

Address: 2 Midsummer Meadow

Application No: 181677/CLE

Proposal: Certificate to confirm if the existing use of the garden building for a dog grooming service for up to 6 dogs per day/per week involving bathing and clipping is lawful in planning terms

Case Officer: Tom French

Introduction & Proposal

The application site comprises a two storey detached dwelling on the south side of Midsummer Meadows. There is an outbuilding to the rear of the property from which one of the residents of the main dwelling operates a dog grooming service.

The applicant contends that the use of the outbuilding is ancillary to that of the host dwelling and as such no change of use has occurred.

Relevant Planning History:

011465 - FUL - Two storey side extension - Application Refused

Relevant Planning Policy & Guidance:

Annexure 8 "Lawfulness and the Lawful Development Certificate" of Planning Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' sets out the procedure for assessing applications for certificates of lawfulness:

Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision on whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

The onus of proof in a LDC application is firmly on the applicant. Subsection (4) of section 191 provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them (see paragraph 8.35 below), they shall issue a certificate to that effect; and, in any other case, they shall refuse the application'.

Para 8.3 states, 'by virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them **and** they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), *a failure to comply with any condition or limitation subject to which planning permission has been granted* is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.'

Consultation Responses:

Environmental Protection

The RBC Environmental Protection team have confirmed that they have no records of a dog grooming parlour operating at this site.

Business Rates

The RBC Income and Recovery Team have confirmed that they do not have any record of a business registered at this address.

Public Consultation

There is no statutory requirement for a public consultation process with this type of application. As such, none has been undertaken. No responses have been received.

Submitted Evidence

The applicant supplied the following information (received 22/09/2018):

- Map showing location of site
- Location Plan
- Block plan of site
- Google street view image of site
- Application form with Planning Portal Reference: PP-07301107

Assessment

Section 191 of the Town and Country Planning Act 1990 (2) (a) states that:

(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);

Section 55 of the act defines development as:

(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.

Section 55 continues to detail that:

2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

...

(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

Considering the above, the use of the outbuilding would be lawful (and the certificate should be granted) if it can be demonstrated that no development has taken place. It is therefore relevant if the operation of the dog grooming service can be shown to be incidental to the enjoyment of the dwellinghouse (in which case no development has occurred) or if it would represent a material change of use of the outbuilding (in which case development requiring planning permission would have occurred).

The statement provided on the application form states that one resident of the main house runs the dog grooming without any additional employees or staff. It also states that currently around 5 dogs are groomed per a week. The opening hours are 08.30 - 15.00 Monday to Friday and average grooming session lasts around 90 minutes. This would allow for a maximum of 4 clients per day, and is considered consistent with the projected maximum capacity of 5 clients per day stated on the application form. This accords with the information displayed on the business's website (www.thedogcabin.co.uk).

When taking into account the level and intensity of operations relating to the dog grooming business, and the physical size of the outbuilding being used in comparison to the main dwelling house; it is considered that the business operations being conducted at this site are not dissimilar to the outbuilding being used as a home office. Were the outbuilding to be used as a home office this would normally be considered a use incidental to the main dwelling and not a material change of use of the land. Applying the same principles I find that the dog grooming service provided at this site would also be incidental to the enjoyment of the main dwelling as a dwellinghouse and therefore no change of use (or development) has occurred.

In the absence of the information or evidence to contradict or make the applicant's version less probable, on balance, it is considered that the no material change of use has occurred as a result of using the existing outbuilding as a dog grooming service. It is therefore considered a Certificate of Lawfulness for the use as a C3 dwelling should be granted.

It is noted that this application has been assessed on the basis of the information submitted at the time of this application. Were the nature of the business or intensity of operations to change then it is possible that a change of use requiring planning permission may occur.

Recommendation

Grant certificate

Location Plan (not to scale):

