

Application S.17/051/CPE

Land at Barton End

Response from Horsley Parish Council

Introduction

This application is made under the provision of s191 Town and Country Planning Act 1990 as amended by s10 of the Planning and Compensation Act 1991. The onus is on the applicant to provide evidence which supports their assertion that their use, or breach of planning conditions, has been carried out continuously for a period of 10 years. The requirement for “continuous” use means that this has been at the same level during this period, and has not been intermittent or changeable. Planning Practice Guidance issued by DCLG on 6/3/2014 requires the evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. It makes it clear that there is no requirement to consult third parties such as the Parish Council or neighbours but that it may be **reasonable to do so to seek evidence**. A planning authority may also choose to issue a certificate for a different description of that sought by the applicant.

For the applicant to succeed on the terms set out in their supporting statement they would need to demonstrate that they had used the site identified in their Location Plan for the purposes of a riding school or equestrian purposes without any limit on the number of horses or ponies, continuously since February 2007.

The only reason that this application can be brought is because of the record of errors, and failures by Stroud District Council (SDC) to address planning breaches on this site over a period of 15 years. The applicant accepts in her own supporting statement that the planning history is “chequered” and that planning permissions to restrict horse numbers have “never been observed”.

The matter is further complicated as the business is located on land owned by the applicant’s father, who during the relevant period was an elected member of Stroud District Council, and indeed sat on the Development Control Committee. from 2009 for some years. It has also recently come to the attention of the Parish Council that there is an additional equine business carried out on the same site, the planning status of which is unclear and yet to be resolved.

We also note with regret that although this matter initially was referred to the Parish Council in September 2016, when it became clear that a retrospective planning application, could not proceed because of the errors referred to above, the District Council has allowed a further 6 months to pass to allow the applicant to lodge this present application. We were notified of this present application just after our Council meeting on 26th February 2017, but have not been afforded the same courtesy of a reasonable extension (we have been given just a week) to enable us to fully consult with residents in order for us to submit any comments. There is a time limit of eight weeks provided for determination of the application but extensions can be sought by the planning authority by agreement with the applicant and they have chosen not to do this.

We have compiled our response therefore from information contained in the application documents; some documents obtained by our District Councillors; and some documents found on the Council's own web site. We note that the District Council's own information is fragmented as files have gone missing, without explanation, and it is clear from officer's correspondence that their own knowledge is fragmented and sometimes inaccurate. We attach our chronology of the history of the site which we believe provides a fuller picture of what has happened over the relevant period.

(All documents referred to derive from the existing records of SDC but can be produced on request if required if SDC records are incomplete).

The Evidence

1. Unrestricted numbers

The applicant relies on licences issued by Stroud District Council during the relevant period, business brochures, a "without prejudice" letter from the BHA which is unsigned, and affidavit evidence from family members and employees of the business. (we note in passing that the affidavits have not been lodged on the planning website although the application form clearly states that the landowner and father of the applicant has sworn an affidavit and so it is difficult to understand why this is not disclosed).

A licence is simply a permission from a licensing authority to carry out an activity. It is not evidence in itself that the activity was carried out, nor that the number of horses licensed were actually used in the business, nor of actual numbers of horses on site. However the licence documentation itself is not comprehensive . The records for 2007 and 2008 are missing.

We have had site of some veterinary inspection reports held by SDC which indicate that 29 horses were identified in 2013 as being on site, 44 in 2015 (of which 9 were owned by individuals other than BEEC), and 43 in 2016. These records are different again from the BHA letter which gives a figure of 45 horses from 2009 onwards. And these figures are at odds with affidavit evidence which provides for example a figure of 63 horses in 2013.

We have also seen an e-mail from Geraldine LeCointe (Planning Manager) dated 9th January 2017, where she refers to a meeting between officers of SDC and the applicant in late autumn 2016 and says " It was apparent from these meetings that there is some confusion as to who owned all the horses currently grazing on the land around the site because the applicant's father owns the surrounding land and also keeps horses."

In summary, the licensing documentation is incomplete and has little or no probative value. The BHA letter is clearly of little probative value as it bears no relation to any other document and is unsigned and submitted "without prejudice". We understand that affidavit evidence has been provided by the applicant ,some members of her family including her father ,or those with whom she has a financial relationship . We have not been allowed to access this directly. It cannot therefore be considered entirely independent. There is no way of confirming whether the horses were part of the applicant's enterprise or that of her father or owned by other individuals entirely. This is a significant issue as the original planning permission for 12 horses was conditioned , and the consent did not inure to the land but solely to the applicant. SDC's own veterinary reports (which are independent) do not accord with the information supplied by the applicant.

It is our submission that the evidence supplied by the applicant is incomplete, and contradictory and of little probative weight. It is not sufficiently independent, and is complicated by the existence of another similar business on site run by one of the persons providing supporting evidence. It is so muddled , ambiguous and imprecise as to fail the test set out in the DCLG guidance, and does not demonstrate a continuity of level of use over the 10 year period. We therefore consider that no reasonable authority could make a finding in favour of the applicant on the balance of probability.

2.Specified Fields

Area 2 on the Location Plan represents the only part of the site which has any form of extant planning consent. Fields A B and C, and Area 1 have no consent for equestrian use. We believe the evidence for their use as part of this application again consists of affidavit statements from the applicant and her family or those with whom she has a financial relationship. It therefore cannot be considered to be independent. There is no separate information in the application about dates ,numbers, periods of use, and the photographic information is misleading. Appendix 19 does not show the presence of horses on the identified fields. The “objects” are in fact large hay bales.- Given the comments above concerning the lack of clarity of numbers of animals, and the existence of a separate business run on the same site with access to the same fields it is impossible to make any finding that these fields were used **continuously** or at all for the business and certainly with the degree of precision and unambiguity required by the legislation.

It is our submission that the evidence supplied by the applicant is not sufficiently independent or precise enough to demonstrate continuous usage over the relevant 10 year period. We therefore consider that no reasonable authority could make a finding in favour of the applicant.

3. Stroud District Council’s responsibility

SDC have done neither the applicant nor local residents any favours in their handling of this case. Between 2000 and 2016 there have been 8 separate planning applications. Many of these have been retrospective applications for buildings erected and changes to conditions , which were then subsequently withdrawn. There is no evidence of any follow up by planning or enforcement officers. The applicant’s supporting statement openly admits that extant planning consents and conditions have been ignored , and that she has always been entirely open with SDC officers who were aware of the growth of her business from a small riding stables to a large establishment with many unpermitted buildings. Indeed the licensing officers inspected on an annual basis ,and certainly a licensing officer in 2007 was initially unwilling to grant the licence as it breached the planning consent. Missing SDC files mean that it is impossible to interrogate the decision making at this time. During this period SDC received complaints from members of the general public (local residents) on 4 separate occasions in 2007, 2011, 2013, and 2015. We have a copy letter from an SDC enforcement officer (J Cooper) dated 30th July 2013 which states that the applicant was “ going to submit an application for a certificate of lawful existing use (CLUED) to try to prove (*that the operation is lawful*)” Yet again no application was forthcoming and yet again no follow up action was taken, just as no action had been taken on the previous occasions. Local residents and the Parish Council have never been provided with a satisfactory explanation for these failures to act.

We raise this because this business is situated on land owned by a previous member of SDC who was also a member of the Development Control Committee during a substantial part of the relevant 10 year period, and who we have recently learned may also run an equestrian business on

the land without requisite consent. . It is important that the public can have confidence in their planning authority to deal with matters fairly and without bias. Although normally dealt with by officers under delegated powers we are strongly of the view that this matter can and should be referred up to be dealt with in public by the Development Control Committee,, as it is very clear from the chronology that SDC officers have been aware of planning breaches since 2007 and failed on many occasions to properly consider what action was appropriate. We do not want this matter to be decided without a degree of transparency just because it may reveal embarrassing past failures by the Council.

4. A way forward

The Parish Council and local community have no wish to see this business close. They simply wish to see it placed on a proper regulated footing so that they can reconcile the desire for a locally owned enterprise with having to deal with the current uncontrolled , unplanned and unsustainable situation.

We have already argued that the current application in its current format should not be granted for the reasons set out above. We have already alluded to the option of granting an alternative certificate. However if rejected there are two other possible courses of action available to the Council -

- to enforce against the existing usage and buildings which have no planning consent, or
- to require the applicant to lodge a comprehensive planning application on the entire site.

This latter option the preferred course of action of the Parish Council as it could then address the following matters

- accurate nos. of horses detailing use and livery type.
- required stabling for those horses
- relevant changes from agricultural to equestrian use of the land
- all ancillary buildings necessary on site
- consideration of drainage
- consideration of muck storage
- parking commensurate with size of the buildings and business
- highways issues (which we note cannot be addressed in the present application)
- (We understand that officers currently consider that this is not an issue as it is not “severe” enough. Given that on weekends there can be up to 250 -300 traffic movements on the local lanes which access the A46 we beg to differ).

Signed on behalf of Horsley Parish Council

Dated: