

PART 1 - PUBLIC

Decision Maker: Plans Sub Committee No 2

Date: 19 November 2015

Decision Type: Urgent Non-Executive Non-Key

Title: YONDER FARM, ORANGE COURT LANE, DOWNE,
ORPINGTON, BR6 7JD

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Chief Officer: Jim Kehoe, Chief Planner

Ward: Darwin

1. Reason for report

This report follows the Council's decision to refuse to grant Lawful Development Certificates for an Existing Use in respect of the following:

- Use of buildings and land as a stable and riding school without complying with condition 3, 4 and 7 of permission ref 02/01905
- Use of part of barn as residential dwelling

Following these refusals a planning application was submitted for the Removal of conditions 3 and 4 of planning permission reference 02/01905. That application was refused planning permission.

The certificate application relating to the residential floor area and the planning application detailed above are the subject of current appeals. This report seeks the Committee's authority to vary the terms of reference in the Council's case to reflect the nature of the development on site.

2. RECOMMENDATION

1. Inform the appellant and PINS immediately that the Council are supplementing their existing case in respect of the appeal against the refusal to issue a Certificate of Lawfulness in respect of a self-contained dwelling (PINS Reference APP/G5180/X/15/3087194) by providing evidence to the Inquiry to the effect that the use does not comprise a self-contained dwellinghouse, but rather part of a mixed use of the site.

2. That the Council issue a single enforcement notice alleging that the site has been occupied as a mixed use comprising a commercial livery yard and residential workers accommodation.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Planning
 4. Total current budget for this head: £N/A
 5. Source of funding: Existing Budget
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Staff

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory requirement.
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Following the submission of the appeal it was not possible to arrange a site visit to include observations on site until after the exchange of statements of case. The Council's Senior Lawyer accompanied the Council's appeal team, comprising an external planning consultant and barrister, to site. Whilst the planning consultant had visited the general area he had not been able to access the site itself previously.

On the basis of observations at site, the appeal team observed that the residential floor area the subject of this appeal comprised a part of a pre-existing barn that had been adapted for residential purposes.

In order to access the residential component of the existing building it is necessary to enter the overall site via the gated entrance and then pass over the equestrian yard having parked any vehicle in the yard area close to the gates. It is not possible to access the residential floor area independent of the equestrian yard.

Then access into the residential area of the barn is either by way of an external door inserted in the north facing elevation of the barn building (i.e. the elevation facing away from the entrance to the site) or via the barn door itself in the southern elevation.

According to the papers submitted to the Council with the Certificate application the owner of the site, who works at the site, has occupied the residential floor space. The reason the residential floor area was created was to provide care and attention for the horses at the site (see paragraphs 4 and 5 of the appellant's Statutory Declaration submitted with application 14/03188).

The residential use of part of the barn does not create any definable separate planning unit that is independent of the equestrian yard; indeed the residential area relies on the equestrian yard for access. The rationale behind the residential floor area was to provide care and attention to the horses stabled in the yard. Therefore, both physically and functionally the residential floor area is reliant on the equestrian use of the larger planning unit.

As such, the view of the appeal team is that the use that now exists at the site is not separate uses as a dwellinghouse and commercial livery yard but a single mixed use for a commercial equestrian livery yard with residential worker's accommodation.

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.

4. POLICY IMPLICATIONS

Existing Development Plan Policies

5. FINANCIAL IMPLICATIONS

This course of action does run the risk of exposing the Council to an award of costs on the grounds of the introduction of late evidence, such behaviour can be held to comprise unreasonable behaviour. The Council will resist any application for costs on the basis that these are simple planning questions of judgment that any rational decision taker would have to address in assessing the merits of the appellant's case. Given that the Council is already at appeal the additional work associated with the Council's supplementary evidence is limited and would amount to matters any reasonable party would normally address as part of such a

case. As such no additional work is generated by the inclusion of this evidence and therefore no costs are wasted.

6. LEGAL IMPLICATIONS

Addressed within the report above

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| Non-Applicable Sections: | Personnel Implications |
| Background Documents: (Access via Contact Officer) | Planning application files, Development Plan documents, Statutory guidance and legislation relating to planning appeals. |