

Seymour, Sarah

From: Gedney, David
Sent: 25 August 2015 14:29
To: _planningadvice
Subject: FW: Lawful Use Certificate Application - Race Over, 154 Dog Drove South, Holbeach Drove (ref H09-0286-15)

Ref H09-0286-15

Please scan – Supporting info

David Gedney | Senior Planning Officer | **South Holland District Council**
dgedney@sholland.gov.uk
DDI: 01775 764468 |
www.sholland.gov.uk

From: Dog Drove South [mailto:dogdrovesouth@gmail.com]
Sent: 25 August 2015 12:34
To: Gedney, David
Subject: Re: Lawful Use Certificate Application - Race Over, 154 Dog Drove South, Holbeach Drove (ref H09-0286-15)

Dear Mr David Gedney,

Thank you. I have responded with comments where applicable.

I will need to arrange for the previous owners of the property to get back in touch with the solicitor to be more detailed in their declarations regarding the dates of when their adult dogs were moved into the property to correctly assist the council legal-team's determination of 'continuation-of-use' prior to my occupancy.

For my own peace-of-mind, please allow me to summarise the history though I was unable to track down the Gilbys but you should have correspondence documents in your archives proving they were also canine enthusiasts:

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 - > Showdog hobby breeders and owners of both showdogs and guard dogs
- * Warrens 1996-2007
 - > Greyhound patron and hobby breeder (member of NGRC)
- * Atkins 2007-2012
 - > Greyhound owner and enthusiast (member of NGRC)
- * Lee 2012-current
 - > Private-pedigree (crossbreed) canine enthusiast (10+ years)

All parties purchased this property for the same reason, to live and enjoy their existing canine hobby in a rural setting, not something newly created after moving in, both previous owners and myself already owned more than 6 dogs before we moved into this property.

Please allow me some time to get in touch with previous owners again. At the time of the declarations being done I was not aware of the exact nature of what was being requested of me, your legal-team has clarified exactly what information is required which I will now aim to get answered in full by the previous owners.

Please do call me on 01406 331080 if you have any concerns or further questions in the meantime.

Kindest Regards,
Pauline Lee

On Fri, Aug 21, 2015 at 12:42 PM, Gedney, David <DGedney@sholland.gov.uk> wrote:

Dear Miss Lee,

I write in relation to the above application.

We have now received a response from Legal Services who have concluded, on the balance of the current evidence, that a certificate of lawful use should not be issued. The full response is outlined below.

“Thank you for your instruction relating to the application for a certificate of lawful use at Raceover, 154 Dog Drove South, Holbeach Drove.

The test which the application must meet for change of use is that the use has been on-going for a continuous period of 10 years, although it is not necessary for the use to be on-going at the time of the application provided the use has not been lost by operation of law ie by way of abandonment; the formation of a new planning unit, or a further material change of use. The evidence submitted must be considered on the balance of probability. This basically means that it must be “more likely than not” that the evidence has met the test.

The correct approach is to identify when the change of use began, and determine whether a period of 10 years has since elapsed, with the unlawful use continuing to be an active use throughout the 10 year period.

The application description reads:

“maintenance care and personal enjoyment of my dogs and I. As has been the case with past owner dating 10 + years”.

The application site

The plan attached to the application appears to show the entire residential boundary. I assume that the application relates to the whole of the curtilage, but this should be clarified before any certificate is issued.

** I am unsure what this means?*

When use first began

The applicant states in the application form that the use began "mid 1996".

The applicant commenced occupation of the property on 30 April 2012.

Evidence

- *Statutory declaration from Ms Bernadette Warren - this declaration relates to the period from about May 1996 to August 2007, at which point the property was sold. The declaration states that "after we had purchased the property we used it as a kennels. We had between 12 and 18 dogs at any one time". However, there is no reference to precisely when, after she purchased the property, the kennel use began; whether the use was continuous during the entire period of ownership; nor whether all of the dogs were adult dogs.*

** Ms Bernadette Warren is a well known greyhound breed patron and was living in a property nearby with her dogs before moving here, her dog hobby was already her lifestyle before moving here with her dogs, I will get the exact date the dogs were moved in clarified.*

- *The declaration also states that greyhounds were raced from the property mainly as a hobby. Does this mean that some commercial activity was also involved ?*

** Both previous owners were and still are greyhound enthusiasts, no commercial operations took place here at the property. No different to I keeping my dogs exercised, but of course Greyhounds are highly-active racing dogs so indeed the activity which keeps such dogs fulfilled would be racing, mechanical lure-chasing, I along with other serious athletic dog enthusiasts also lure-chase my dogs, its effectively a toy you tie to a machine and then you press a button and it pulls it along the grass and the dogs chase after it, keeping their instinct and body nourished.*

- *The declaration does show that the former kennels (which the declaration states was a block of four double kennels) were replaced by Ms Warren during her ownership ie between May 1996 and August 2007.*

- *Statutory declaration from Mr Derrick Atkins – this relates to the period from August 2007 until April 2012, at which point the property was sold (the date provided by the current owner is 30 April 2012). The declaration states that “at the time of our purchase we had 8 dogs kept in the kennelling for pleasure. Over the years the number of dogs that we kept there varied between 8 and 15”. However, the declaration does not state whether this use was continuous; nor whether the dogs were all adult dogs*

** I will get this clarified.*

- *The Rural Scene estate agency advertisement indicates that there was, at the date of their visit to the property, a kennel block with 12 doubles and 6 singles (kennels), plus a stable. The advertisement is not dated*

** This document along with the other two were what my mortgage provider's surveyor used when making a site visit here before the mortgage was agreed.*

- *The property.independent.co.uk website advertisement which carries the dated 10/03/2012 indicates that there are 12 double NGRC approved kennels plus stabling, but there is no indication that any site inspection has taken place, and I wouldn't expect an inspection to have taken place.*

** Yes, this advert does appear to have been simply an advert, but as it was a public advertisement it was merely included to show that I did not build the ample kennelling here and the factors which attracted me to the property.*

- *The vebra.com website advertisement which again carries the date 10/03/2012 indicates that there are 2 stables and 12 double NGRC approved kennels. The website does not confirm the accuracy of the details.*

** As above.*

- *There are 3 objections to the application for the lawful use certificatae, two of which refer to the current kennel block being built in 2010/11. This contradicts the information contained in the first statutory declaration detailed above from which we can deduce that the current kennel block must have been provided no later than August 2007, when the then owner sold the property. However, as the application is not seeking a certificate for the construction of the kennel buildings, clarification on this point does not assist*

- *One objector states that “the newly built kennels were not fully used until the property was purchased by the current owners”*

** It would be unreasonable to consider the statement of this objector as factual, speculative yes. Please note that dogs come out of kennels at the rear of the building, and that exit is not visible from the road, it would be impossible for any member of the public to know how many dogs are held in the kennel or in quiet dogs case if any at all. Greyhounds generally whilst kennelled are fairly quiet dogs in comparison to other breeds of dog held in kennels, it would be respectfully prudent to interpret the objector's claim as conjecture.*

- *Aerial photograph - the aerial shot of the property which the applicant has dated 1999 does not provide evidence that the kennels were being used at that time*

- *Other information*

- *I am advised that there is no planning permission for the building of the new kennel block nor any permission for change of use. The only recent application relating to the site is H09-1368-07 which is for an extension to the bungalow and a detached double garage/workshop*

- *I am advised that no enforcement action has been taken other than requesting the applicant to submit an application;*
- *I am advised that the Council has no contra evidence other than correspondence submitted by residents in relation to the current application, which are referred to above*
- *there is no evidence submitted in relation to the Greyhound Racing Club licenses*

** I can request this if it is important for this application?*

- *Number of dogs*
- *The first statutory declaration, whilst it does not show continuous use, indicates that the owner kept between 12 and 18 dogs at any one time during her occupation between May 1996 to August 2007*
- *The second statutory declaration, whilst it again does not show continuous use, states that the owner kept between 8 and 15 dogs during his occupation between August 2007 until April 2012*
- *The current owner states that she moved there in April 2012 with 20 adult dogs; and that there are currently 28 adult dogs (22 in kennels, 4 inside and 2 guard dogs), though the number has varied up to 42 including puppies*

On the basis of the current evidence I do not consider that a certificate of lawful use can be issued. The application is not precise as to the number of dogs for which a certificate is being sought, but in any event the statutory declarations are not sufficiently precise and unambiguous as to the following issues:

** 30 adult dogs, but there could be juniors and puppies in addition to this but that would be temporary as is usual in canine hobbies, number will always be a maximum of 30 adult dogs.*

- *whether the dogs kept by each previous owner were all adult dogs*

** I will get this clarified.*

- *whether the use was continuous during each occupation*

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- *whether the use was entirely ancillary to the residential use of the property."*

** Although dog hobbyists rely on kennels to keep dogs contained and safe, we often bring our dogs to the dwelling-property too, but for a civilised structured system we manage our dogs so that we have an 'our' garden and they have 'their' area to exercise/play in, I will clarify how the previous owners managed their hobby lifestyle though I would not imagine it would be greatly different to mine considering the dogs are personally owned dogs. Please note, canine enthusiasts and their lifestyle with their dogs differs greatly in comparison to typical companion-pet/hoarder type owners, it would be illogical to put both pet-owners and canine-enthusiasts in the same bag, being a canine-enthusiast is a lifestyle choice of mind and heart not purely emotion alone.*

I welcome any further comments that you wish to make within the next 5 days.

Regards.

David Gedney

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From: Gedney, David
Sent: 25 August 2015 14:36
To: _planningadvice
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Dear Miss Lee,

Thank you for the additional information.

No objections are raised to the application being put temporarily on hold to enable you to obtain further information from previous owners, etc. Concerning "the application site", it is assumed that the whole of the site, including both the dwelling and outbuildings, has been used for the keeping of dogs throughout the relevant period?

I look forward to receipt of the additional information in due course.

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