
Appeal Decision

Site visit made on 1 December 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 11 December 2020

Appeal Ref: APP/Y9507/X/20/3252933

Meadow View, Horsham Road, Findon, West Sussex BN14 0RG

- 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 Ms Janet Scoble against the decision of South Downs National Park Authority.
 - The application Ref SDNP/19/0479/LDE, dated 2 October 2019, was refused by notice dated 29 November 2019.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the occupation of the dwelling in non-compliance with the occupation condition (Condition 2) on planning permission FN/83/90. The Condition requires the occupation of the house by persons employed or last employed at Kingswood Livery Stables or locally in agriculture or forestry.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Local Planning Authority's (LPA) refusal to issue a certificate of lawfulness for the continuous breach of the Condition for ten years was well founded.
3. Under s191(1)(c) of the Act, any person who wishes to ascertain whether any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful may apply for the purpose to the LPA specifying the land and describing such a failure. s191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
4. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of 10 years beginning with the date of the breach. The appellant therefore needs to show, on the balance of probability, that the breach of the Condition had occurred for a continuous period of at least 10 years by the date of the application for the LDC, which was 2 October 2019. Consequently, the evidence to support that

claim needs to date back to at least 2 October 2009. The burden to make out the case rests with the appellants.

Reasons

5. The appellant has occupied Meadow View, a two-storey house, continuously since it was built in early 1993, following planning permission on 28 January 1991. It is this permission to which Condition 2 is attached. Condition 2 states:

The dwelling hereby approved shall be occupied only by persons employed or last employed at the Kingswood Livery Stable or locally in agriculture or forestry.

The reason given for the Condition states:

The site lies in a rural area and an Area of Outstanding Natural Beauty¹ where in accordance with the policies of the Structure Plan and the Draft Arun District Local Plan, development unrelated to the essential needs of this livery stable, agriculture or forestry would not normally be permitted.

6. It is located on the northern edge of Findon, one of only two houses on the west side of the A24 trunk road, from which it is accessed. It is situated on the rising down land just to the east of Kingswood Livery Stables, a business owned and run by the appellant. Immediately to the east of the house is a sand school for the horses and east of that two rows of stables and a barn attached to the southern end of the western stable block. Both the house and the stables and yard are accessed from a gravel track through a timber farm gate.
7. There are 10 stables in total, at present occupied by 9 horses. The barn is occupied by a small gym and is also used to store vintage combie vans that are apparently used for weddings. One of the fields above the house is used for no more than 28 days a year as a venue for weddings/receptions in marquees and is generally accessed from the A280, according to Ms Scoble. Some of the buildings/stables at the southern end of the eastern stable block are occupied by Class B1 businesses, in particular a printmaking and pottery business and a stonemason. The appellant owns all this land. Kingswood Livery Stables' website says that it offers liveries or gazing on 35 acres of land, 17 acres on this west side of the village extending onto the A280 and 18 acres on the eastern edge of Findon.
8. It is agreed between the parties that the appellant lets out the livery yard and stables on a DIY basis and does not have a 'hands-on' role in attending to the horses stabled there or maintaining the livery yard. She does not herself have a horse in the stables. She is retired now but was last employed as a self-employed beauty remedial therapist. Her partner, who lives with her in the appeal property, is also retired and was last employed as a picture framer and gilder. The livery yard has been run in this way, with no direct 'hands-on' employment or day-to-day management of the stables by the appellant or her partner, since she first occupied the house in 1993.
9. The LPA does not challenge the appellant's statement that no more than 100 hours of work per year are undertaken in terms of administering the DIY livery business, by her and her partner, who undertakes small repairs to the holding and also carries out book-keeping for the business. The appellant organises the

¹ Now a National Park

- contracting out of general maintenance work to a third party. She deals with any re-letting of the stables including administering to the signing of licenses by those wanting to keep their horses in the livery stables.
10. The appellant claims that neither her nor her partner are employed in the livery business, nor have been since 1993, and that the Condition has therefore been continuously breached for all that time – well over 10 years.
 11. However, it is clear from the individual licenses signed by those people keeping their horses in the livery stables or on the appellant's grazing land that Meadow View is the business address of Kingswood Livery Stables. The website for the business makes clear that the owner, Ms Scoble, lives on the site. Whilst not a limited company it is a business owned and run by the appellant. It is clear that she and her partner spend time, albeit a limited amount of time, running the business. She clearly derives an income or profits from running the livery business, which is the main occupier of the stables and yard area, as opposed to the B1 businesses that only occupy a small part of the buildings.
 12. This is more than just taking rental income from letting a property. The appellant is responsible for setting the rules and terms by which people use her grazing land or occupy her stables, resolving any management issues or breach of the rules or license agreements and resolving any disagreements between the DIY occupiers. She is responsible for collecting the rent and chasing any non-payment or arrears. Condition 2 makes no reference to Meadow View being occupied by someone mainly (my emphasis) employed or last employed in Kingswood Livery Stables; it merely states 'employed'. She and her partner are, beyond a doubt, employed in running the business simply because it is her business and she runs it and profits from it. No one else runs it. To be employed in the running of the business does not mean that the appellant or her partner need to spend most of their time running it or that this needs to be 'hands-on'.
 13. The length of time this takes her, or her partner, is irrelevant. She lives on the site and is a reassuring presence in terms of security irrespective that she does not actively supervise or patrol the site. The house was only granted permission in 1991 on the basis that there was an essential need for someone to live on site in connection with the running of the livery stable business. The appellant ran the business then and still runs it now.
 14. For these reasons I conclude that Condition 2 has never been breached since it was first imposed on the above planning permission in January 1991. Consequently, I conclude that the LPA's refusal to grant a certificate of lawful use or development in respect of the breach of Condition 2 was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Nick Fagan

INSPECTOR