



Appeal Decision

Site visit made on 1 July 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Appeal Ref: APP/P2935/X/19/3240618

Buildings north east of Thrum Mill Farm, Rothbury, Morpeth NE65 7XH

- 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 Debbie Noble against the decision of Northumberland County Council.
 - The application Ref 19/01263/CLEXIS, dated 15 April 2019, was refused by notice dated 21 June 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is agriculture.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The issue of a Lawful Development Certificate (LDC) depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The burden of proof regarding decisive matters of fact rests on the appellant. The relevant test of the evidence is 'the balance of probability'.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Background

4. The appeal site comprises a modern steel framed structure located in open countryside to the north east of Thrum Mill Farm. Planning permission was granted for it in 2008 under reference A/2008/0530. Although I have not been provided with any documents relating to that permission, the planning history in the planning officer's report gives the description of the 2008 development as 'Demolition of existing stable building and erection of steel portal framed building to be used as secure store and general purpose building'.
5. The appellant asserts that a reference within the 2008 decision notice to a development plan policy relating to new agricultural buildings provides proof that the barn was intended for agriculture. However, such a reference to a

policy is not determinative, and does not take precedence over the given description of a development.

6. The appellant clarifies that, if the Council's refusal is upheld through this appeal, then she seeks confirmation instead that the appeal site falls into Use Class B8 – Storage or Distribution. However, an LDC application must relate to a specific use, in this case, agriculture. It is not open to me to consider the lawfulness of any use other than that specified, although the appellant is free to submit a further LDC application for that purpose if she so wishes.

The use of the appeal building

7. In order for the appeal to succeed, the appellant needs to show that the appeal building has been in continuous use for agriculture for 10 years or more prior to 15 April 2019, which is the date of the LDC application. The building therefore needs to have been in this use from 15 April 2009, or before. The National Planning Policy Guidance (NPPG) states that the appellant's evidence must be sufficiently precise and unambiguous so as to justify the grant of an LDC on the balance of probability¹.
8. Although the appellant makes frequent reference to 20 March 2013 as a key date, I note that this is a determinative date for the consideration of the conversion of agricultural buildings to dwelling houses under Class Q² of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO). For the purposes of my consideration in this case, the date of 20 March 2013 is no more or less significant than any other date within the ten year period alluded to above.
9. In support of her case, the appellant has submitted a number of documents. I have been provided with a letter of 9 May 2006 confirming the notification of a County Parish Holding (CPH) number. As the letter states, the CPH number indicates the location of the main business at Thrum Mill Farm. However, I have not been provided with any further information, for example, a map, to confirm the extent of the holding. An extract of Section 1 from a Holding Register document similarly gives various details but does not refer specifically to the appeal building.
10. Further documents include: Defra Movement Documents dated October 2012, February 2014 and October 2014; an Animal By-Products Movement Document of March 2014; a note confirming delivery to the Morpeth Hunt on 15 March 2013, and; a letter of 3 May 2018 from AWS Accountancy Limited confirming the change in status from Thrum Mill Farm as a limited company to Thrum Mill Partnership in 2013. Whilst these documents clearly relate to the farming business registered at Thrum Mill Farm, they do not in themselves provide direct evidence of the continuous use of the appeal building over the ten year period for agricultural purposes.
11. The appellant has also provided a series of photographs taken at the appeal site. These provide clear evidence of the agricultural use of the appeal site, as they confirm the presence of sheep and lambs in or around the building. However, they are not dated. In final comments, the appellant makes

¹ Paragraph: 006 Reference ID: 17c-006-20140306

² Paragraph Q.1(a) of the GPDO states that under Class Q, development is not permitted if the site was not used solely for an agricultural use as part of an established agricultural unit on (i) 20 March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use.

reference to the children who appear in a number of the photographs. If the children, who are now 13 and 11, were around four in the pictures, they would have been taken approximately eight years ago, in or around 2012.

12. Crucially, however, for the use in question to be found lawful, it needs to have been continuous over ten years or more up until the date of the LDC application. There is certainly evidence to show that an agricultural business based at Thrum Mill Farm was active up until 2014, the latest document dating from October of that year. The photographic evidence shows that the appeal building was previously in agricultural use at some point within the relevant period, albeit that the timescale is imprecise.
13. However, there is little evidence relating to agricultural activity, whether at the appeal building or elsewhere at Thrum Mill Farm, between October 2014 and 15 April 2019, which is a substantial gap of almost five years. For that reason, I am satisfied that the submitted evidence falls significantly short of demonstrating, on the balance of probability, that the appeal building was used continuously for agriculture during the ten years preceding the submission of the LDC application.

Other Matters

14. The appellant makes reference to procedural matters relating to the Council's handling of the application to which this appeal relates, and voices concern over the Council's consideration of third party representations. However, no documentation relevant to these matters has been made available, and so I am unable to take them into account. As stated above, my assessment depends entirely on the factual evidence submitted and the interpretation of law where relevant. Whilst I acknowledge the appellant's concerns, any remaining issues must be resolved directly between the Council and the appellant.

Conclusion

15. As set out in the NPPG³, the refusal of an LDC does not preclude another application being submitted at a later date, if more information can be produced.
16. Nevertheless, on this occasion, I conclude for the reasons above that the Council's refusal to grant an LDC in respect of the use of the appeal building for agriculture was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Elaine Gray

INSPECTOR

³ Paragraph: 005 Reference ID: 17c-005-20140306