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# Appeal Decision

Site visit made on 14 April 2022

**by Simon Hand MA**

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

**Decision date: 03 May 2022**

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**Appeal Ref: APP/Y3940/X/21/3289799**

**Land and buildings at Highway Manor, Highway, Hilmarton, Calne, SN11 8SR**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr D Buscombe against the decision of Wiltshire Council.
  - The application ref PL/2021/04125, dated 21 April 2021, was refused by notice dated 8 December 2021.
  - 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 land for the purposes of agriculture, together with educational/therapy sessions by prior arrangement.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs was made by Mr Buscombe and is the subject of a separate decision letter.

## Reasons

3. The appellant rents land and buildings at Highway Manor, a large farm which is owned by Viscount Sidmouth. In 2019 an application by the owner was made for various uses at the farm, including glamping, yoga, a forest school and Mr Buscombe's petting farm. A temporary 2 year planning permission was granted, which was never fully implemented due to the pandemic. A further 2 years has subsequently been applied for, but now the owner has separated out the various uses and only applied for the glamping. As a consequence, Mr Buscombe has been left with no planning permission for his activities.
4. It seems this appeal is a possible first stage in a process to regularise Mr Buscombe's activities by arguing that they are all encompassed within the definition of agriculture and so do not require a separate planning permission.
5. There would seem to be no dispute that there is farming being carried on at Highway Manor and that various separate businesses also operate from the site, including the glamping and Mr Buscombe's business which is called 'Dave and Ewe'. Having looked round the site it would also seem clear to me that Mr Buscombe is a farmer who is carrying on agricultural activities on the land. He has a herd of cows and breeds calves for sale, a flock of sheep from which he breeds lambs for sale and similarly goats.

6. However, he also keeps pigs, ducks, chickens, alpacas, pygmy goats, rabbits and guinea-pigs. It is possible that some of these may be kept for traditional agricultural purposes (the chickens for eggs for example), but it is unclear if this is so. There are also two rescue donkeys and two rescue Shetland ponies. The majority of these animals are used for Mr Buscombe's other main occupation which is providing therapeutic sessions for children and adults on the farm.
7. The evidence provided in the covering letter to the application for the LDC and the appeal statement is that the therapy sessions are by appointment only and last for about an hour. They occur 5-10 times a week during the summer and less frequently in the winter. As part of some of the sessions there is alpaca walking, which involves only 1 person at a time for up to 4 hours. In his final comments the appellant's agent suggested the alpaca walking had been discontinued, but at the time the application was made, which is the crucial date, it seems that was one of the uses on the land.
8. It is clear to me that animal therapy is not an agricultural use, it is either educational or medical, depending on what, exactly, is taking place and who it is for. I have had regard to the various court cases referred to by the appellant, but even if the therapy was restricted to the animals on the farm that were clearly also being kept for agricultural purposes, it is still a different and new activity that is unrelated to agriculture. It is not, for example, a normal downstream activity such as bottling and selling wine from a vineyard but is a different type of use that just happens to conveniently take place on a farm. If the agricultural use ceased altogether the therapy use could continue unhindered. However, the therapy use is not restricted to the breeding herds, but large numbers of rabbits and guinea-pigs are kept as well as rescue animals, pygmy goats, alpacas and orphaned lambs. These are all used for the purposes of therapy, not just as pets, or because of kind-heartedness.
9. It is clear to me that while the grazing of animals is agricultural the animals are not kept just for grazing or solely for an agricultural purpose. Some of the animals are kept primarily for agriculture but have a secondary role in the therapeutic business, others are kept mainly for therapy purposes.
10. The secondary question is whether the therapy use is so small as to be de minimis, which it clearly isn't given the timings mentioned above, or whether it is a genuinely incidental to the main agricultural use. However, I have no figures to suggest how intense the agricultural use is and no real way of determining the balance between the two uses. I would say the farm is modest in size and it seems the therapy elements are an important part of the overall purpose of the farm. It seems to me there is a mixed use here of agriculture and therapy, which is wider than just an agricultural use and so does require planning permission. A certificate for the single use as described cannot be granted.

### **Other Matters**

11. The issue of the planning unit was also raised by the parties. The Council consider the whole farm is in a mixed use, agriculture, therapy, glamping and possibly other uses, whereas the appellant argues his use and the glamping are clearly separate from the rest of the site. I don't need to consider this as neither outcome would affect my view on the uses being carried out on the LDC

site<sup>1</sup>, but in any event, I do not have enough information to determine what the planning unit is. I do not know for example if there is more farming being carried on at Highway Manor beyond Mr Buscombe's activities, or if the other uses such as the forestry school have restarted, or the extent of shared services, access, parking, barns and so on. Either outcome is equally likely given what I saw on site so I shall not determine the planning unit issue.

*Simon Hand*

INSPECTOR

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<sup>1</sup> If I agree with the appellant then his planning unit is in a mixed use, but if I agree with the Council then the whole farm is in a mixed use. Either way it is not the use applied for.