and the stages of family life. Nevertheless, the presence of the stables, the more or less permanent presence of jumping facilities, and not least the evidence of horses and ponies being kept on the site - with exercise or schooling clearly being part of the activities – indicates that the use has probably been continuous for the period from 1965 to 1997, and probably to 2001 thereby establishing a lawful use of the land.

46. Although there was little evidence of activity from 2001 to 2013, there is no evidence that any other significant use was made of the land during that period that might indicate the claimed use had been abandoned, or superseded by some other use, or change of the planning unit. I consider that the use for schooling and exercising of horses and ponies had then become dormant. It appears to me that the claimed use was lawfully resumed in about 2013 after a period of dormancy.
47. The Council argue that even if there had been a 10 year period of continuous use for the schooling and exercise of horses, such use should be seen as *de minimis* and did not amount to a material change in the use of the land. It appears to me that given the number of horses that have been kept on the land, and that they were ridden for long periods by several people on a reasonably regular basis, in both fields – notably the appellant and his friends up to 1994, and Joe Dixon’s continuing use for breaking in foals – this is likely to have been a significant use, and not *de minimis*. The fact that the use was to some extent seasonal, or that it was concentrated during school holidays does not to my mind significantly detract from this conclusion. Nor do I consider that reduction in the intensity of use during off seasons or school terms means that the use had been abandoned.
48. I consider that on the balance of probabilities the use of the enforcement appeal site, and of fields 396 and 400, for the mixed use of agriculture and the schooling and exercise of horses and ponies has become lawful as a result of the use continuing for a period of over 10 years before both the issue of the enforcement notice on 20 November 2015 and the date of the LDC application of 16 February 2015.
49. I therefore conclude that the enforcement appeal should succeed on ground (d) with respect to the change of use of the land to the mixed use of agriculture, and use for the schooling and exercising of horses and ponies. Accordingly the enforcement notice will be quashed insofar as it relates to that use. In these circumstances the appeal relating to the alleged change of use under other grounds set out in section 174(2) to the 1990 Act do not need to be considered.
50. Regarding the LDC appeal, 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 change of use of the land to the mixed use of agriculture, and use for the schooling and exercising of horses and ponies was not well-founded and that the appeal should succeed. Accordingly, I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

The enforcement appeal on ground (g)

51. This ground is that the compliance period stated in the notice is too short, and a longer period should be allowed. I have already concluded above that the fence should remain subject to the requirements of the notice. However, since it has already been altered, there is clearly no need to increase the compliance period.

52. Regarding the stable block, while 3 months would be quite adequate for its removal, the appellant should be allowed enough time to make a planning application for retention of the existing block, and/or to make arrangements for stabling to replace what would be lost. I consider a period of 6 months would be adequate for any necessary discussion with the Council about suitable siting, and for a planning application to be made and determined, with contingency arrangements for alternative stabling to be made concurrently. The appeal therefore succeeds on ground (g), and I shall vary the enforcement notice accordingly.

Conclusions

53. I have taken account of all other matters raised, but I have found none sufficient to outweigh the considerations which have led me to my decisions.

Formal decisions

Appeal Ref: APP/H0928/C/15/3141454

54. I direct the enforcement notice be varied by:

INSERTION of the word '*material*' before the words '*change of use*' in allegation (iii) of paragraph 3 of the notice.

Subject to that variation the appeal is allowed insofar as it relates to the change of use of the land to the mixed use of agriculture, and use for the schooling and exercising of horses and ponies, and the enforcement notice is quashed in that regard.

55. The appeal is allowed to a limited extent on ground (g) with respect to the erection of a stable block, and the enforcement notice is varied by:

DELETION of *three months*, and SUBSTITUTION of *six months* as the period for compliance.

Subject to this variation I dismiss the appeal with respect to the erection of a stable block and the enforcement notice is upheld in that regard.

56. I uphold the enforcement notice insofar as it relates to the erection of a fence in excess of 2 metres high.

Appeal Ref: APP/H0928/X/16/3141604

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

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Constanze Bell	of Counsel, instructed by Ward Hadaway, Solicitors
She called:	
Teena Fowler	The appellant's mother.
Neil Fowler	The appellant's step-father.
Alison Wales Bell	Friend of the appellant.
Anna Dixon	The appellant's wife.
Robert Cubby	Friend of the appellant.
Catherine Woods	Nearby resident.
George Henry Morton	Friend of the appellant.
Mark Purdham	Nearby resident.
Margaret Ann Jackson	Nearby resident.
George Robinson Morton	Nearby resident.
Paul Dixon	The appellant.
Christian Hughes	Nearby resident.

FOR THE LOCAL PLANNING AUTHORITY:

Alison Ogley	of Counsel, instructed by David Rackstraw, Solicitor to Eden District Council.
She called:	
Daniel Addis MRTPI	Senior Planning Officer Eden District Council.

FOR THE RULE 6 Party:

Peter Winter MRTPI	Planning Consultant, Head of Planning Penrith Farmers' and Kidds' plc.
He called:	
Andrew Jackson	Nearby resident and landowner.

DOCUMENTS

1	Attendance lists.
2	The Council's letters of notification of the appeals and circulation list, dated 19 July 2016.
3	Letters of representation.
4	Statement of Common Ground.
5	Schedule of appendices to the appellant's enforcement and CLEUD statements of case.
6	Appendices to Paul Dixon's statement.
7	Appendices to Georgia Hirst's statement.
8	Appendices to Neil Fowler's statement.
9	Plans appended to the statements of witnesses for the appellant (2 no.)
10	Appendices to Mr Addis's proof of evidence.
11	Appendices to Mr Jackson's proof of evidence.
12	Addendum to the appellant's cost application.
13	The Council's response to the costs application.
14	Correspondence between the Council and Simpson Towler of January/February 2015 (3 items).

PLANS

A LDC application plan.

PHOTOGRAPHS

1 Google Earth aerial photograph of the appeal site.



Lawful Development Certificate

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
email:enquiries@pins.gsi.
gov.uk

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

IT IS HEREBY CERTIFIED that on 16 February 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, edged 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 use has subsisted continuously for a period in excess of 10 years prior to the application date.

Signed

Stephen Brown

INSPECTOR

Date: 09 January 2017

Reference: **APP/H0928/X/16/3141604**

First Schedule

A mixed use of the land for agricultural, and the schooling and exercising of horses and ponies

Second Schedule

Land at Blencathra View, Gamblesby CA10 1HR.

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NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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 my decision
dated: 09 January 2017

by **Stephen Brown** MA(Cantab) DipArch
RIBA

Land at:

Blencathra View, Gamblesby
CA10 1HR.

Reference:

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