The Planning Inspectorate

Appeal Decision

Site visit made on 9 May 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 09 June 2023

Appeal Ref: APP/V1505/X/21/3286506
Casetta, Orchard Avenue, Ramsden Bellhouse, Billericay, CM11 1PH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the "Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Simon Wane against the decision of Basildon Borough Council.
- The application ref: 21/00554/LDCP, dated 1 April 2021, was refused by notice dated 11 October 2021.
- The application was made under section 192(1)(b) of the Act.
- The development for which a certificate of lawful use or development is sought is described as 'the formation of an access track as indicated on Block Plan to serve an approved scheme for a menage and horse walker'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Albeit the appeal form sets out that the appeal is brought under section 191 of the Act, the application was originally made in accordance with section 192 of the Act to ascertain whether the operations proposed to be carried out would be lawful. This concurred with my observations at the site visit and therefore I have considered the appeal before having regard to s.192 of the Act.

3. The Council's decision notice gives a description of the development for which a certificate of lawful use or development is sought as *'a proposed change of use of land to enable access to existing Menage and Horse Walker'*. The appeal form provides an alternative description, namely *'Menage/horse walker was granted in 2014, the access was marked clearly on the plans as the existing track was allowed for agriculture use'*. However, I shall determine the appeal in accordance with the wording in the application form, as set out in the header above.

Main Issue

4. Section 192(2) of the Act indicates that if, on application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and therefore the main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

5. In an appeal relating to an LDC, the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities.

6. I have had regard to the history of development in the vicinity of the appeal site. I note that permitted development was granted by the Council for a hay barn and tractor shed[1] as part of a larger holding in agricultural use associated with 'The Hyde', Glebe Road in January 2012 (the "Permitted Development").

7. Subsequently, in November 2014, the Council granted planning permission[2] for a change of use of the hay barn and tractor shed to equestrian use, together with allowing permission for a circular horse walker and menage (the "Change of Use").

8. Although an access is stated to have been formed as part of the Permitted Development to provide access from an existing point on Orchard Road, it is the Council's case that vehicular access was not sought in relation to either the Permitted Development nor the Change of Use. There is no dispute that the red line of the application site for the Change of Use did not include any access track. However, the appellant contends that the access track was 'obviously necessary' to provide access to the approved equestrian use and suggests that this was evident from the plans which showed a track that was in agricultural use. Moreover, the appellant asserts that the track was lawful at the time of the Change of Use application because it had been in place for over 4 years.

9. Notwithstanding the appellant's account, the issue regarding the lawfulness of the track at that time is immaterial for the purposes of this appeal given that the track was subsequently removed pursuant to the steps of an enforcement notice[3] following determination of a previous appeal[4]. Although there may have been a track that could lawfully have served the equestrian use, that track has gone. At the time of my visit, I noted that the land had reverted to rough grassland and the presence of heaped earth mounds makes any access on foot or by vehicle difficult to achieve.

10. The LDC application and this appeal concern proposed development and therefore the former track is out of scope for the purposes of this appeal.

11. In the absence of a lawful use with associated permitted development rights for the formation of the track, it therefore follows that the laying of the proposed track would amount to the carrying out of operational development that would require planning permission. It therefore follows that it is necessary to consider whether any other rights would permit the formation of an access track.

12. It is the appellant's case that the purpose for which it is proposed to use the land is for the keeping of a horse(s). It is put to me that this proposed use would amount to agriculture. However, this depends on whether the equestrian activity falls within the statutory definition of "agriculture" as defined in s.336 of the Act. The agriculture activities listed in s.336(1) include '*horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or*

[1] Planning Reference 11/00927/AGBAS
[2] Planning Reference: 14/00932/FULL
[3] Ref: 16/00412/UBW
[4] APP/V1505/C/18/3200729

for the purpose of its use in the farming of the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes'. Livestock does not extend to the breeding or keeping of horses unless it is for the purpose of their use on the farming of the land. It has not been put to me that any horse would be used in such a way.

13. Whilst the production of hay may satisfy the definition of agriculture, by reason of the limited size of the equestrian facility this would restrict any haymaking activity and moreover, the intention described here is to provide an access to an equestrian facility.

14. Albeit a previous owner cut hay from the adjacent fields, any past hay production by a person now unconnected with the equestrian facility is inconsequential given the change in ownership and noting that the equestrian facility is severed from any adjoining agricultural lands.

15. Thus, I consider that it has not been demonstrated that what is proposed to be done is for the purposes of agriculture within the definition given above. Agricultural rights in relation to the provision of a hard surface or the provision, rearrangement or replacement of a private way under Class B, Part 6, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) would not therefore apply in this instance.

16. Similarly, as ownership of Casetta has changed and the equestrian facility does not fall within any residential curtilage, permitted development rights pursuant to Class F, Part 1, Schedule 2 of the GPDO for the provision of a hard surface which is incidental to the enjoyment of a dwellinghouse does not apply.

17. Whilst I accept the appellant's difficulties in getting a horse box or a lorry to the equestrian facility, this matter does not demonstrate the lawfulness of the proposed development.

Other Matters

18. The appellant has complained about the conduct of officers, an absence of an independent complaints procedure within the Council and a refusal to determine an application for planning permission when the land was subject to an enforcement notice. However, these matters are not for my consideration as part of this appeal.

19. It is put to me that the proposed track would be comprised of materials that would be less obtrusive than the original track and present an improved ecological value. However, I cannot consider planning merits as part of this appeal.

20. Although a number of interested parties have provided their comments on this appeal, their comments mainly concern the planning merits of the proposed development. As the appeal before me does not include a planning application, I have therefore determined the appeal based upon the issue of lawfulness of the proposed development.

21. Whilst my attention has been drawn to a number of examples of unauthorised development within the locality, these examples cannot affect whether the proposed track is lawful.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of 'the formation of an access track as indicated on Block Plan to serve an approved scheme for a menage and horse walker' 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.

E Brownless

INSPECTOR