

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 14/03187/ELUD

Ward:
Darwin

Address : Yonder Farm Orange Court Lane
Downe Orpington BR6 7JD

OS Grid Ref: E: 543161 N: 162702

Applicant : Ms Sarah Williams

Objections : YES

Description of Development:

Use of buildings and land as a stable and riding school without complying with condition 3, 4 and 7 of permission ref 02/01905.

CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding

Proposal

This application was deferred by the Planning Sub-Committee which convened on 5th March 2015, in order to seek further evidence to substantiate this Lawful Development Certificate application.

In response, the agent has provided a note from the applicant's accountant confirming that he has acted for her for well in excess of 10 years and that she has operated from the site (i.e. Yonder Farm) for 10+ years. In addition, the applicant has provided an affidavit supporting her previous representations regarding her activities within the site for the last 10 years.

The previous report is repeated below with minor changes.

A Certificate of Lawfulness for an Existing Use is sought in respect of the use of buildings and land as a stable and riding school without complying with condition 3, 4 and 7 of permission ref 02/01905. That permission was granted for the use of the buildings and land for stables, and for the construction of a sand school; and the use of the land for the keeping of horses.

The conditions in question concern the following:

- (3) The use of the existing buildings shall only be for the private stabling of horses in the ownership of the person in possession of the land/buildings and shall not be used for or in connection with any commercial use;
- (4) The sand school shall only be for the use of horses in the ownership of the person in possession of the land/buildings and shall not be used for or in connection with any commercial use whatsoever;
- (7) The use shall be solely for the benefit of the applicant and no other party.

The application is accompanied by an Affidavit and a Witness Statement, and various evidence comprising of 8 exhibits made up of the following items:

- invoices
- documents outlining key aspects of business
- insurance and registration documents
- letters from customers
- training contract
- accounts documents dating back to 2002
- photos of demonstration days
- letters referring to applicant running a business on site

In addition and, as noted above, following the previous committee meeting the agent has provided a note from the applicant's accountant confirming that he has acted for her for well in excess of 10 years and that she has operated from the that site (i.e. Yonder Farm) for 10+ years.

Within the Affidavit and Witness Statement, the applicant advises that she purchased the site in 2002, in the same year that she relocated her business to the application site. The business continued to develop and expand, and the following facilities now existing at the site:

- 60m x 20m manege
- a horse walker
- a stable block of 3 stables
- a further stable block of 3 stables
- a large barn with lean-to to include covered yard and tack room
- a block of 7 stables
- a residential flat

This application is accompanied by a second application for a Certificate of Lawfulness for an Existing Use relating to the use of part of one of the barns as a residential dwelling (ref. 15/01584/ELUD), which is also included in this Committee agenda.

Location

The site is situated to the north of Downe Village, along the northern side of Orange Court Lane, and approximately 200 metres to the east of its junction with Farthing Street. The site falls within the Green Belt.

Comments from Local Residents

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

- lack of formal consultation
- risk to the Green Belt in respect of soakaways given the existing and potential large number of horses in relation to the business use
- risk to neighbouring property in respect of water supply
- no application for other breaches involving manege, horse walker, stable blocks, and other items listed in the Witness Statement
- Green Belt is under far more pressure than it was in 2002 when the stables were bought by the applicant
- granting of application for a dwelling would act as a green light for other stable owners

Further representations have been made by the Downe Residents' Association which can be summarised as follows:

- creation of a residential flat undermines decision in 2001 to refuse a proposed dwelling at the site
- premises are very secluded and it is assumed Council officers had no reason to make a visit
- proposal conflicts with Policy L4 of the UDP as there are too many horses kept on the land in view of the overall grazing area
- strong possibility that Condition 4 could well have not been adhered to, being that the use of the sand school should only be for horses in the applicant's ownership
- breach of Condition 6 could also be questioned where it states the use shall be solely for the benefit of the applicants and no other party
- concerns regarding compliance with Condition 2 and approval from Environment Agency
- retrospective approach undermines the planning process
- no Council Tax or Business Rates appear to have been paid
- applicant should not benefit from planning breaches
- Downe is the heart of a potential World Heritage Site and the area should not fall to unauthorised development, which would damage a future bid

Comments from Consultees

Legal opinion is that on balance the use is subject to section 171B(3) and therefore the 10-year use rule.

Planning Considerations

This Lawful Development application is to be considered under Section 191 of the Town and Country Planning Act 1990 (as amended). The Town and Country Planning Act 1990, section 191 provides for consideration of a Lawful Development

Certificate for an existing use or development if any person wishes to ascertain whether any existing use of buildings or other land is lawful.

For the purposes of the 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);
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Planning History

The site planning history is summarised in the table below:

Reference	Proposal	Decision	Date of Decision
91/00682	Detached dwelling and garage (outline)	Refused	04.07.1991
01/01958	Conversion of barn into a dwelling	Refused	03.08.2001
02/01905	Use of buildings and land for stables and construction of sand school; use of land for keeping of horses	Permission	02.10.2003

An accompanying application for a Certificate of Lawfulness for an Existing Use involving the use of part of part of one of the barns as a residential dwelling (ref. 14/03188) was refused by the committee. A subsequent application with additional information has been received by the Council (15/01584) which is being considered alongside this current application.

Conclusions

The application requires the Council to consider whether or not the operation has subsisted continuously for the past 10 or more years.

The Government's Planning Practice Guidance advises that in the case of applications for existing use, if a local 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.

In light of legal advice, it is considered that on the basis of the evidence submitted - namely in the form of a Witness Statement from the applicant and various supporting letters from associates of the applicant - on the balance of probability, there are sufficient grounds upon which to grant a Lawful Development Certificate for the existing use. Furthermore, following the deferral of this application from an earlier committee, further evidence has been provided to support the applicant's version of events.

Whilst letters of objection have been received in relation to the use, no compelling evidence has been provided to suggest that the use has occurred for a period of less than 10 years. Accordingly, Members are advised to grant a certificate.

Background papers referred to during production of this report comprise all correspondence on the file refs set out in the Planning History section above, excluding exempt information.

**RECOMMENDATION: GRANT CERTIFICATE FOR EXISTING USE/
DEVELOPMENT**

- 1 On the balance of probabilities the use has subsisted for at least 10 years.