The Planning Inspectorate

# Appeal Decision

Site visit made on 2 May 2017

**by Paul Dignan MSc PhD**

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

**Decision date: 25 May 2017**

**Appeal Ref: APP/D0121/X/16/3158051**
**82 Clevedon Road, Tickenham, BS21 6RD**

- 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 Mr D J Withers against the decision of North Somerset Council.
- The application Ref. 16/P/0942/LDE, dated 28 March 2016, was refused by notice dated 15 July 2016.
- 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 Residential leisure use ancillary to the use of number 82 as a dwelling house.

## Decision

1. The appeal is dismissed.

## Application for costs

2. Applications for costs were made by North Somerset Council and Mr Withers against each other. These applications are the subject of separate Decisions.

## Reasons

3. No. 82 Clevedon Road is a dwellinghouse on the south side of Clevedon Road in Tickenham. It has vehicular access from Clevedon Road to a parking area and block of garages to the west of the house, a small front garden and a more substantial rear garden bounded by hedges. There is a large barn running south from the garage block. The appeal concerns a block of land to the east and south of the house and gardens, along with a separate vehicular access running from Clevedon Road alongside the barn to the west. The appeal land is a strip of land comprising a grassed paddock with Clevedon Road frontage immediately to the east of the house, a cluster of stable buildings further south and another grassed paddock to the south of the buildings, along with the vehicular access running to the west of the barn. Up until 2001 the land and stables were in use for commercial livery, a use that had become lawful through the passage of time. Commercial livery ceased then, but private use of some stables and the paddocks continued until about 2004.

4. The LDC application and appeal seek to establish that the lawful use of this land is now for uses ancillary or incidental to the use of No 82 as a dwellinghouse, or in other words that it has a dwellinghouse use. The use of the land was considered at a public Inquiry in October 2015. That Inquiry

specifically concerned the lawful use of the barn[1]. Mr Withers was trying to establish that the barn and access drive formed part of the planning unit of the dwelling at 82 Clevedon Road and were used for incidental or ancillary purposes to the residential use of the dwelling house. He also put forward his view that the overall planning unit at that time comprised the dwelling and its garden and yard, the barn and access drive and the stables. In that context it is worth rehearsing some of the findings of the Inspector regarding land in Mr Withers' ownership, namely the barn, the house, yard and garden, and what comprises the current appeal site.

5. Applying the *Burdle*[2] approach to identifying the appropriate planning unit, she started with the unit of occupation, which she identified as the dwelling and its garden, parking area and garages, the barn, and what is the current appeal site. She considered that: "The house, the garden and the yard have the appearance of a discrete area of land, physically separated from the remainder of the land in Mr Withers' ownership by the hedge round the garden and, in the case of the yard, the northern wall of the barn and the back wall of the garages. The primary use of this part of the site is plainly residential."

6. Having considered Mr Withers' evidence of the use of the barn and of the stables complex and associated paddocks, the current appeal site, she concluded that: "Up to the time the stables ceased to be in use commercially, I consider that there were at least two physically and functionally separate parts of the unit of occupation. One would have been No 82 and its garden and the yard and garages, whose use was primarily residential. On the information provided I consider that the remainder of Mr Withers land, including the stables, the barn and the fields, formed another planning unit, physically separate from the residential planning unit and functionally in a different and mixed use, i.e. that of commercial stables and agriculture." In respect of the access, she stated: "There is no evidence that it has become part of the residential planning unit or that the character of its use has changed in any material way."

7. While not making an explicit finding on the current use of the whole 2001 planning unit comprising the appeal site, the access and the barn, she clearly considered that nothing material in physical terms or in the character of the use subsequent to the private stables use that had persisted to 2004 had changed up to the date of the Inquiry. Further, she made it clear that at the date of the application, 30 March 2014, the dwelling, its garden, the yard and the garages comprised a single planning unit.

8. Turning to the present appeal, the essence of the appellant's case is that in 2001 the appeal site had an established mixed use comprising the commercial livery/stables use and a 'residential leisure' or 'leisure/domestic' use. He claims to have abandoned the first of these, the commercial stables/livery use, leaving the sole use of the appeal site as 'residential leisure', which in turn he claims to be a use incidental, or ancillary[3], to the use of No 82 as a dwellinghouse.

9. It is clear that Mr Withers considers the 2015 Inspector's conclusions, so far as they were relevant to the appeal site in this case, specifically the identification

[1] Appeal Ref. APP/D0121/X/15/3004362
[2] Burdle v Secretary of State for the Environment [1972] 3 All ER 240
[3] The terms 'incidental' and 'ancillary' are often used interchangeably in planning, notwithstanding that they can be distinguished.

of the planning units comprised in the unit of occupation, to be wrong, though without adequate explanation. He remains of the view, and it is central to his case, that the correct planning unit in 2001 included the dwelling, yard, garages and garden, the appeal site and even the barn, and that it was in a mixed use of commercial stables and dwellinghouse, and is now in a single primary use, namely dwellinghouse use, the commercial stables use having been abandoned.

10. Mr Withers' argument is that the 'residential leisure' use comprising the use of a small number of the stables, 4 of the 27 stables, and the associated paddocks for private equestrian use, either by the owners of the land and dwelling before him or by his daughter and her friend/s, was a different and separate use to the commercial stable/livery use, and was in fact a use that was incidental to the use of the dwellinghouse as such. There is no evidence that this was the case, and for much of the period when her horse was stabled at the appeal site his daughter was not resident at No 82. It is quite normal for a commercial stables/livery operation to have an element of private use by the owner, and that would not normally be seen as a different and separate use. Mr Withers' daughter's own statement that she was "in the very lucky position to benefit from all the facilities, stabling and grazing, free of charge" for her horse suggests to me that the private use for her horse, and her friends horses, was not in fact a different and separate use. The evidence suggests that she, and her friend/s, about whom there is no information, appear to have been using the stables in exactly the same way as the paying users, the only difference being that their use was free of charge.

11. Mr Withers view that the small amount of private use of the stables while they were in commercial use amounted to a separate domestic use appears to arise from a dispute that he had with the Valuation Office Agency (VOA) about rating of the property. However, as the 2015 Inspector pointed out, the VOA and the Lands Tribunal were not reaching any conclusions as to the use of the land for planning purposes. I note that the Council, in its Officers Report, has referred to the stables as being in a mixed use comprising commercial and private stable/livery uses, and that this conclusion also appears based on the VOA investigation. I would not draw from that evidence a conclusion of materially different equestrian uses in planning terms, distinguished by one being commercial and the other private, but it is clear nonetheless that the Council considered the appeal site to be solely in equestrian use.

12. In terms of what may have happened since 2001 to effect a change of use of the appeal site, there is Mr Withers' daughter's use of the stables until early 2004, a period when she was not living there, a very small amount of storage in the stable buildings, some dog walking and the construction of a track. Considered individually or cumulatively, I consider that these could not reasonably be considered as affirmatively establishing a dwellinghouse use over the appeal site land.

13. The burden of proof in an LDC appeal is on the appellant. In this case Mr Withers has provided very little in the way of evidence to demonstrate that the use of some of the stables by his daughter and friends was a materially different use to the commercial stable/livery use up until 2001. But even if that was the case, there is still less evidence that it was a use that was in fact incidental or ancillary to the use of the dwellinghouse as such. It is abundantly clear to me that the 2015 Inspector correctly identified the planning units

within Mr Withers' ownership in 2001, that is one comprising the dwelling, yard, garage and garden, and the other comprising the stables and paddocks, the barn and the access. It is easy to distinguish the same planning units on the ground now. They are physically delineated and of entirely different character. I find, as a matter of fact and degree, that the appeal site lies within a different planning unit to the dwellinghouse, and, on the balance of probability, has done so since the stables use commenced. On the evidence provided I can see no basis whatsoever for the appellant's assertion that the land has been in dwellinghouse use at any time, still less that a material change of use of a planning unit including both the dwellinghouse and the stables to a use including dwellinghouse use occurred more than 10 years ago.

14. Mr Withers has placed a great deal of reliance on his stated abandonment of the commercial stabling/livery use. In reality, that has no bearing on my conclusion that the appeal land has not been used for purposes incidental to, or ancillary to, the use of No 82 as a dwellinghouse. I note that it appears to be Mr Withers' strongly held belief that abandonment of one use on a planning unit in a mixed use does not result in a material change of use. However, whether or not a change in the mix of uses carried out on a planning unit amounts to a material change of use is a matter of fact and degree (see *Beach v SSETR & Runnymede BC* [2001]).

15. Another argument put forward by Mr Withers is that the appeal land is in any case within the curtilage of the dwellinghouse. He put that argument to the Inspector in respect of the barn the subject of the 2015 appeal. She considered the extent of the curtilage of the dwelling at No 82 as follows: "As to whether the appeal site lies within the curtilage of No 82, which has also been argued by Mr Withers, it is generally accepted that "curtilage" means an area forming part or parcel with the house or building which it contained or to which it was attached. In the case of No 82, in my opinion the curtilage is marked by the extent of the house, the garden and the yard and garages, which is a well-defined area clearly forming part and parcel with the house and serving the purpose of the house. The appeal site is not an integral part of this, indeed it is physically separate from it. It does not form part of the same enclosure as the dwelling. The limited amount of storage of domestic items in the barn even at present is not sufficient to bring either the barn or the access track within the definition of "curtilage", given the clear physical separation between the two."

16. The very same considerations apply to the appeal site in this case. However Mr Withers argues that the court judgement in *Sumption*[4], a case where land originally outside of the curtilage of the dwellinghouse was taken into the property as garden land, and subsequently confirmed as residential curtilage, supports his view. However, the land in that case was within the same planning unit, the land was garden land at the time of the determination, and it was in an urban situation.

17. He points also to the absence of a defined boundary between the side of the house and the northern paddock, and also to a gate from the garden into the paddock, but despite the easy access between the appeal site and the dwelling and garden along a short section, it is easy to distinguish the different areas, which are entirely different in character. For land to fall within the curtilage of a building or other land there must be an intimate association, and curtilage land

[4] Sumption & Sumption v L B Greenwich and Anor [2007] EWHC 2776 (Admin)

should serve the purpose of the building within it in some reasonably necessary or useful manner. Though they adjoin, there does not appear to me to be an intimate relationship between the dwellinghouse in this case and the appeal site land, and there is scant evidence that the appeal site land serves the purpose of the dwellinghouse in any reasonably necessary or useful manner.

18. He has also referred to an unimplemented planning permission for an extension to the dwellinghouse granted on appeal decision in 1990. This extension would have encroached on the paddock alongside the dwellinghouse, and Mr Withers claims that the grant of planning permission was an acknowledgement that this land was within the residential curtilage at that time. That is simply not a conclusion that can be drawn from a grant of planning permission.

19. I see no good reason to come to a different conclusion on the extent of the dwellinghouse curtilage to that of the Inspector in the 2015 appeal. I conclude therefore that the appeal site falls outside of the curtilage of the dwellinghouse.

**Conclusion**

20. For the reasons given above, and having regard to all other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the site as *Residential leisure use ancillary to the use of number 82 as a dwelling house* was well-founded and that the appeal should fail. Accordingly, I shall exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Paul Dignan*

INSPECTOR