

**HEYSIDE FARM, WINDMILL LANE, CUMBERWORTH, HUDDERSFIELD,
WEST YORKSHIRE, HD8 8YD**

**IN THE MATTER OF AN APPLICATION FOR A CERTIFICATE OF LAWFULNESS
OF EXISTING USE OR DEVELOPMENT PURSUANT TO SECTION 191(1)(a) OF
THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

SUPPORTING STATEMENT

1 INTRODUCTION

- 1.1 This statement is submitted in support of an application ("the Application") for a Certificate of Lawfulness of Existing Use or Development ("CLEUD") pursuant to section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) ("the Act").
- 1.2 The Application is being submitted, on behalf of Mr Edwin John Whittaker and Mrs Margaret Clare Whitaker (referred to collectively as "the Applicants"), to Kirklees Council ("the Council") and relates to the property known as Heyside Farm, Windmill Lane, Cumberworth, Huddersfield, West Yorkshire, HD8 8YD ("the Property").
- 1.3 The Property was acquired by the Applicants in August 1979, who have resided at the Property since November 1979.
- 1.4 The Property is subject to an option agreement dated 22 December 2023 between the Applicants and Redwater Homes Limited.
- 1.5 The Council is the local planning authority (within the meaning of the Act).
- 1.6 The Application seeks a CLEUD in respect of the use of the Property for commercial equine use on site, including indoor and outdoor riding areas and keeping of horses (use class Sui Generis as per the Town and Country Planning (Use Classes) Order 1987 (as amended)) ("the Existing Use").

2 ENCLOSURES

- 2.1 In support of the Application, a statutory declaration dated 20 June 2024, sworn by Edwin John Whittaker, has been enclosed (along with its relevant Exhibits).

3 BACKGROUND

The Property

- 3.1 The Property is situated within the rural countryside and a remote location. It consists of a large farmhouse with associated barns, large stable buildings, paddocks and a dwelling house.
- 3.2 The Property was first used for the Existing Use in November 1979. At this time, the Property was home to 8 competition horses which were stored in a small building.
- 3.3 The Property expanded to include an outdoor stable area. Following the completion of this, the number of competition horses at the Property increased to 12.
- 3.4 The business operations at the Property have continued to grow. The horses have competed internationally in competitions. The Property has been used to breed and train horses and also to host elite showjumping.
- 3.5 The Property has 36 stables, 4 small pens, 3 large pens, 3 tack rooms, an area for semen collection for stallion horses, and an indoor and outdoor riding school as well as storage space. The Property also hosts parking for tractors, cars and 4 large horse boxes.

Planning History

- 3.6 The Existing Use is not expressly authorised by any planning permission but has become immune from enforcement action through the passage of time as demonstrated in the sworn evidence (and other material) that is submitted in support of the Application. Specifically, the Existing Use has continued without material interruption for a period of at least ten years as at the date of the Application.
- 3.7 Accordingly, the Application clearly demonstrates the Existing Use at the Property is lawful. There is no legal basis to withhold the grant of a CLEUD.

4 LEGAL AND POLICY FRAMEWORK

- 4.1 The relevant statutory provisions will be well-known to the Council, so we need only summarise them here.
- 4.2 Section 191 of the Act provides as follows (insofar as is material):

'191 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;

...

he may make an application for the purpose to the local planning authority specifying the land and describing the use...

- (2) For the purposes of this 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)
- ...
- (4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use...described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect;...
- ...
- (6) *The lawfulness of any use...for which a certificate is in force under this section shall be conclusively presumed.* [our emphasis]

4.3 Section 171B of the Act provides as follows (insofar as is material):

'171B Time limits.

- (1) *Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*
- (2) *Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*
- ...
- (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.* [our emphasis]

4.4 For the avoidance of doubt, reference to 'any other breach' within section 171B(3) above includes change of use. Whilst we note that Section 171B of the Act has subsequently been updated, this ten-year period remains unaffected by these amendments.

4.5 Therefore, the Act provides that the Council cannot take enforcement action in relation to a change of use of any building if the use has subsisted for more than ten years.

4.6 The National Planning Practice Guidance ("the PPG") provides as follows (insofar as is material to the Application):

'How is a lawful development certificate obtained and what does it mean?

Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not.

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section

191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

The key statutory framework for such applications and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 ("the Act").

[...]

Paragraph: 002 Reference ID: 17c-002-20140306
Revision date: 06 03 2014

What information must accompany an application for a lawful development certificate?

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. There is a different application form for each type of certificate, but either type must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee. Application forms can be obtained from the local planning authority and can be completed by the applicant or someone working on their behalf.

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

Paragraph: 005 Reference ID: 17c-005-20140306
Revision date: 06 03 2014

Who is responsible for providing sufficient information to support an application?

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.

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.

[...][our emphasis]

Paragraph: 006 Reference ID: 17c-006-20140306
Revision date: 06 03 2014

- 4.7 It is acknowledged that the onus of proving the lawfulness of the Existing Use rests with the Applicant. Consistent with the PPG, the Courts have held that the relevant evidential test is '*the balance of probability*' (see, for example Gabbitas v Secretary of State for the Environment [1985] JPL 630). Applying this approach to the Application, it is necessary to satisfy the Council that it is more likely than not that the lawful use of the Property is for commercial equine purposes. This is the legal basis upon which the Application must be determined by the Council.

4.8 This being so, it will be demonstrated, by reference to the material submitted in support of the Application, that a CLEUD ought to be granted by the Council having regard to both the Act and the PPG.

4.9 If the Council has no evidence of its own, or from others, to contradict or otherwise make the applicant's versions of events less than probable, there is no good reason to refuse the Application provided that the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a CLEUD '*on the balance of probability*'.

5 LAWFUL USE OF THE PROPERTY

5.1 As above, the Application is supported by a statutory declaration that has been sworn by Mr Edwin John Whitaker (being one of the Applicants). The Applicants have owned the Property for forty-three years (since November 1979), and therefore have extensive experience of the Property and its ongoing use for commercial equine purposes. The evidence of Mr Edwin John Whitaker has been sworn on oath and significant weight should be attached to it.

5.2 We would highlight the following points arising out of the statutory declaration sworn by Mr Edwin John Whittaker:

- the Property was first used for the Existing Use in November 1979 and has been used continually for the Existing Use since this date; and
- the Existing Use is ongoing.

5.3 This evidence plainly demonstrates (clearly and precisely) that:

- (a) the Property has been used for commercial equine purposes since November 1979; and
- (b) the use of the Property for this purpose has not been materially interrupted since that time and is ongoing.

5.4 For all these reasons, therefore, the Property was, at all material times, in use for commercial equine purposes.

6 CONCLUSION

6.1 For the reasons articulated above, the comprehensive and clear evidence that has been submitted in support of the Application demonstrates beyond any reasonable doubt (less still on the balance of probabilities) that:

- (i) the Existing Use is ongoing and has continued for a period in excess of ten years without any material interruption;
- (ii) no enforcement action has been, nor can be, lawfully taken by the Council in respect of the Existing Use; and
- (iii) therefore, the Existing Use is lawful within the meaning of the Act.

6.2 Accordingly, we respectfully invite the Council to grant the CLEUD pursuant to the Application at the earliest opportunity.

CLYDE & CO LLP
JULY 2024