



Appeal Decision

Site visit made on 27 November 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/A4710/X/20/3259375

**Cliffe Manor, 363 Stainland Road, Stainland, Halifax, West Yorkshire
HX4 9HF**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Simon Emberton of Stainland Dog Services against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 20/00584/191, dated 3 June 2020, was refused by notice dated 18 August 2020.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is two existing barn buildings, along with 3 fenced areas, used since 1999 for running a dog day care and walking business by Stainland Dog Services.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. Therefore, the fact that the business may have been relied upon by the local community, and operated without complaint, cannot be taken into account since these matters concern the planning merits of the development.
4. Given the issues in this appeal, I consider it is useful to set out the statutory framework. Planning permission is required for the carrying out of any 'development' of land¹. 'Development' means the carrying out of building,

¹ Section 57(1) of the 1990 Act.

engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land². The development in this appeal concerns a change of use of land/buildings, as opposed to operational development.

5. If any person wishes to ascertain whether any existing use of buildings or other land is lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use³. Uses are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action has expired⁴. The time limits are set out in section 171B of the 1990 Act. In this case, the material change of use falls within subsection (3) - any other breach of planning control, and so no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach. It is also necessary to consider whether the use continued after the date of change without significant interruption, since during these periods the Council would have been unable to take enforcement action.
6. The appellant is seeking to show that a material change of use of land and buildings to use as a dog day care and walking business took place on or before 3 June 2010⁵, and that the use continued after the date of change without any significant interruption, such that it would have been too late for the Council to take enforcement action.
7. The description of the use given in the application form referred to two existing outbuildings plus three fenced areas. These areas were identified on a drawing with the relevant land/buildings shaded red. This drawing and an aerial plan from Google Earth included a further 'shed' type building, with the annotation "office/reception", located to the east of the main house. I saw from my site visit that the shed, the two outbuildings and the three fenced areas, where the primary use is stated as being in connection with Stainland Dog Services, could reasonably be differentiated both physically and functionally from land in residential or some other use. As such, the appellant was correct to identify these areas in his LDC application as forming a separate planning unit.
8. However, the Council's decision notice describes the use as "use of buildings for dog day care and walking business". This is only part of what was sought. It seems that the Council relied only on the submitted Google Earth aerial plan, which identified the shed and the two outbuildings in red but did not include the associated land. I consider that this plan annotation resulted from a misunderstanding on the part of the applicant, who I note is unrepresented. It would have been open to the Council to clarify the discrepancy between the Google Earth aerial plan and the application form/drawing, as I would do if I were in a position to allow the appeal. To be clear, I have considered this appeal on the basis of what was sought in the application form, as set out in the banner heading above, as opposed to the altered description provided by the Council.
9. Finally, the appellant explains that the use ceased on 26 February 2019. This admission, in itself, is not fatal to the appeal since it is argued that the change of use occurred sometime in 1999. As set out above, the appellant must show

² Section 55(1) of the 1990 Act.

³ Section 191(1)(a) of the 1990 Act.

⁴ Section 191(2)(a) of the 1990 Act.

⁵ Ten years prior to the date of application.

that the change of use occurred on or before 3 June 2010 and continued for ten years without significant interruption.

10. Contrary to the Council's assessment in the delated report, it is not necessary for the appellant to show the use was continuous up until the date of the application. If the use commenced in 1999 and continued after the date of change for ten years continuously, it would have become lawful sometime in 2009. The Council has erroneously discounted much of the evidence on this basis. I appreciate that lawful rights can be lost, for example through a material change to some other use or by abandonment, but the Council did not discount the evidence for such a reason. If the use has been dormant as explained, pending a licence issue, it does not automatically mean that any lawful use rights which may have been accrued would be lost.
11. The Council also suggests that the enterprise is a hobby as opposed to a business. However, this is irrelevant. What must be considered is whether a material change of use occurred, not whether that use was commercial.

Main Issue

12. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

13. The appellant's evidence is as follows: a letter from a neighbour at No 365 dated 7 September 2020 confirming the use was in operation from before 2007; an email from an interested person dated 1 June 2020 stating that the business has been established for ten years; a letter from a customer dated 31 May 2020 stating that their two German Shepherd dogs attended day care from Easter 2010; an email from another customer dated 31 May 2020 confirming that their dog Ozzy attended at least three days a week from September 2009; a booking form for Murphy the labrador for the period 14 to 16 August 2009; an invoice for advertising dated 1 March 2008; an email concerning Bubble the Jack Russell who attended the day care facility for three days each week from July 2009 to February 2017; a statement to the Magistrates Court dated 23 October 2009 concerning one of the dogs under evaluation, and a receipt for building materials dated 2010.
14. While this information lends support to the appellant's case, it is not sufficient. The evidence is non-specific in terms of dates. Crucially, it is not clear that the use operated without significant interruption throughout the relevant period. Moreover, the evidence does not relate specifically to the land and buildings in question, showing how these areas were used and occupied by the business.
15. The emails and letters from customers and neighbours are useful but these would carry more weight if they were submitted as sworn evidence in the form of a statutory declaration⁶. The appellant may also provide sworn evidence of his own setting out the dates when the use commenced, from where on the land it operated, that it was continuous, numbers of dogs etc. Examples of other documentation could include booking forms, insurance policies,

⁶ The Statutory Declarations Act 1835 provides for the use of declarations in place of oaths in specified circumstances. These are made in front of a person with appropriate authority as set out in the 1835 Act (usually an independent lawyer) and are classed as sworn evidence.

invoices/receipts and financial information such as tax returns or bank statements.

16. As I have explained, the onus of proof is on the appellant. The information before me is incomplete and I am unable to reach a finding that the appellant has shown on the balance of probability that the change of use occurred on or before 3 June 2010, and that the use continued after the date of change without any significant interruption, such that it would have been too late for the Council to take enforcement action.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a dog day care and walking business by Stainland Dog Services 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.

Debbie Moore

Inspector