



Appeal Decision

Inquiry held on 10 and 11 September 2019

Site visit made on 11 September 2019

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 27 January 2020

Appeal Ref: APP/X0360/X/18/3219312

Land at Pinecopse, Nine Mile Ride, Wokingham, Berkshire RG40 3ND

- 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 Mrs Christine Reed against the decision of Wokingham Borough Council.
 - The application Ref 182427, dated 31 August 2018, was refused by notice dated 21 November 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which an LDC is sought is the mixed use of land for purposes ancillary to the adjoining residential dwellinghouses, the keeping of horses, the stationing of caravans for residential purposes and the parking of vehicles connected with the adjoining commercial units.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is considered to be lawful.

Procedural matters

2. The Inquiry was held to consider the appeal and three others; APP/X0360/C/17/3192131 (Appeal A), APP/X0360/X/17/3192153 (Appeal B) and APP/X0360/C/18/3213161 (Appeal C). On the second day of the Inquiry a ruling was made on the ground (b) appeal in Enforcement Appeal A and, consequently, the main parties requested that the Inquiry be adjourned indefinitely pending discussions on the four appeals. Subsequently, the enforcement notices that were the subjects of Appeals A and C were withdrawn and Appeal B was withdrawn. No further action has therefore been taken with regard to Appeals A, B and C and the main parties have agreed that the appeal that is the subject of this Decision should be determined with regard to written documentation.

Reasons

3. The roughly rectangular area of land owned by the Appellant is to the east of a railway line and to the south of Nine Mile Ride. The part of the land that is the subject of the appeal is about the northern two-thirds of this land and is shown on application plan 11_462D_001A, and is hereafter referred to as 'the land' in this decision. Excluded from the land are three commercial units at its southern end, the Appellant's home and its curtilage, an area bordering the railway line that is

occupied by caravans that is a registered Caravan and Motorhome Club Site, part of a stable building that is a dwelling, and a small building in light industrial use.

4. For an LDC to be issued the mixed use applied for must, in accordance with the provisions of Section 171B(3) of the Act, have subsisted uninterrupted and without intensification for a period in excess of ten years. Usually this is the ten year period prior to the date of the application but it can be a ten year period some time before. In this regard the Appellant maintains that the mixed use commenced in 2003 and became lawful in 2013, and has continued uninterrupted and without intensification up to the date of the application.

5. The Council's witness at the Inquiry on legal matters produced a proof of evidence, but there is no reference to this appeal in the text of the document. In the application delegated report, it is stated that "The evidence submitted by the Applicant appears to support a 10 year use", but the report then goes on to consider factors that justified a conclusion that the application should be refused. These factors are an intensification in the stationing of caravans for residential purposes, and the removal from the land of the registered caravan site, the Appellant's dwelling and its curtilage, the dwelling created by conversion of part of the stables, and the building in light industrial use.

6. The mixed use includes, as referred to in the use for which an LDC is sought, static and touring caravans that are in residential use, an area bordering Nine Mile Ride that is generally open and is a garden area for residents of the land, the keeping of horses in stables, and the parking of vehicles mainly associated with the three commercial units excluded from the land. Small parts of the land are used for purposes ancillary to these uses, such as a horse walker and a garden area used by the Appellant's grandchildren.

7. The Appellant has provided extensive documentary evidence on the siting and residential occupation of caravans on the land. Caravans were first sited on the land, and occupied for residential purposes independent from any other use of the land, in 2003. The number of caravans on the land increased in the ten year period up to 2013 but not to the extent that there was a change to the character of use of the land, or that resulted in an intensification of this element of the mixed use. The increase in the number of residential caravans on the land in the ten year period starting in 2003 did not result in a material change in the use of the land.

8. Stables have existed on the land since 2003 and have been used for the keeping of horses. Aerial photographs indicate that the northern part of the land and the small garden area have subsisted, and have been used for purposes ancillary to the adjoining residential uses, also since 2003 when the house that is the Appellant's home was completed. These photographs also show that the parking area to the north of and alongside the commercial units has subsisted since 2003. There is sufficient precise and unambiguous evidence to justify a conclusion that the uses of the land that are mentioned in the use for which an LDC is sought, subsisted uninterrupted and without intensification from 2003 to 2013.

9. The Appellant's dwelling and its curtilage existed before the claimed mixed use planning unit commenced. The planning unit in 2003 was the land including those parts now occupied by the registered caravan site, the dwelling and the industrial unit. The first of these was registered in 2005 and, being a separate, well defined and independent area in a single use, became a planning unit in its own right. The other two uses, the dwelling and the industrial unit, commenced in 2012, the industrial unit becoming authorised in 2017 when planning permission

17139 was granted. Both uses are separate, well defined and independent single uses and became planning units in their own right. Crucially, consistent with conclusions reached by the Planning Inspector in a similar case (Appeal Ref. APP/M1595/X/17/3186765), the creation of the three independent planning units in 2005 and 2012 did not constrain or inhibit the continuing use of the land for the mixed use established in 2003. The character of that use remained the same, albeit on a slightly reduced area of land.

10. The mixed use of the land for purposes ancillary to the adjoining residential dwellinghouses, the keeping of horses, the stationing of caravans for residential purposes and the parking of vehicles connected with the adjoining commercial units, commenced in 2003 and subsisted uninterrupted and without intensification, despite the creation of three separate planning units on the land, until 2013. The mixed use of the land, furthermore and as a matter of planning judgement, has remained as it existed in 2013, without intensification, up to the date of the application. There has been no material change in the use of the land since 2003. Enforcement action taken by the Council in 2014 does not affect this conclusion.

11. For the reasons given above and on the evidence now available, the Council's refusal to grant an LDC in respect of the mixed use of land for purposes ancillary to the adjoining residential dwellinghouses, the keeping of horses, the stationing of caravans for residential purposes and the parking of vehicles connected with the adjoining commercial units at Land at Pinecopse, Nine Mile Ride, Wokingham, Berkshire was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31 August 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use is immune from enforcement action through the passage of time.

Signed

John Braithwaite

Inspector

Date: 27 January 2020

Reference: APP/X0360/X/18/3219312

First Schedule

The mixed use of land for purposes ancillary to the adjoining residential dwellinghouses, the keeping of horses, the stationing of caravans for residential purposes and the parking of vehicles connected with the adjoining commercial units.

Second Schedule

Land at Pinecopse, Nine Mile Ride, Wokingham, Berkshire RG40 3ND

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 January 2020

by **John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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Scale: not to scale

