



## Appeal Decision

Inquiry Held on 20 October 2020

Site visit made on 23 October 2020

**by Paul Dignan MSc PhD**

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

**Decision date: 24 November 2020**

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**Appeal Ref: APP/D0121/X/19/3231176**

**Land at Parsonage Lane, Winford.**

- 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 Leigh Devonald against the decision of North Somerset Council.
  - The application Ref 19/P/0261/LDE, dated 15 January 2019, was refused by notice dated 17 May 2019.
  - 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: Use of a caravan on an agricultural smallholding for use ancillary to the operation of the holding including supervision of animals including horses.
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### Decision

1. The appeal is dismissed.

### Reasons

2. For the avoidance of doubt, in an appeal under s195 of the Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The standard for the evidence is one of balance of probabilities.
3. The appeal site is a long strip of land enclosed by hedgerows running alongside Parsonage Lane. It has no planning history, but it is common ground that it had a lawful agricultural use when the appellant acquired it in late 2008. Neighbouring residents recall a mobile home, or at least the remains of one, having been present on the site prior to 2008, though there was no evidence of its use, or what it was doing there.
4. Mrs Devonald's evidence is that when she bought the site it was inaccessible. She brought some goats onto the site in late 2008-early 2009 to help with clearance, and claims she brought the caravan now on site, a small tourer, at about that time. Chickens were brought onto the site shortly afterwards, then 2 Shetland ponies about a year later. The land was registered with DEFRA as an agricultural smallholding in 2011 in order to bring pigs in. In about 2015-16 Mrs Devonald moved her horses to the site, re-homing the pigs since they were incompatible with the horses. Since then the land has been used for keeping horses and chickens, along with some vegetable growing. The horses are used

for recreational purposes. There are various structures on the site, mainly stables and chicken arks.

5. It is apparent that behind the application is the belief that the caravan on the site is immune from enforcement action due to the passage of time, have been stationed there for more than 10 years at the date of the application. There is substantial, though not conclusive, evidence of the touring caravan having been there for that period. However, the stationing of a caravan on land for purposes ancillary to its lawful use is not development, and hence, in the absence of any restrictive conditions, could not be subject to enforcement action. Whether a use is ancillary is a matter of fact and degree, and I heard evidence about how it was used over the years, but the purpose of the caravan ultimately stands to be considered against the use of the land on which it is stationed.
6. At the date of the application the evidence overwhelmingly indicates that the primary use of the land was not agriculture. As I understand it, nothing much had changed on the site between the application date and my site visit. In terms of extent, about half of the site was being used solely for horses, including stables and paddocks. A piece at the western end was being prepared for raised beds for vegetable growing, and the remainder, the eastern end with highway access, was in use for parking, stationing of the caravan, and poultry. Aside from the parking area, this was laid to grass and had some domestic paraphernalia. The overall predominant character of the use, however, I considered to be the keeping of horses for private recreation. There was evidence that the caravan had been used on occasion for extended periods by the appellant and her family, mainly school holidays, but I saw no reason to question the appellant's claim that it is used in the main for shelter and comfort while tending to the horses, with occasional overnight stays when preparing for travel to equestrian events or for animal welfare reasons.
7. I find accordingly, as a matter of fact and degree, that the land now has a single primary use, that is the keeping of horses, with the use of the caravan being for purposes ancillary to that use. The leisure uses apparent on the site, preparing for vegetable growing and spaces more adapted for family leisure than horse care, being peripheral or incidental to the primary use, having regard to the use of the horses primarily for family recreation.
8. It is well established by case law<sup>1</sup> that the keeping of non-agricultural horses, as opposed to using them to merely graze the land, is not agriculture for planning purposes. That the land is registered as an agricultural smallholding does not alter that. The land has been used for its current purposes for about 5 years. Before that, in the appellant's ownership, it was used for keeping pigs, goats for a period, poultry and 2 Shetland ponies. This suggests that there was a gradual transition from agricultural use to the present use, but I am satisfied that the existing primary use of the land use cannot be dated further back than 2016. It is materially different in character to an agricultural use, and on the evidence I have heard it is also different to the immediately preceding use, which appears to have been a mixed use of agriculture and the keeping of horses, or alternatively solely agriculture depending on whether the Shetland ponies were there to graze the land or for other reasons. It is not necessary to

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<sup>1</sup> Belmont Farm v MHLG [1962] 13 P&CR 417: Sykes v. Secretary of State for the Environment [1980] QBD 439/79

make a clear finding on that point since it is clear to me, again as a matter of fact and degree, that the bringing of the horses to the site in or about 2016 brought about a material change of use of the land.

9. Section 55(1) of the 1990 Act states that the making of a material change of use of land is development, which requires planning permission by virtue of section 57(1). The land does not have planning permission for its present use, that is the use of the land for the keeping of horses, usually called equestrian use. Development without planning permission can gain lawfulness by the passage of time, but the use would have to have been sustained for a period of 10 years during which the Council could have taken enforcement action against it. That period has not passed here, so the current use is unauthorised. The stationing of the caravan on the land is for purposes ancillary to the current unauthorised use, hence it is part and parcel of it.
10. Section 191(2)(a) of the 1990 Act provides that a use of land is lawful if no enforcement action may be taken in respect of it, whether because it did not involve development or require planning permission or for any other reason. Although the Council has not indicated that it has any intention of taking enforcement action against the current use, it is still vulnerable to enforcement action which could require the use, which includes any ancillary use, being part and parcel of the primary use, to cease. That being the case it is not possible to issue an LDC for the use existing, of which the use of the land for siting the caravan for ancillary purposes is a part. If the appellant wishes to regularise the situation, she will need to make an application for planning permission.
11. I should add that the description of the use for which the LDC was sought is somewhat ambiguous, referring to an agricultural smallholding but without actually specifying the use of the land save for 'the operation of the holding'. While I have the power to amend the description to more clearly reflect what was actually happening at the site at the application date, it would not assist the appellant in any case. I note also that the reason given for refusing the LDC refers to the use broadly as described in the application, but it is the primary use of the land at the date of the application that is determinative, and it is the Council's decision to refuse the LDC that is the subject of the appeal, and not its reasons.
12. In all the circumstances, on the evidence available I am satisfied that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of the caravan for purposes ancillary to the use of the land at the date of the application was well-founded. The appeal cannot therefore succeed, and accordingly I shall exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Paul Dignan*

INSPECTOR

