



Appeal Decision

Site visit made on 15 September 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/J3720/X/20/3254044

New House Farm, Birmingham Road, Bishopton Hill, Pathlow CV37 0ES

- 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 Matthew Shilvock against the decision of Stratford on Avon District Council.
 - The application Ref 19/02693/LDP, dated 23 September 2019, was refused by notice dated 19 November 2019.
 - The application was made under section 192(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 works of conversion of an agricultural building to a dwellinghouse in accordance with the information, plans and drawings submitted in support of prior approval application reference 18/03573/COUQ made under Class Q.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Background and Main Issue

2. Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) permits development consisting of a change of use of building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) together with building operations reasonably necessary to convert the building. Development is not permitted by Class Q if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or 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.
3. The appellant submitted a prior approval application, reference 18/03573/COUQ, which was refused. However, the Council issued the decision after the expiry of 56 days. In such cases, prior approval is deemed to be granted and the development is lawful if it is carried out in accordance with the submitted plans and it is permitted development (PD).
4. Given the above, the main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded. This will turn on whether the building had been used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or 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.

Reasons

5. In an LDC the burden of proof is firmly on Mr Shilvock to prove, on the balance of probability, that the building was in agricultural use on the relevant date. Whilst the burden of proof is on the appellant, it is established case law that evidence should not be rejected simply because it is uncorroborated.
6. The appellant has submitted information in support of this appeal which was not available to the Council when it made its decision and has drawn my attention to Cottrell¹ in this regard. The Council requests that I do not consider the new evidence, however, this denies the purpose of the LDC procedure, which is to arrive at an objective decision based on the facts and evidence available at the time the decision is taken. Furthermore, it would open to the applicant to re-apply and would serve no useful purpose to refuse the LDC if subsequent evidence has come to light proving the case on the balance of probability.
7. The appellant has drawn my attention to an appeal decision, reference APP/F2605/W/19/3240798, where the Inspector concluded a building which had been used for the storage of miscellaneous items had not been substantially changed since its last agricultural use. While I agree with the Inspector's approach in this regard, whether a material change of use has occurred is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.
8. The appellant was not the owner of New House Farm in 2013. The appellant and his wife, Claire Shilvock, first viewed the property in 2014, at which time the Granary is said to have been empty. Although it appears there may have been an intention by the previous owner to use the building for personal storage and sell part of New House Farm in 2006, the refusal of planning permission for the reopening of an old vehicular access and the sale in 2015 suggests that the sale did not go ahead in 2006 as intended since the appellants purchased the barn, dwelling and surrounding agricultural land.
9. The Council makes reference to a report for a 2014 application in relation to another barn which states that a barn to the south west of the application building was not in use for agricultural purposes but domestic storage. It goes on to explain that the report refers to a building south west of the site and, since there is no such building, assumes the officer must have been referring to the appeal building. However, relying on a statement which is clearly inaccurate is, in my view, unsatisfactory. Whilst it is not unusual for officers to take interest in an overall site or seek to give a summary of activities going on, since the 2014 application did not relate to the appeal building, I consider it unlikely that the use of the Granary would have been given the same level of scrutiny as it would had it been the subject of the application itself.
10. The Officer report for the LDC application states 'from my observations of the building internally, I was not satisfied that the building was being used solely as an agricultural use. The building appeared to be used for general storage...'. The term 'general storage' is not defined within the report. I do not consider that storage of items in connection with an agricultural use is unusual and does not demonstrate that a change of use has occurred. The

¹ Cottrell v SSE & Tonbridge and Malling BC [1982] JPL 443

appellant has provided an inventory of items which were stored in the Granary around the time of the officer's visit. The items stored appear consistent with an agricultural use and are also consistent with what I saw on site. Similarly, photographs provided by the previous owner, Mrs Jackson, point towards the building being used to store agricultural equipment and machinery. This casts significant doubt on the Council's conclusions that the building was not in agricultural use because it has been used for general storage.

11. The Council refers to appeal decisions APP/J3720/W/18/3205479 and APP/P1133/W/17/3191645 where the Inspectors held that there must be some element of trade or business for permitted development rights to apply. For Part 3, paragraph X states that "agricultural building" means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and "agricultural use" refers to such uses. GPDO rights only apply to agricultural uses that are operating as a trade or business, whether profitable or not. No one factor is decisive, it should be considered on the facts.
12. Claire Shilvock has provided a signed statement which states that the site was a working farm, registered with CPH (County Parish Holding) number 43/227/0002 until it was sold to the appellant in 2015. It is stated that the land was rented out for sheep grazing and the tenant farmer used the Granary to store their farming equipment. A CPH number demonstrates that livestock was kept on the land and whilst this is not by itself proof that this was done to make a profit, I consider it highly unlikely that a tenant farmer would farm the land on a hobby basis.
13. The appellant has provided various evidence which points towards an element of trade or business at the site, including a Certificate of Registration for Value Added Tax (VAT), dated 11 February 2015, which identifies the trade classification as mixed farming, a Partnership Tax Return, and correspondence from the Rural Payments Agency regarding an Expression of Interest (EOI) for the Growth Programme. While there is limited documentary evidence relating to the business use of New House Farm prior to the appellant's purchase of the site in 2015, I see no reason why the property would have been any less likely to have been used as part of a trade or business.
14. Aerial photographs provided by the appellant show activities occurring at New House Farm which are consistent with commercial farming including the grazing of sheep in 2010 and hay making in 2013 and information submitted by the appellant indicates commercial farming has been carried out since. Furthermore, the building does not appear to have been modified, as may be expected where a change of use has occurred.
15. The Council has drawn my attention to title No WK476955, part of which was granted planning permission 15/00887/FUL for the construction of single stable and hay barn and change of use of land from agricultural to equestrian. However, since the planning permission was granted after 20 March 2013, it is not relevant to the appeal before me. Although land to the west of the building is used as part of the residential garden associated with New House Farm, this is outside the application area and does not therefore demonstrate that a change of use of the appeal site has occurred.

16. For the reasons given above, I conclude that the appellant has demonstrated, on the balance of probabilities that no change of use of the building has occurred and that on the relevant date therefore, the lawful use of the building was agricultural as part of an established agricultural unit.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusals to grant a certificate of lawful use or development was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Savage

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 September 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the building was used solely for an agricultural use as part of an established agricultural unit on 20th March 2013. Since prior approval is already deemed to be granted, the development is therefore granted permission by Article 3, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

M Savage

Inspector

Date 12 October 2020

Reference: APP/J3720/X/20/3254044

First Schedule

Works of conversion of an agricultural building to a dwellinghouse in accordance with the information, plans and drawings submitted in support of prior approval application reference 18/03573/COUQ made under Class Q.

Second Schedule

New House Farm, Birmingham Road, Bishopton Hill, Pathlow CV37 0ES

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 October 2020

M Savage BSc (Hons) MCD MRTPI

Land at: New House Farm, Birmingham Road, Bishopton Hill, Pathlow CV37 0ES

Reference: APP/J3720/X/20/3254044

Scale: NTS

