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## Appeal Decision

Site visit made on 9 June 2020

**by Alexander Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 July 2020**

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**Appeal Ref: APP/P2365/X/19/3237869**

**Holly House Farm, Stoney Lane, Parbold, WN6 9QF**

- 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 Mr Lee Mason against the decision of West Lancashire Borough Council.
  - The application Ref 2019/0695/LDC, dated 9 July 2019, was refused by notice dated 3 September 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 the use of former agricultural building for storage and ancillary domestic storage.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal site comprises a former agricultural building that forms part of a wider site consisting of a large dwelling and domestic outbuilding set within extensive grounds. The appeal building is set back from the main dwelling and there is a physical barrier in the form of the gated access into the dwelling. However, they share the same access driveway off the road and there is clearly a functional relationship between the two buildings with the appeal building being used for ancillary domestic storage associated with the dwelling. Whilst the appeal building comprises a mixed use of ancillary domestic storage and commercial storage, due to the functional connection, I do not consider that it forms a separate planning unit to the main dwelling. Therefore, the overall planning unit, including the dwelling and the appeal building comprises a mixed residential and commercial use.
3. The application form described the development for which the certificate of lawful use is sought as 'B8 - Storage or distribution'. However, during the course of the Council's consideration of the application the description was amended to that as I have described in my banner heading above. The application was determined on this basis and I note that the appellant has used this description on the appeal form.
4. The appellant argues that there is no distinction between commercial storage and domestic ancillary storage and therefore the proposal is essentially seeking a certificate of lawful development for the use of the building for a B8 storage and distribution use. However, I do not agree. Whilst I acknowledge his

references to numerous appeal decisions relating to storage, the details before me of these decisions are limited to excerpts, therefore I cannot be certain that the circumstances of these appeals are directly comparable to the proposal before me. I have been provided with the full decision letter for appeal decision APP/W0340/X/17/3167986. Whilst this included various forms of storage, it did not include items of a domestic nature. Therefore, it is not comparable to the appeal before me. The storage taking place within the appeal building comprises the storage of motorbikes on a commercial basis, which involves the use of a forklift truck, presumably to load/unload the motorbikes. Then there is also the storage of domestic items belonging to the appellant, such as a ride on lawn mower, toys, gym equipment, Christmas decorations, golf clubs, as well as items belonging to him relating to his business, including a trailer, scaffolding and general building equipment.

5. Therefore, there is a clear distinction between the personal items stored in the building belonging to the appellant, which are being stored in a fashion similar to what one would typically find in an ancillary building to a dwelling, such as a garage or shed, and the items, ie motorbikes, that are being stored on a commercial basis, ie they are unloaded and loaded for storage/distribution to customers. Therefore, I consider that the building is being used as ancillary storage to the main dwelling, Holly House Farm, and for commercial storage. To consider that there is no distinction between the two forms of storage would imply that a typical garage used for storage ancillary to a dwelling would benefit from a B8 use, which would be a perverse proposition.
6. Accordingly, for the reasons I have outlined above, I have determined the appeal on the basis that a certificate is sought for the mixed use of the former agricultural building for commercial storage and ancillary domestic storage.

### **Main Issue**

7. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is not well-founded.

### **Reasons**

8. The appeal building comprises a large brick building with two large roller shutter doors and two standard doors to the front elevation. Internally, the ground floor is on two different levels, with the eastern half being on a slightly higher ground level than the western half. Within the western half there is an enclosed room with a mezzanine floor above accessed via a spiral staircase. To the front of the building is a large, ungated hardstanding area that leads off the driveway that also serves the main dwelling.
9. The evidence submitted by the appellant includes invoices from LJM Properties, Holly House Farm to Moto GB for storage between October and December 2008, and January and March 2009; an invoice from Lee Mason to Moto GB for storage between July and September 2012; and, invoices from Mason Properties to Frank Thomas Group trading as Vroom for storage and fork lift truck driver between July and September 2009, and October and December 2019. These invoices are supported by photographs dated 2008 and 2019, which indicate that the building was at the time being used for the storage of motorbikes.

10. Whilst the above clearly indicates that the building was, in part, used for the storage of motorbikes in 2008, 2009, 2012 and 2019, there is no evidence supporting the use of the building for commercial storage between 2009 and 2012, and 2012 and 2019. There is no evidence, such as invoices, accounting for the use of the building for commercial storage for eight years out of the ten year requisite period prior to the application being made. Given that invoices have been produced going as far back as 2008, it seems unusual that invoices have not been produced covering the proceeding years, covering the period of time up until when the application was made. This raises significant doubts that the building has been in continuous use for the requisite ten year period.
11. The Council have no evidence to contradict the appellant's evidence and therefore his submissions do not need corroborating<sup>1</sup>. However, whilst there is sufficient evidence to indicate that the appeal building has been used for numerous periods over the last ten years, and prior to that, there is a lack of evidence supporting the assertion that any material change of use has been continuous for so long as to gain immunity from enforcement action..
12. The Council do not dispute that the building has also been used for ancillary domestic storage. Based on the evidence before me, including the observations I made on site, I find no reason to conclude otherwise. However, the building has not been solely used for ancillary domestic storage. There has been an intervening commercial storage use, ie the storage of motorbikes, which has likely resulted in a material change of use from ancillary domestic storage to a mixed use of ancillary domestic storage and commercial storage, each time the intervening commercial storage use has occurred.
13. As a result, the clock restarted for the requisite period of immunity from enforcement action each time the intervening use takes place/ceases. For example, the building may have been used solely for domestic ancillary storage from when the appellant bought the property in 2006. However, when the building was used for commercial storage in 2008 this would have resulted in a material change of use of the building to a mixed use, at which point the period of immunity would have begun from this date in 2008. This mixed use of domestic ancillary storage and commercial storage may have continued until 2009, possibly 2012. However, the lack of evidence covering the period between 2012 and 2019 suggests that this mixed use ceased over this period, resulting in the building reverting back to domestic ancillary storage only, with the mixed use restarting in 2019.
14. Consequently, as the sole use of the building as ancillary domestic storage has been interrupted on numerous occasions by the intervening mixed use, most recently in 2019, which at the time of my site visit continues to be in such use, I cannot grant a certificate of lawful development for the use of the building as ancillary storage associated with Holly House Farm.
15. I find therefore that there is insufficient evidence to demonstrate that on the balance of probabilities the proposed mixed use comprising commercial storage and domestic ancillary storage has occurred uninterrupted for the 10 year period prior to the application being made.

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<sup>1</sup> F W Gabbittas v SSE and Newham LBC [1985] JPL 630

## **Conclusion**

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Alexander Walker*

INSPECTOR