

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: FG/190/21/CLE

LOCATION: Ferring Country Centre And Riding Stables
Rife Way
Ferring
BN12 5JZ

PROPOSAL: Lawful development certificate for existing use for dog agility classes using indoor riding school facilities.

DESCRIPTION OF APPLICATION

This application is for a Certificate of Lawfulness for the existing use of the indoor riding arena for dog agility classes. The site location plan indicates the position of the building within the complex.

The accompanying statement sets out the case for considering whether the use of land for dog agility training classes in the absence of planning permission is now lawful by virtue of the fact that the land use has been ongoing for a period of greater than 10 years.

The indoor riding has been used for the provision of dog agility training classes by an external provider since October 2000. These sessions are run 4 evening per week between the hours of 5pm and 10pm. Sometimes the club use the facilities at the weekend, no more than 4 week days per annum.

SITE AND SURROUNDINGS

The application site is part of the Ferring Country Centre. The building was approved under planning permission FG/28/93 and the use operates within the existing indoor riding arena. Condition 3 of the permission limits the use of the indoor riding arena to the provision of riding and training for people with learning or physical disabilities.

RELEVANT SITE HISTORY

The development that is the subject of this application is the use of land (the indoor riding arena) at the Country Centre for the provision of dog agility training classes. The application has made on the basis that condition 3 of planning permission ref. FG/28/93 for the construction of the indoor riding arena limits it's use as follows:

"The proposed building shall be used for riding and training by and for the mentally handicapped and disabled only and for no other purpose."

REPRESENTATIONS

Representations Received:

None

Comments on Representations Received:

None

CONSULTATIONS

Consultations Responses Received:

None

Comments on Consultation Responses:

None

LEGISLATIVE BACKGROUND

Section 191(1) of the Town & Country Planning Act 1990 states -

"Certificate of lawfulness of existing use or development

(1) If any person wishes to ascertain whether -

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."

INFORMATION/EVIDENCE:

Section 191 to 195 of the Town & Country Planning Act 1990 and NPPG guidance on LDC's have the effect of requiring these applications to be determined having regard only to the information/evidence provided and not planning policy.

Section 191 (4) of the Town and Country Planning Act 1990 states:-

"If, on an application under this 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 they shall refuse the application."

Paragraph 006 (Reference ID: 17c-006-20140306) of the Planning Practice Guidance (PPG) on LDCs

states that:

"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG on LDCs points out that:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

MATERIAL DEVELOPMENT:

Section 55 of the Town & Country Planning Act 1990 states -

"Meaning of "development" and "new development".

(1)Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(3)In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

Paragraph 009 (Reference ID: 17c-009-20140306) of the PPG on LDCs points out that:

"In the case of applications for existing use, if a local planning 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."

If an LDC application refers to a material existing use or operation which has, based on the evidence and the balance of probability, been in use for a period of ten years after the date of the breach of planning control then no enforcement action may be taken, it becomes lawful with the passage of time and a Certificate of Lawfulness for said existing use/operation can be granted.

In relation to S171 (1-3) as above, in the case of this LDC application for existing use, the relevant time period for continuous use is October 2011 to October 2021, i.e. 10 years to the date of the application being made to the Council.

CONCLUSION

A range of information has been submitted which seeks to evidence the continuous use of the arena for dog agility classes. This includes:

- Letters from the former and current operators of Highdown Agility (an external provider) confirming that the use of the indoor riding arena for the provision of dog agility training classes has been continuous since October 2000.
- Copies of invoices for School Hire for Dog Agility classes from December 2009 until September 2021.

The evidence presented by the applicants indicates the premises was first hired for use in December 2009 and remains in use as such under the same business name today.

The LPA are not aware of any contradictory evidence which either the Council or other parties hold and none has been presented to it by other parties.

In conclusion, sufficient information has been submitted in support of the application, and in the absence of any contradictory information, it is considered on the balance of probability that the evidence indicates that the premises has been used on a continuous use for a period of at least 10 years. As such, in accordance with Section 171 of the Town & Country Planning Act, the use is considered immune from planning enforcement and lawful by virtue of the passage of time. Accordingly a Certificate of Lawfulness can be granted.

In the interests of clarity and for the avoidance of doubt the agent has advised that the Covid-19 global pandemic, which commenced in late 2019 and has been ongoing to date, resulted in temporary cessation of the use of the indoor riding arena for dog agility training. This was due to the need to comply with Government guidance during the lockdowns that were introduced to reduce avoidable social contact and quell the spread of the Covid-19 virus. Dog agility classes have recommenced at the Centre throughout the pandemic period when permitted in accordance with Government guidance.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, is immune from planning enforcement and lawful within the meaning of Section 171 of the Town & Country Planning Act (1990, as amended) by virtue of the passage of time.

FIRST SCHEDULE

Use of the indoor arena at Ferring Country Centre for dog agility training classes for up to 4 evenings per week and occasional weekend use (maximum 4 times per annum).

SECOND SCHEDULE

Indoor Riding Arena, Ferring Country Centre, Rife Way, Ferring, BN12 5JZ.

EXTENT OF USE

The extent of the use is defined by red edging on the submitted Site Location Plan received 20/10/2021.

FG/190/21/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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