
Appeal Decision

Site visit made on 28 October 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 22 November 2021

Appeal Ref: APP/Q9495/X/21/32374261

Lofshaw Airstrip, Hutton End, Penrith

- 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 Roger Savage against the decision of Lake District National Park Authority.
 - The application Ref 7/2021/3015, dated 3 February 2021, was refused by notice dated 1 April 2021.
 - 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 mixed use of the land as agriculture and an aerodrome.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue an LDC was well founded. In this case that will turn on whether the appellant has proved on the balance of probability that the use of the property changed to mixed use for agriculture and an aerodrome on or before 3 February 2011 and that the use then continued without significant interruption for ten years after the date of the change.

Reasons

3. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
4. The application included an application form, planning statement and letters of support. Additional appeal evidence includes the appellant's flying log and a letter from the former owner of Eyecott Farm, Berrier. It is the appellant's case that the mixed use of the land for agriculture and an aerodrome first occurred more than ten years and has occurred continuously for at least ten years.

5. It appears to me that the main use of the land is agricultural and more specifically, for the grazing of sheep. There is no evidence that at any time the use of the land for such grazing has ceased and based on the evidence before me the land appears to be grazed throughout the year.
6. The application sets out that the use of the land as an aerodrome started in 2009 when it was a low key activity and mainly limited to the appellant's own use. The details submitted clarify that the level of use has increased in more recent years and until drainage works, reseeding and harrowing were made and more formal grass strips were marked out, take-off and landing aircraft could take place anywhere on the fields. It is stated in the Planning Statement that it has been only in the past two years that formal grass strips have been identified to make it easier for visiting aircraft to land and take-off. The strips can now be seen on site.
7. The evidence submitted shows that there were 32 visiting aircraft between May and the end of December 2019 and this number increased to 150 in/out flights during 2020 including the appellant's own use. For the 8 years leading to 2019 the appellant states that the aerodrome was used in excess of 28 days in any calendar year, but other than this there is no detailed account of the use or evidence to confirm the levels of use over the material 10 year period.
8. There are letters from people who have used the aerodrome over the years and these make general reference to the use of the land in question for taking-off and landing aircraft, the location of the site, facilities available and support the application. In particular, I have noted that three of the letters refer to use since 2010 and another refers to the use over a decade. Another letter refers to regular use of the Troutbeck airfield over the last 5 years.
9. The former owner of Eyecott Farm, Berrier has confirmed that between 2007 and 2014 the appellant was allowed to use some of his land at Berrier and Lofshaw for flying operations. In 2011 Mr Savage was allowed to extend his runway at Berrier. The appellant purchased the land at Lofshaw in 2013/2014. Whilst this evidence points to the general use of land for aircraft activities it is not precise.
10. The appellant has submitted an extract from his flying log which shows that between October 2009 and February 2010 he frequently flew to and from Berrier and that he sometimes flew via the appeal site. He has stated that he could submit hundreds of such extracts but has not actually done so. The extract covers only a relatively short period and includes no evidence covering the material period up to the date the application was made.
11. Therefore, although there is some evidence of the mixed use of the land during the material period it is generally imprecise and insufficient for me to conclude that on the balance of probabilities the property changed to mixed use for agriculture and an aerodrome on or before 3 February 2011 and that the use then continued without significant interruption for ten years after the date of the change

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of mixed use as agriculture and an aerodrome 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.

A A Phillips

INSPECTOR