

Roy M Lewis
Planning and Heritage Consultant

23 September 2022

For the attention of: Niamh Bonner
Planning and Regulatory Services
Ryedale District Council
Ryedale House
Malton
YO17 7HH

Dear Ms Bonner

Planning Application 20/00563/FUL

Erection of an Isolation Stable Barn for 12no. horses with ancillary areas for tack, feed and storage and associated landscaping, installation of 2.5m high acoustic fencing to eastern boundary of the site, installation of a section of new hardstanding to provide partially separated vehicular access for equestrian traffic, widening of the existing access, amendments to existing parking arrangements, installation of new vehicular passing place within main driveway and retention of a section of existing hardstanding, together with the temporary retention of temporary stabling and 1no.storage container. (Part retrospective)

I write on behalf of Mr and Mrs Crawford of East Lilling Grange with regard to the above application and with particular regard to the forthcoming meeting of the Planning Committee on the 27 September 2022.

Mr and Mrs Crawford were disappointed to see the very limited analysis of the evidence I have provided in relation to the lawfulness of the existing equestrian training use, in the officer's report. It is also noted that the applicant's agent, Mr Burns, has made further erroneous comments in an email dated 3 September 2022.

In the circumstances, Mr and Mrs Crawford have sought independent Counsel's opinion. This has been provided by Mr Ben Fullbrook of Landmark Chambers. A copy is attached. I also attach copies of two key documents referred to in the Counsel's opinion, sourced from the Council's planning application website.

I acknowledge the work that you have carried out and time spent in relation to determination of this application. However, I do not feel that the issue of the lawfulness of the existing equestrian training use at East Lilling Grange Farm has been properly considered. I remain of the opinion that a material change of use has taken place within the last ten years; that the existing use is unlawful; and that this is a relevant issue in relation to determination of the current application.

I trust that the Council, will give full regard to the Counsel's opinion provided by Mr Fullbrook and the highly pertinent legal points raised therein. In the circumstances, I consider that it would be inappropriate for the Planning Committee to determine the application on the basis of the published officer's report.

Roy M Lewis BA (Hons), MA (Arch Cons), MRTPI, IHBC
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Planning and Heritage Consultant

I would repeat the point I have made previously, that Mr and Mrs Crawford are not seeking to extinguish the existing equestrian training business at East Lilling Grange Farm. They are simply asking the Council to act with fairness in this matter, in line with the law, given the unsatisfactory planning history and uncontrolled development of the existing use. It seems to me that this could be achieved by requiring the operators to make a retrospective planning application for the unauthorised use, in order that the scale and operation of the use can be appropriately controlled.

In the circumstances, it would not be appropriate to grant planning permission for a development that would provide essential support for an unauthorised and potentially undesirable development.

Yours sincerely

Roy Lewis BA (Hons), MA (Arch Cons), MRTPI, IHBC

Attachments:

1. Copy of Mr JR Burns' Design and Access Statement dated 23 March 2010 (application ref. 10/00315/FUL)
2. Copy of Officer's Report dated 18 May 2010 (application ref. 10/00315/FUL)

IN THE MATTER OF:

DEVELOPMENT AT EAST LILLING GRANGE FARM

REFERENCE: 20/00563/FUL

OPINION

A. INTRODUCTION

1. I am instructed by Mr Roy Lewis MRTPI on behalf of Mr and Mrs Crawford, who reside at East Lilling Grange, which property is adjacent to the above site (“**the Site**”). I have been asked to review and comment on an “*Update Report*” (“**the Report**”), which has been produced by Ryedale District Council (“**the Council**”) in respect to the above application (“**the Application**”). I have been asked to look particularly at the Council’s consideration of representations going to the lawful use of the Site.

B. ANALYSIS

2. At the outset, I should note that, although the Application is for operational development (some retrospective), it is essential that the Council engages fully with questions about the lawful use of the Site. In *R (McPhee) v South Downs National Park Authority* [2015] EWHC 1661 (Admin), Dove J held that, in circumstances such as these, a local planning authority will act unlawfully if it fails to consider whether an application for operational development is providing essential support for an unauthorised and potentially undesirable development.
3. I note that the Report has attempted to engage with this issue, notwithstanding incorrect representations from the applicants’ agent Mr Burns that it is irrelevant. However, I have several concerns about the analysis contained in the Report.
4. The first such concern is that the Council has taken an overly-simplistic approach to the question of when land may undergo a material change of use. Broadly speaking, the Council appears to have placed great reliance on the suggestion that the Site has been used for what is referred to variously as “*commercial activity*”, “*commercial use*” and “*commercial equestrian use*” for over ten years. No doubt this is based largely on the applicants’ various statutory declarations which all include a statement to this effect at §5.

5. However, it is important to pay attention to the particular character of the use. Commercial equestrian use has the potential to cover a range of different activities, which have different characters and generate different effects. In my view, it is entirely possible that a site could remain in commercial equestrian use for 10 years but nevertheless undergo a material change of use during that time, either as a result of intensification or otherwise. I consider that the Report has failed to engage properly with this issue.
6. I note that, in this case, the Council has sought advice from counsel, who has advised that there is unlikely to have been a material change of use of the Site by way of intensification. I have not seen this advice in full and do not know what material was provided to the barrister. However, I consider that there are grounds for arguing that a material change of use has taken place. I would note the following in particular:
 - a. Although some form of commercial equestrian use may have been ongoing prior to 2010, it was clearly on a small scale. The 2010 application for the proposed horse walker was accompanied by a design and access statement from Mr Burns attesting that it would be used for the applicant's own horses and did not refer to any commercial use (which was in any event prohibited by condition). In determining this application, officers also visited the Site. The relevant officer report recorded that *"the [equestrian] use [of the Site] is currently operated on a private basis, and would continue to be solely used for the occupants"*. Thus, it would appear that any commercial use of the Site which was being undertaken at that point (contrary to the representations made to officers) was not so substantial as to be noticeable.
 - b. By contrast, the applicants' business is now described (in their design and access statement) as employing five staff, including two full-time grooms, and as training a considerable number of horses and riders, including international competitors who stay at the Site for training;
 - c. In my view, this would appear to amount to a clear change in the character of any earlier equestrian use with obvious additional impacts, particularly relating to traffic, noise, and the accommodation of riders.
7. It follows from this that the Council's planning committee ("**the Committee**") will have to specifically address its mind to this evidence and the question of whether this obvious change in the character of the use amounts to a material change of use. Such analysis does

not appear to be present in the Report. In addition to this, the Committee will also have to address its mind to the question of *when* this change occurred. Plainly, it has happened at some point since 2010. However, the evidence provided on behalf of Mr and Mrs Crawford strongly suggests that it happened at some point between 2015 and 2017, when the applicants sought additional planning permissions and saw a significant uplift in the business (as reflected in the accounts and the fact that it was only after 2017 that the business became large enough to attract a commercial rates assessment). If this is the case, and the change has taken place within the past 10 years, there are good grounds for concluding that the current use of the Site is unlawful.

8. My second particular concern about the Report relates to its approach to evidence. Whilst this is not an application for a lawful development certificate or an appeal against an enforcement notice, I consider that the Council is nevertheless required to adopt the approach set out in the Planning Practice Guidance (“PPG”) which states as follows:

“...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.”

9. The principal evidence upon which the Council appears to be relying in this case is the various (identical) statutory declarations which attest that *“the land at East Lilling Grange Farm has irrefutably been used solely for commercial equestrian purposes associated with the business (DHI Event Horses Ltd) since the company formed in 2005”*.
10. However, the Council has evidence of its own to contradict this statement in the form of the 2010 officer report and associated statement from Mr Burns which quite clearly show that (at the very least) the Site was not *solely* (or even *mainly*) used for *commercial* purposes in 2010. This significantly undermines the applicants’ case and the weight that can be given to the statutory declarations in general.
11. The Report briefly addresses this issue, but its analysis is very difficult to understand. It states:

[I]t is considered that the point about the permissions granted in the years up to and including 2010 which had non-commercial conditions attached is noted. However at this point, it is acknowledged that the Applicants have confirmed this has been used for commercial purposes since then. There is no evidence to the contrary and this is considered likely to be the case on the balance of probabilities.

12. If the applicants have confirmed use of the Site for commercial purposes *since 2010* then that directly contradicts what they say in their statutory declaration, and requires the Council to be satisfied that the material change of use took place *between 2010 and 2012*. None of the evidence which the applicants have provided establishes this (rather it says the change to general commercial use took place in 2005) and, as I have explained above, the evidence provided on behalf of Mr and Mrs Crawford suggests that it occurred much later (between 2015 and 2017).
13. In addition, the statement that the Site has been used for commercial equestrian purposes is, even if true, not sufficiently precise and unambiguous to make out their case on the balance of probabilities. As I have explained above, particular attention needs to be paid to the specific character of the use and it is quite possible that a material change of use could have occurred despite the Site remaining in commercial equestrian use. In my opinion, in order to make out their case on the balance of probabilities, the applicants will need to provide much more detailed evidence on the nature of the commercial equestrian use and how it has changed over time.
14. Furthermore, I note that the statutory declarations do not specify that *the whole* of the Site has been used for commercial equestrian purposes since 2005. This would be necessary to establish a lawful change of use of the entire Site. To counter this, the applicants' agent Mr Burns has stated in an email that the whole of the Site has indeed been so used. However, a mere email from a person who is not directly or indirectly involved in the business has no real evidential value - and particularly so in circumstances where previous representations made by Mr Burns in 2010 appear to directly contradict what the applicants now say in their statutory declarations about the use of the Site at that time. It follows that, in their own right, the statutory declarations are not sufficiently precise or unambiguous to establish that the *whole* of the Site has assumed a lawful use for commercial equestrian purposes.

C. CONCLUSION

15. In my view, the Council will need to squarely address the concerns which I have raised above about the analysis contained in the Report. In order to do so, it is likely to be necessary for it to defer consideration of this matter by the Committee.

BEN FULLBROOK

LANDMARK CHAMBERS

23 September 2022