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## Appeal Decision

Site visit made on 12 January 2021

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

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

**Decision date: 21 January 2021**

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**Appeal Ref: APP/Z4718/X/20/3259182**

**Lower Dimpledale Farm, Lower Sowood Lane, Briestfield, Dewsbury WF12 0NY**

- 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 in part to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr and Mrs Heaps against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2020/CL/91551/E, dated 28 May 2020, was approved under terms modified by the Council by notice dated 21 August 2020.
  - 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 equestrian use.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the Council's decision to approve a certificate of lawful use under modified terms was well-founded. In this case that turns on :
  - i. whether the appellants have proved on the balance of probability that the use of the property changed to equestrian use on or before 18 May 2010 and that the use then continued without significant interruption for 10 years after the date of the change; and
  - ii. whether the Council's approach to decision-making was sound with particular reference to whether the appellants should have been informed of the modification to the description of the use for which the LDC was issued prior to issuing the LDC.

### Reasons

3. In an appeal relating to a LDC the onus of proving the relevant facts rests with the appellants, and the standard of evidence is the balance of probabilities. The appellants' own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellants' version of events less than probable, the appellants' evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
4. It is my understanding that the original application included the application form and the following:

- Plans and Elevations as Existing (Drawing 2020-15-01);
  - Site Location Plan (Drawing 2020-15-02);
  - Site Plan (Drawing 2020-15-03); and
  - Legal Statement by Hall and McKay dated May 2020.
5. The appeal site comprises a linear building constructed of blockwork and timber with a partly open frontage. The wider land holding also has a more recently built agricultural building of blockwork with timber weatherboard cladding and a large open sloping field. Access to the appeal site is gained via a track off Briestfield Road. At the time of my site visit the building in question was being used for a variety of uses, including equestrian, agricultural storage and general storage purposes.
6. The building in question was erected as an agricultural building with open fronts for storage of hay and animal shelter under planning permission reference 92/62/93424/E2. I understand from the evidence before me that it was constructed in 2006 and an application was submitted under reference 2006/62/93003/E2 for the change of use of the building to use for agriculture and equine purposes. The application was approved and the appellants state that the building has therefore been used for stables and equestrian use for around 14 years and this is the lawful use.
7. The appellants have also stated that case law<sup>1</sup> confirms that merely to cease the use of one of a component activity in a composite use of land would not itself amount to a material change of use. Other case law is quoted relating to the intensification of a remaining land use, the definition of agriculture and what constitutes a material change of use. I am aware of the well-established principles identified and have taken those into account in determining this appeal. However, they cannot override the basic legal principles of dealing with an appeal such as this with respect to the burden of proof and the standard of evidence required.
8. In this case there is a distinct lack of evidence to support the appellants' case. The legal statement submitted with the application contains no evidence, but is a summary of planning history, the statutory context for the determination of LDCs and case law. Although it is contended that the use of the building as stables falls outside the definition of agriculture, there is no evidence of the actual use of the building during the material period. It is stated that it cannot be suggested that there has been an intensification to the equestrian use of the building and no change in the character of the land. Without evidence to support these claims it is not possible to conclude that the use applied for has occurred, that planning permission would not be required for the use sought and that enforcement action could not be taken against the use of the building.
9. In coming to this conclusion I have taken account of the statutory context for the determination of LDCs, advice in Planning Practice Guidance (PPG) and the approach taken by the Council. I conclude that the appellants have failed to prove on the balance of probabilities that the use of the property changed to equestrian use on or before 18 May 2010 and that the use then continued without significant interruption for 10 years after the date of the change.

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<sup>1</sup> Wipperman and Buckingham v SSE and the London Borough of Barking [1965] 17 P&CR 225

10. Turning to the second main issue, S191(4) of the Act allows a local planning authority to modify the terms of an application for a LDC, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than issue an outright refusal. Case law<sup>2</sup> has established that an Inspector can exercise the same power, on appeal, as the local planning authority has done on the application. Indeed, the Panton judgment indicated that an Inspector is obliged to issue a certificate for any use of the planning unit which the evidence shows is lawful, and to modify or substitute the descriptions of the use and the land to which it relates, if necessary.
11. PPG states that a local planning authority may choose to issue a LDC for a different description to that applied for. It is, however, advisable to seek the applicants' agreement to any amendment before doing so. In this case the evidence is that the Council did not seek the appellants' agreement to the amendments made before issuing the LDC. The Council had ample opportunity to do so during the application process and the appellants are clearly dissatisfied by the approach taken. That may be so, but the Council's approach is not unlawful. Consequently, I conclude that the Council's approach to decision-making was sound with particular reference to whether the appellants should have been informed of the modification to the description of the use for which the LDC was issued prior to issuing the LDC.

### **Conclusion**

12. For the reasons given above I conclude that the Council's approval under modified terms 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.

*A A Phillips*

INSPECTOR

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<sup>2</sup> Panton and Farmer v SSETR and Vale of White Horse DC [1999] JPL 461