



Appeal Decision

Site visit made on 4 February 2025

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2025

Appeal Ref: APP/Z3825/X/24/3343641

Highgate, Hammerpond Road, Plummers Plain, West Sussex RH13 6PE

- 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 Barter against the decision of Horsham District Council.
 - The application ref DC/23/0552, dated 24 March 2023, was refused by notice dated 15 January 2024.
 - 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 continued use of the Old Tack Room as a single residential dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought confirmation that the 'continued' use as a single residential dwelling was lawful on the date of application. The determination relates to the lawfulness of the use on the date of the application, rather than whether the continuation of the use would be lawful, and I have determined the appeal on that basis.

Background

3. The appeal site is a small complex of buildings adjacent to Hammerpond Road, with grazing land extending to a watercourse at the bottom of the valley. There is a small stable yard on the site which is in use as kennels, although horses are also kept on the land. There are various other small sheds and kennels on the site, as well as the building the subject of the appeal. The use for dog kennels and as an animal rehoming centre has been carried on since the appellant purchased the property in 1994.
4. Planning permission was granted in 2019¹ to retain the kennels and the use as a re-homing centre with ancillary overnight accommodation provided in the Old Tack Room. Permission was also granted to extend the Old Tack Room, for which works had commenced in 2016. The 2019 permission was subject to a planning condition as follows:

The overnight accommodation, within the building indicated on drawing no. 17006 P 001, shall not be used as a primary place of residence, and shall only be used in

¹ Ref. DC/17/2086

connection with the kennels and rehoming centre, as set out in the Design and Access Statement dated September 2017.

Reason: The establishment of an additional independent unit of accommodation would give rise to an over-intensive use of the site and lead to an unsatisfactory relationship between independent units of living accommodation contrary to Policies 1, 3, 4, 26 and 33 of the Horsham District Planning Framework (2015).

Main Issue

5. The appellant's case is that the Old Tack Room has been in use as a single dwelling house for a continuous period of four years and is therefore immune from enforcement action. The Council refused the application on the grounds that insufficient evidence was provided to demonstrate on the balance of probability that the building has been occupied as a single dwelling house for the necessary period. They also considered that the residential use was part of the overall area occupied by the kennels and rehoming centre as a single planning unit.
6. The onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. The appellant must show, on the balance of probability, that the development was lawful at the date of the application. The main issue is therefore whether the Council's decision was well-founded.

Reasons

7. To succeed the appellant would have to show that the use as a single dwelling commenced more than 4 years before the date of the application, that is before 24 March 2019, and was sustained throughout a 4-year period.
8. It is not in dispute that when the application the subject of this appeal was made, the building afforded to those who use it the facilities necessary for day-to-day domestic existence. It has its own entrance door and a small sitting out area to the rear, separated from the adjacent kennels. Internally there is a sleeping area on a mezzanine above a living area with a dining table, sofa and woodburning stove. The mezzanine has two rooflights but the living area below has no windows. A bathroom is accessed from the living area with a WC, a bath with a shower fitting and wash basin. Within the extension that was approved in 2019 is a kitchen area with further seating and an office area.
9. Nonetheless, the Council has questioned whether the residential use is ancillary to other uses within the same planning unit, or whether it shares a physical and functional relationship with the other uses, so that the whole unit of occupation represents a single planning unit. They therefore question whether a material change of use has occurred.
10. In cases where there is a dispute as to whether a material change of use has occurred it is necessary to ascertain the correct planning unit. *Burdle*² is the leading case for the determination of the planning unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

unrelated purposes. The concept of physical and functional separation is key. The judgement suggested three broad categories of distinction, which are set out in the Planning Officer's report.

11. There is no dispute that the use of the land as a whole has been as a dog kennels and rehoming centre, with horses and chickens also being kept on the land. The appeal documents indicate that there are up to 53 dogs on site at any one time. The appellant has put forward evidence to show that due to a change in personal circumstances she has been living in the appeal building for a period of time with Christopher Rollings, as their primary residence.
12. The appeal building is understood to have been on site for a number of years, predating the appellant's purchase of the land. It is clear from the committee report to the 2019 application that the appeal building, as extended, was to provide an office, kennels, washroom and a mezzanine sleeping area for overnight accommodation in connection with the existing use of the site. It provided a dog introduction/separation area. It was on this basis that condition 6 was imposed, reflecting the ancillary nature of the accommodation to the overall use of the site for kennels and rehoming centre, in a single planning unit.
13. Putting to one side the ambiguity as to whether, at the time of the Council's visit in January 2022, the residential use was as a primary residence or not, there were indications at that time the building was being used in connection with the dog rescue as well as overnight accommodation. The appellant confirmed that the overnight facilities were required to ensure the safety, security and welfare of the dogs, indicating a close functional connection between the overnight use and the kennels/rehoming use.
14. The extension was being used to accommodate several dogs at the time of my visit, separately to those accommodated in kennels elsewhere on the site. The appellant manages the kennels and re-homing centre and has an office in the building. Access to the Old Tack Room is through the entrance and yard to the kennels/rehoming centre which surrounds the building. I have not been advised that there is no longer a need for the appellant to be on-site to provide care for sick or birthing dogs overnight, or to ensure the safety, security and welfare of the dogs. Photographs of the interior of the building from social media posts from 6 January 2018 and 2 March 2019 show several dogs within the building. A further post from 24 November 2021 shows 9 dogs within the kitchen/office area. All this leads me to conclude that the residential use and the kennels/rehoming centre are closely physically and functionally interrelated.
15. As the appellant identifies, a permanent residential use would normally be a primary use, rather than ancillary to other activities. However, in this case, the evidence shows that the unit of occupation is the whole site, where there are two or more activities being carried out which are not incidental to each other. A smaller planning unit has not been formed which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The evidence indicates, on the balance of probability and as a matter of fact and degree, that the site as a whole is a single unit of occupation where it is not possible to say that one activity is incidental to the other and it is therefore in a mixed use, for which the immunity period is 10 years. Having regard to the tests established by Burdle and on the basis of the evidence before me, I find that a material change of use to a single dwelling has not taken place.

16. The appellant refers to two appeal decisions. The appellant quotes paragraph 13 of the decision for the Pine Ridge Dog Sanctuary³, which sets out the Case for the Council, but the Inspector's reasoning is set out in paragraphs 19-24. The Inspector found that while the residential caravans were not ancillary or incidental to the dog sanctuary, they were not occupying separate planning units. They found that there was a mixed use that includes the caravans and a permanent dwelling. This was because there was no physical and functional separation between the residential units and the dog sanctuary. The appeal decision supports my conclusion in this case.
17. The case at Northaw Brook Meadow⁴ relates to the formation of a new dwelling and the period of immunity but as the facts of the case differ to this appeal it does not indicate that the appeal should be allowed.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for continued use of the Old Tack Room as a single residential dwelling is 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).

N Thomas

INSPECTOR

³ Ref APP/R0335/X/03/1110311

⁴ Ref APP/C1960/X/07/2054801