



Appeal Decision

Site visit made on 8 June 2021

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

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/C2708/X/20/3263459

Buckstone Lane, Cowling, Keighley BD20 7BD

- 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 Mrs Keeley Reading against the decision of Craven District Council.
 - The application Ref 2020/21940/CPE, dated 16 August 2020, was refused by notice dated 3 November 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 equestrian and agricultural.
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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. The fact that there are other equestrian facilities and/or containers in the area is not relevant as this concerns 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, 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.

¹ Section 57(1) of the 1990 Act.

² Section 55(1) of the 1990 Act.

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 application sought an LDC for a mixed use of agricultural and equestrian. This 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 mixed 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 claims that the land was previously used for agricultural purposes but has been in a mixed use for the past 11 years. The concept of a mixed use is one of two or more primary uses existing within the same planning unit or unit of occupation. One is not incidental to the other, although there may be incidental uses associated with each primary use. The mixed use sought includes grazing, riding and schooling of horses and donkeys. It is explained that the majority of the land provides grazing for horses and sheep, and there is a fenced area for breeding pigs and poultry. Within the fenced area, there are several small pens and a stable block. I also saw four shipping containers within the fenced area, which I understand are used for the secure and dry storage of equipment, feed/hay and a small welfare area for use during inclement weather. At the time of my site visit, there were several motor vehicles and pieces of agricultural equipment on the land.
7. The Council classes the fencing, containers and stables as operational development, and in certain circumstances they may be treated as such. However, it is clear from the appellant's descriptions that these are considered as part and parcel of, and integral to, the claimed use of the land as opposed to being operational development in their own right. For example, the containers are said to be used for storage or for shelter when an on-site presence is required, such as during lambing and farrowing. The stables provide shelter for livestock and/or horses and the fencing sub-divides the land for animal welfare and land management. This distinction is important since the time limits for taking enforcement action differ between operational development and a material change of use. Moreover, I must consider the use that was sought which is a change of use, as made clear in the application. I have determined the appeal on this basis.

Main Issue

8. I must consider whether the appellant has shown that a material change of use of land from an agricultural use to a mixed use for agricultural and equestrian purposes took place on or before 16 August 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. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

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.

Reasons

9. The appellant's evidence comprises a number of witness statements and 'Google' images. The statements describe seeing horses and donkeys on land near Wainman's Pinnacle over many years. The Google images are dated 2009 and 2016 and show a building in the same location as the current stable block. A storage container is shown in the 2016 image, located in the south-eastern corner, along with some fencing to separate a winter paddock from the grazing land.
10. 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 mixed use operated without significant interruption throughout the relevant period. Moreover, the evidence does not relate specifically to the land in question, nor does it show how this area was used and occupied for a period in excess of 10 years. While it may be correct to differentiate between the agricultural and equestrian primary uses in seeking a mixed use, because the definition of agriculture⁶ does not include the keeping and breeding of horses, a true equestrian use must involve activities other than just putting the horses out to graze. The evidence in relation to the equestrian element of the mixed use is very limited.
11. The emails and letters from local residents are useful but these would carry more weight if they were submitted as sworn evidence in the form of a statutory declaration⁷. The appellant may also provide sworn evidence of her own setting out the dates when the use commenced, from where on the land it operated, that it was continuous, and numbers of livestock and horses. Examples of other documentation could include insurance policies, registration and movement documentation, invoices/receipts and other financial information such as tax returns or bank statements.
12. As I have explained, the onus of proof is on the appellant. The information before me is incomplete and ambiguous 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 16 August 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

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an equestrian and agricultural use 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

⁶ As defined in Section 336 of the 1990 Act as amended.

⁷ 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.