



Appeal Decision

Site visit made on 25 May 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2022

Appeal Ref: APP/R2520/X/22/3290198

White House, Eagle Lane, Eagle Moor, Lincoln LN6 9DP

- 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 Mrs Elaine Lovell against the decision of North Kesteven District Council.
 - The application ref 21/0098/LDEXI, dated 26 January 2021, was refused by notice dated 22 July 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: *Equestrian Centre, Showground and ancillary uses associated with equestrian use - including training, showing, eventing, livery, stabling equine care, grazing, riding and training clubs etc.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description entered in the application form is shown in the heading above. The Council's decision notice uses a different description as follows: *Equestrian Centre comprising a Showground and other uses associated to include training, showing, eventing, competitions, riding and training clubs*. I have been provided with correspondence showing that this change was agreed prior to the determination of the application and I have therefore considered the description as revised.
3. I have been provided with 2 location plans. One shows a site including the dwelling 'White House' and a stable block. The other plan shows essentially the same site but with White House and the stable block excluded from the area edged red. The Council has advised that the plan excluding White House and the stables is the correct plan but the appellant says that the other plan is the correct one. The appellant also states that the house and stables constitute separate planning units. Since I have concluded that a certificate should not be issued in respect of either site, as explained below, it has not been necessary to resolve the question of which is the correct site plan.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether, on the balance of probability, the use of the site as described in the revised description was lawful when the application was made.

Reasons – the smaller site excluding White House and the stables

General approach to LDCs

5. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

The site

6. The appeal site is primarily comprised of a large field. When I visited the site it was laid out for equestrian use, with multiple jumps of various designs. These appeared to have been in place for some time and some of the jumps were elaborate in their design. It would plainly be a significant task to remove all the jumps given their number and design and it thus appears that they remain on the site throughout the year. Indeed, the appellant advises that the items have remained on the site for over 20 years, a claim the Council does not dispute. There were other items and structures on the site, apparently used in connection with equestrian activities. This included a public address system, with speakers placed on poles.
7. In 2021 the Council granted an LDC¹ for '12 No Stables in equestrian centre with associated use of livery, stabling, grazing, exercise, one-to-one training and equine care'. This related to the larger site, including 'White House' and the stables. The plan attached to the certificate shows the stable building edged in red and the wider site in blue, but the wording makes clear that it relates to both the red and blue land. Thus, whichever site is the correct one in this case, lawfulness of the equestrian centre use as described in the existing LDC can be 'conclusively presumed' in accordance with s191(6) of the Act.

The requirements to demonstrate lawfulness

8. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations are lawful at any time if—

(a) 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); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

9. No enforcement notice was in force at the date when the application for the LDC was made. Accordingly, my decision hinges solely on s191(2)(a). In accordance with section 171B(3) of the Act, the use would need to have continued for a 10 year period prior to (but not necessarily immediately prior

¹ Ref 21/0107/LDEXI

to) the LDC application on 26 January 2021 in order to become immune from enforcement action and lawful as a result. Thus, the use described in the application would have needed to have commenced by 26 January 2011 at the latest and continued for at least 10 years without any significant interruption.

The planning unit

10. In deciding a matter of existing use for planning purposes, it is first necessary to consider the relevant planning unit(s) - that is, the piece of land that each use relates to.
11. I understand that the whole site is used by the appellant for equestrian purposes. Thus, the unit of occupation is the whole site.
12. The large field/paddock that makes up the bulk of the site is essentially open in character, with little in terms of development other than the jumps and portable structures. A smaller (north-eastern) part of the site is separated from the main part by a hedgerow and trees. However, there is no suggestion that this part of the site is used differently from the rest. Given the occupation of the entire site by the appellant and the apparent uniformity of use across it, I conclude that the whole site is a single planning unit. This is consistent with the views expressed by both parties.

Assessment

13. The Planning Practice Guidance advises that:

In all cases, the description [of an LDC] needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (ie "sui generis" use);

14. In this case 'Equestrian Centre' is used as an umbrella term for the use. The appellant's preferred description then goes on to list what that comprises. The description of the existing LDC does something similar, also referring to an equestrian centre, but with a different list of specific activities. Thus, there is no dispute that the site is in lawful use as an equestrian centre. The question is whether the list of detailed activities the appellant now favours is a proper reflection of what that very general term actually comprises in this case.
15. The existing certificate refers specifically to livery, stabling and grazing. The certificate now sought would refer to a showground, showing, eventing and competitions, amongst other things. The showground is not explicitly stated to be an equestrian showground, but that is clearly implied by the wording and I have considered the appeal on that basis.
16. The proposed LDC would not state the extent to which activity at the equestrian centre is comprised of shows, events and competitions. Nevertheless, both parties clearly regard the appellant's preferred description of the equestrian centre use as materially different to that described in the current LDC, a view I share. Shows and other events attended by members of the public have the potential to have significantly different planning impacts due to things such as noise and traffic generation, when compared to other equestrian activities such as grazing or rider training. Thus, by emphasising those elements and referring to a showground, the description the appellant

proposes describes a materially different use. The dispute between the parties largely focuses on the extent to which showing/eventing at the site has been demonstrated.

17. The appellant has provided a range of evidence in support of her case. This includes various leaflets, calendars and schedules relating to equestrian events scheduled to be held at the site between 2008 and 2020. Street View images from May 2012 show the site much as it is at the moment, with fencing, jumps and other items associated with equestrian use.
18. There is no dispute that the site has been used for shows and competitions at times. Several events appear to have taken place each year since at least 2008. While the various calendars and leaflets do not prove that each event publicised actually took place, I have no reason to doubt that the majority did so. The likely exception to this is 2020, which must have been affected by the Covid-19 pandemic and which I cannot, therefore, assume to have gone ahead as planned.
19. The appellant has not given a breakdown of the number of shows for each year. In general, they have increased over the years. The White House Farm Equestrian Calendar for 2019 (the most recent year available, excluding 2020) lists activities taking place on 39 dates in total. Of these, 19 are training events or jumping clinics. These training events accord with the equestrian centre use described in the existing LDC, and I am not persuaded that they indicate use as a showground. Their exclusion leaves only 20 show/competition events. The information available for earlier years suggests fewer show/competition events in general. The calendar for 2015 shows only 11 events (excluding jumping clinics) and there is an indication of events on only 8 dates in 2011.
20. Moreover, the information before me does not show the scale of the various shows that have taken place. A 'show' could be a large-scale event or something much smaller, attended primarily by family and friends of the riders. Small scale events might be little different in character to the day-to-day use of the site as an equestrian centre as set out in the current LDC. The information before me does not show that larger scale events that may be different in character have taken place with sufficient regularity during any relevant 10 year period such that 'showground' needs to be identified as a specific element of the primary use of the site.
21. While the site contains a variety of jumps all year round, those are consistent with its acknowledged use for, among other things, rider training. Thus, the presence of those items does not show that the use of land has changed to include showground use. The public address system is more specifically for public events, but is a relatively minor addition to this substantial area of land and does not persuade me that a change of use has occurred.
22. I appreciate that it is not necessary for an activity to take place constantly for a piece of land to be said to be in that use. As the appellant points out, a storage building is still a storage building, even when empty. However, the intensity at which particular activities take place on a site have a bearing on the character of the use of the land. The information before me does not indicate show/competition use at a significant scale over any continuous 10 year period. In my judgement, the use for shows on the scale indicated does not imply a different use of the site and the use is adequately described by the existing LDC for an equestrian centre issued by the Council.

23. I have considered whether it would be appropriate to issue a certificate with revised wording to define more clearly the scale of the use of the site for shows and competitions, to the limited extent that it has been demonstrated. However, there is nothing to indicate that the appellant seeks such a certificate. While it appears that there has previously been some dialogue between the Council and the appellant on this point, neither party has proposed any alternative wording for me to consider.
24. Moreover, as I have already indicated, the information before me does not demonstrate that the use to date has been inconsistent with the existing LDC. Even if some events were of a nature that was materially different to the lawful equestrian centre use, it has not been shown that they were sufficient in number to amount to a breach of planning control, given the permitted development provisions relating to temporary uses². Consequently, I cannot see that issuing a certificate to reflect showground/competition activities to the limited extent they have been demonstrated would serve any useful purpose.
25. Both parties have referred to the case of *Hillingdon LBC v SSCLG & Autodex Ltd [2008] EWHC 198 (Admin)*, but that is of little assistance in deciding whether the appellant's description of the use of this site is appropriate. Indeed, the judgement made the point that what would be an appropriate level of detail in the certificate will necessarily vary from case to case. The judgement indicates that the degree of particularisation will be a matter of judgment for the decision-maker, based on the evidence.
26. I have also been referred to an appeal decision in which an inspector declined to place a limit on the number of cars to be sold at a site, but the information before me does not show that there is any meaningful comparison to be drawn with the appeal before me.
27. The appellant advises that the site is rated as a showground, but that does not show whether the specific use the appellant seeks a certificate for is now lawful. I understand that there have been no complaints regarding the use of the site and that local people have been generally supportive. However, the lack of complaints reinforces my view that shows at the site have not been sufficient in number or scale to cause significant planning impacts such as to have a bearing on the character of the use of the site.
28. For these reasons I conclude that it has not been demonstrated, on the balance of probability, that the site has been continuously used for any 10 year period as an equestrian centre comprising a showground and other uses associated to include training, showing, eventing, competitions, riding and training clubs. Consequently, I am not persuaded that such use of the site is lawful.

Reasons - the larger site including the White House and Stables

29. The reasoning in relation to the smaller site applies to the larger site as well. The additional land is a relatively modest addition to the site and, even if it forms part of the same planning unit, does not alter my findings regarding the extent to which the site has been used as a showground. Accordingly, it has

² Subject to certain limitations, none of which are applicable here, Class B of Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permits the use of any land for any purpose for not more than 28 days in total in any calendar year and the provision on the land of any moveable structure for the purposes of the permitted use.

not been demonstrated, on the balance of probability, that the use the appellant describes is lawful in relation to this larger site either.

Conclusion

30. For the reasons given above I conclude that, whichever of the 2 sites is considered, the Council's refusal to grant a certificate of lawful use or development 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 and dismiss the appeal.

Peter Willows

INSPECTOR