



Appeal Decision

Site visit held on 20 January 2026

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 24 February 2026

Appeal Ref: APP/L3815/X/23/3334659

The Coach House, Oak Lane, Shillinglee, West Sussex GU8 4SQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Mr Paul Hayward against the decision of Chichester District Council.
 - The application Ref PS/22/02194/ELD, dated 25 August 2022, was refused by notice dated 22 November 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as a mixed use of business activities and private amenity land (*Sui Generis*).
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Summary Decision: the appeal is dismissed

Procedural Matters

1. I have taken the site address in the Header above from the Council's formal Decision Notice. This was also the address stated on the Application Form. The Appeal Form gives the site address as Land to the north of Keepers Cottage, Oak Lane, Shillinglee but I am satisfied from the other documents before me that The Coach House is the correct address.

Reasons

2. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an 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; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
3. In relation to Certificates of Lawful Use or Development (LDC), the Planning Practice Guidance (PPG) makes it clear that an application needs to describe precisely what is being applied for and that precision in the terms of any

certificate is vital, so there is no room for doubt about what was lawful at a particular date.

4. The development for which a certificate of lawful use or development is sought is described as a mixed use of business activities and private amenity land. This would constitute a *Sui Generis* use. In this respect, it is important to keep in mind that a mixed use is defined as two or more primary uses of a single planning unit, with neither use being subservient to nor ancillary to the other.
5. This raises the first question: what is the relevant planning unit? It is settled case law that 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 and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. The case law identified three broad categories of distinction:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
6. In this case, I understand that the wider site known as The Coach House (including the current appeal site) is wholly owned by the appellant. The wider site is therefore to be treated as the unit of occupation for present purposes.
7. This appeal is one of five that are before me relating to the wider site known as The Coach House¹. In three of those cases, the use sought by the appellant is use for camping on a parcel of land in the north-west corner of the wider site. In the other, the use sought is for the storage and business use of an outbuilding/shed located towards the centre of the wider site (known as The Forge).
8. The current appeal site is distinguished on paper as being a separate parcel of land. It is to some extent physically separate, insofar as it is enclosed by fences, gates and hedging. However, access to other parts of the unit of occupation are easily achieved through gates (as on my site visit). Consequently, in practice the site forms part and parcel of the wider unit of occupation and in that sense is not completely physically separate.
9. Across these appeals the appellant accepts that the land (i.e. the unit of occupation) was previously in an agricultural use. Neither the camping use nor the use of the outbuilding at The Forge for storage and business use have ever been found to be lawful. It therefore seems to me that, on the balance of probability, the lawful use of the unit of occupation as a whole is for agriculture (although for the avoidance of any doubt I make no formal determination on that point, given that the matter is not before me). In that respect, the appeal site is not functionally separate from the rest of the unit of occupation.

¹ The others being APP/L3815/X/25/3358727; APP/L3815/W/25/3368755; APP/L3815/X/2/3371010; and APP/L3815/C/25/3372104

10. It therefore seems to me that, as a matter of fact and degree, the entirety of unit of occupation comprises a single planning unit, the lawful use of which is probably for agriculture. The appeal site constitutes just one part of that planning unit. I have approached this appeal on that basis.
11. The appellant explains that the land subject of this appeal ceased all agricultural use during 1999. The appellant explains that more than 10 years before the date of this application, engineering works took place on the land to carve out shelves of flat area, and extensive landscaping took place with ornamental trees having been planted. The appellant goes on to point out that the entire site is surrounded by domestic cherry laurel hedging, which is poisonous to livestock and farm animals, preventing the possibility of the land being used for grazing. In the appellant's view, the maturity of these trees and hedges further demonstrates that this use took place more than 10 years ago.
12. The difficulty here is that the appellant does not explain in detail what the 'business activities' for which the LDC is sought are. That phrase could encompass a wide range of business uses, the characteristics of which could range widely and have very different environmental impacts. Furthermore, no detail is provided as to when that business activity commenced and no evidence has been provided to show that the business activity has taken place continuously over the relevant period: for example, no invoices, receipts or accounts have been provided to show when business was active and for how long have been provided.
13. In support of his case, the appellant has provided a total of eleven Statutory Declarations relating to the use of this land. All eleven Statutory Declarations are properly formatted, signed and witnessed in accordance with the provisions of the Statutory Declarations Act 1835. Consequently, I afford these Statutory Declarations due weight.
14. The Statutory Declarations are practically identical, both in terms of content and wording. They all attest that the authors have participated in leisure and sports activities taking place on this land. They also confirm that the land was being used for domestic purposes, with the grassland kept as lawns. None record having seen any agricultural use of this land throughout this time.
15. But it is significant that none of the eleven Statutory Declarations make any reference to business activities taking place on the land. This includes the Statutory Declaration of Mr Colin Wright, who indicates that he was a tenant at Oakdale House, Oak Lane, Shillinglee since 2008 (without stating when that tenancy ended). It also includes the Statutory Declaration of Mr Edward Keet, who indicates that he regularly worked at Oakdale House, Keepers Cottage and The Coach House since 1994 as gardener and Mr John Nixon, who confirms that he lived at The Coach House for several months at a time on 2 separate occasions. All these individuals would have been well placed to observe any business activities occurring on the site.
16. It is reasonable to conclude that if business activities had been taking place on the land, regular visitors to the site (as the authors of the Statutory Declarations all claim to be) would have been aware of business activities taking place on the land as part of the mixed use. Yet none so much as mentioned business activities as taking place. I find that instructive. With Statutory Declarations, often what is omitted (intentionally or otherwise) is as important as what is actually said.

17. It is a similar situation in terms of the claimed use as private amenity land. The appellant does not define exactly what is meant by 'private amenity land' and how that use manifests itself. However, it seems to me that the word 'private' in that term must be taken to mean to the exclusive use of the land by the appellant, his family and guests. I have therefore approached this matter on the basis that the use is akin to a private garden to a dwellinghouse albeit remote from any dwellinghouse.
18. In relation to both leisure and sports activities, the Statutory Declarations are short in terms of detail. The authors of those Statutory Declarations all indicate that they took part in leisure and sports activities on this land "over the years". No specific dates are given, and it is therefore not possible to determine whether their participation in those activities took place continually over a period of at least ten years. Furthermore, it is usual in LDC cases for witnesses to relate their attendance/participation to specific events, often tied with important social occasions (weddings, birthday celebrations and other family gatherings) and memorable major events (such as the Olympics, football World Cups and concerts). These can be useful in terms of pinpointing precise dates on which the land was used for the claimed purpose. However, in this case, all the Statutory Declarations are entirely silent in these respects.
19. There is a further consideration here that is specifically referred to in the Council's Delegated Officer's Report but on which the appellant is again entirely silent. This an appeal decision dated 25 May 2016 in relation to the refusal of the Council to grant planning permission for the proposed change of use from existing residential garden and private amenity/sports/fitness training/meditation/yoga/spiritual healing/wellbeing to include: club use for sports/fitness training/meditation/yoga/spiritual healing/wellbeing (APP/L3815/W/15/3141476). The appeal was dismissed but that is entirely academic for present purposes.
20. It is important to note that in paragraph 3 of the Decision the Inspector records that the Council questioned at the time the lawfulness of the (then) current use of the appeal site. The Inspector goes on to indicate that this was not a matter before them, such that no conclusion was reached on that point.
21. There is no plan attached to that Decision, but the Inspector observed that the site comprises several distinct areas with differing characteristics. The Inspector described one of those areas as rising steeply and comprising "open paddocks but also a substantial area that has been planted with a variety of trees and shrubs with mown grass underneath that has a somewhat domestic appearance". That description is entirely consistent with my own observations of the appeal site during my site visit, albeit for the reasons set above I still regard the appeal site as forming part of a single planning unit. I therefore take it from that description that the Inspector was referring there to the current appeal site. In any event, on my reading, the application subject to that Decision related to the whole of the wider site known as The Coach House and therefore including the current appeal site.
22. The salient point is that the (then) appellant's own description of that existing use was of constituting residential garden and private amenity/sports/fitness training/meditation/yoga/spiritual healing/wellbeing. Two points arise.
23. Firstly, the LDC application subject to this appeal does not specifically include many of the elements in that description. For example, there is no mention in

the LDC application to a 'residential garden' or to 'fitness training/meditation/yoga/spiritual healing or wellbeing'. I recognise that the appellant at that time was not the appellant in this case. Nevertheless, that was the claimed to be the existing use of the site at that time. I understand that the current appellant was the owner of (or at least involved with) the appeal site at that time, yet he has not indicated that this was not the use then taking place.

24. Secondly, there is no mention in that description to any business activities taking place on the land. Indeed, the purpose of that application was to seek planning permission for use by a club (not specified which type of club) and away from purely private use. There is no mention of that proposed use being a 'business activity'.
25. The Appeal Decision is dated 25 May 2016 and relates to a period after 1999 and within the relevant ten-year period for the LDC (August 2012 to August 2022). If the use then existing was that described in the planning application subject to that appeal (i.e a purely private amenity use), then as a matter of logic the mixed use claimed to be lawful in the LDC could not have been taking place at the same time. This casts significant doubt over the claim made by the appellant that the mixed use described in LDC was lawful on the date the LDC application was made.
26. In overall terms, the question here is whether a material change in the use of land occurred in or around 1999 and, if it did, whether that mixed use has carried on continuously since that date. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach adopted by the courts is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
27. The appellant accepts that the land was previously in an agricultural use before the mixed use for business activities and private amenity land commenced (if it ever did). It follows that without knowing the type of business activities claimed to have taken place on the land, and the characteristics of those business activities, it is not possible to determine (a) whether there has been a material change of use away from agriculture and (b) if there was to be a further change of use at some point in the future, whether that would then constitute a material change of use requiring planning permission. I reach the conclusion at (a) having regard to the planning unit as a whole.
28. Moreover, the use claimed is a mixed use and it is the combined characteristics of each of the two components of the mixed use that would determine the overall characteristics of the mixed use. I have not been provided with sufficient evidence to enable to reach an informed opinion on the characteristics of either component of the mixed use. Adopting the language employed in the PPG, there is considerable room for doubt about what was lawful on the date that the LDC application was made. In these circumstances, it is not possible for me to issue an LDC.

Conclusion

29. This is not a situation where the local planning authority has evidence of its own to contradict that of the appellants or make their version of events less than probable. However, I find that the appellant's evidence is not sufficiently

precise and unambiguous on its own to show, on the balance of probability, that a mixed use of business activities and private amenity land (*Sui Generis*) has been taking place continuously for a period of ten years on the date that the LDC application was made. The appellant has therefore not discharged the burden that falls upon him.

30. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a mixed use of business activities and private amenity land (*Sui Generis*) at The Coach House, Oak Lane, Shillinglee, West Sussex GU8 4SQ 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.

Formal Decision

31. The appeal is dismissed.

Paul Freer
INSPECTOR