



Appeal Decision

Inquiry Held on 7 January 2020

Site visit made on 8 January 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/Y9507/X/18/3200665

Buriton Barn, Buriton Farm Lane, Treyford GU29 0LF

- 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 N Smith against the decision of South Downs National Park Authority.
 - The application Ref SDNP/17/04166/LDE, dated 14 August 2017, was refused by notice dated 18 October 2017.
 - 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 C3 residential use for the site area and buildings described on the accompanying drawings (193-P20 to P29).
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Decision

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

Application for costs

2. At the Inquiry an application for costs was indicated to be made by Mr N Smith against the South Downs National Park. This application is the subject of a separate decision.

Reasons

3. The main issues in the case are what is the planning unit and how has the land been used, including considering occupation of the land, physical separation and functional use of the land, past and present, and also the effect of previous planning permissions.
4. For the relevant period all the land has been in the same ownership.
5. The identification of an area of land for the purposes of a Planning Contravention Notice does not imply that area is a planning unit.
6. I am considering planning use and not curtilage in the consideration of the appeal.
7. There are no physical boundaries within the site that would suggest a particular use is confined to a particular area. The land has boundaries on all sides, apart

- from to the north-west. This boundary is open to the agricultural land adjacent, which if anything is less suggestive of a residential use, but I attach no weight to physical boundaries.
8. The appellant has identified previous planning applications/permissions for residential use of the barn, and specifically the area of land enclosed within the red lines of those applications, which essentially was the same, at least initially for all of them, as this LDC application. I acknowledge that when an application is made for a house, with the permission there is also an assumed change of use of the land associated with it and that is normally taken as being the land within the red line.
 9. It is clear from the various applications starting with that in 2002, that the Authority has endeavoured to control the residential activity associated with the dwelling. In 2002 the Authority went back to the applicant and requested a reduction in the site area and land which would reduce the land that would gain residential use, by adjusting the red line position. It seems to me this was the appropriate way to limit residential use of the associated land and it is a pity, if that was the Authority's aim, that this approach was not continued with the subsequent applications. However, in later applications the main control was in relation to the location of curtilage and not residential use, which is not unusual, but with the main aim/outcome being the control of where associated permitted development can occur. To my mind that does not of itself limit residential use of the red line area.
 10. However, this is of little effect in relation to this appeal. It is common ground that none of the previous planning permissions have been implemented and therefore the change of use of the land that would have come into being with their implementation has not occurred. Different permissions identified different areas of land. While what was intended may have a little relevance, a previous unimplemented permission does not infer or grant planning permission for another future scheme, even if that is a residential use of the land on the lines of the previous permissions.
 11. I therefore give little weight to the intentions of the Authority to limit the area of land for curtilage in previous applications, or the appellant's reliance on the red line of the previous permissions. The appeal does not relate to planning impacts, but what has occurred in terms of the use.
 12. Subsequent to the inquiry the Authority has agreed on information provided by the appellant that the residential use of the buildings is lawful and on the certificate has drawn the red line closely around the group of buildings. This appeal therefore concentrates on the land beyond the buildings.
 13. The land within the red line was in active agricultural use up to around 2002, when it was sold off separately. From this point the ownership and control of the land within the red line of the application has been in a single ownership, although the actual owner has changed with the sale of land and property. I therefore acknowledge that the starting point for consideration of the planning unit is the unit of occupation, the whole land within the red line.
 14. The agricultural use is evident in an aerial photograph of 2001. The next aerial photograph is from 2007 where the character of the land has changed from the adjacent field and appears to be unmaintained. There is no fence between the land and the adjacent field and for the land to the north-west, that is still the

- case on its western edge, although there are wheel marks around the edge of the field adjacent to the western edge of the appeal site.
15. In terms of the aerial photographs, the character of the land does not change until the photograph of 2013. While the majority of the land still appears unmaintained there are now signs of the building works with some spoil and formation of the hard standing to the rear of what is now the garage. There is some evidence of activity on the site with 'trodden' routes evident and that is the case in 2018.
 16. There is not a great detail of evidence on the use of the site, and the appellant, who has not been in occupation for a considerable time, has not given evidence at the inquiry, which is understandable as for much of his occupation there has been evident residential use of a proportion of the land, particularly that to the south east.
 17. A previous owner has provided a statutory declaration. Much of the information provided is related to explanation of how the buildings are used, which was initially relevant to this application, but subsequently the use of the buildings is now confirmed by the LDC issued.
 18. I will consider the use of the disputed land in three parts:- the land to the front of the dwelling, the hard standing immediately to the rear of the garage and the land to the rear of the site.
 19. The land to the front of the building has always been directly associated with the dwelling. When it was constructed it had the drainage and septic tank for the dwelling installed in the land and doors from the dwelling open directly out to the land. The previous owner notes that he maintained the land, although it was not in the same intensive way as the central area. The drainage and door way do not necessarily mean that the land is used in association with the house, but given that the land is intimate to the door way and that the septic tank will need maintenance and the land is in the appellant's ownership, I conclude on the balance of probability that it was so used.
 20. The Authority's aerial photographs and other photographs are not sufficient to indicate that this was not the case. While suggesting a less intense use it is not no use. The Parish Council's comments also are not precise enough to suggest that the appellant's residential use of the land is unlikely.
 21. The hard standing land to the rear of the garage had the hard standing added at an early date after the land had the underground array of pipework serving the heating system installed for the house. The area of hard standing has been used for parking by the occupants of the house and this is clear in the photographs provided by the Authority. Thomas Eggar LLP note in relation to Land Charge inquiries that the area of hard standing was used by the contractors and was to be removed and the land returned to paddock. That may be the case, but it did not occur, and on the balance of probability the parking use has continued as has the use of heat array pipes. It has continued to be used by the appellant in association with his house and has been in that use for in excess of 4 years.
 22. I appreciate that the garage permission has been implemented and that there is a condition that limits the use of the roof space itself, but this is a different area of land.

23. The land to the rear was noted by Mr Fenech to have been a paddock used for the keeping of chickens and the whole area, probably including the hard standing, was to be turned back to meadowland. The keeping of chickens is an agricultural use and does little to aid the appellant in establishing a residential use. When used on residential land is treated as de minimis and does not amount to a change in use. To my mind, while I accept that any agricultural use has ceased for quite some time, the land is more akin to a meadow than it is for residential use. The heaps of stored materials are relatively small and not a residential use. The small shed is de minimis and again not sufficient to establish a residential use. The aerial photographs provided by the Authority suggest that there has been no specific use of the land. In my view, at present, on the balance of probability the land is in a nil use. It is not in the same planning unit as the residential use.
24. For the reasons given above I conclude, on the evidence now available, that the Authority's refusal to grant a certificate of lawful use or development in respect of C3 residential use for the whole site area and buildings described on the accompanying drawings (193-P20 to P29) was not well-founded and that the appeal should succeed in part only. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended. The appeal is allowed in part.

Graham Dudley

Planning Inspector



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

IT IS HEREBY CERTIFIED that on date of application the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto 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 land has been shown of the balance of probability to have been used for residential purposes for more than 4 years before the application date.

Signed

Graham Dudley

Planning Inspector

Date 17 April 2020

Reference: **APP/Y9507/X/18/3200665**

First Schedule

Residential use

Second Schedule

Land at Buriton Barn, Buriton Farm Lane, Treyford GU29 0LF

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 the Lawful Development Certificate dated: 17 April 2020

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Scale:NTS

