
Appeal Decision

Site visit made on 7 December 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2022

Appeal Ref: APP/Z5630/X/20/3256152

Robin Wood Farm, Robin Hood Way, Kingston Vale SW15 3QG

- 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 Sean McCormack against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 20/00558/CEU, dated 4 March 2020, was refused by a notice dated 16 May 2020.
 - 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 described as, "Change of use from 'Agricultural Use' to 'B8 Use'".
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Decision

1. The appeal is dismissed.

Procedural Matter and Main Issue

2. Section 191 (4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matters described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal. The main issue is whether the Council's decision to refuse to grant a Certificate of lawfulness of existing use or development (LDC) was well founded.

Reasons

3. The appeal site has been in use for the storage of motor vehicles since January 2019 and was previously associated with a neighbouring agricultural building and land. The appellant considers that the appeal site is within the curtilage of the agricultural building and therefore, the B8 storage or distribution use benefits from planning permission granted under Class R, Part 3, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended) (GPDO).
4. Class R of the GPDO states that development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within one of the following provisions of the Use Classes

Order – (a) Class B8 (storage or distribution) of Schedule 1; (b) is permitted development subject to limitations at R.1 and conditions at R.2 and R.3.

5. The appellant has provided a signed and witnessed Statement of Fact which sets out the history of the land within his ownership, including the appeal site. From the evidence before me, and in the absence of evidence to contradict or make the appellant's version of events less than probable, the appeal site was formerly in agricultural use. However, Class R of the GPDO provides for "agricultural buildings to a flexible commercial use". Development which is permitted is the change of use of a building **and**¹ any land within its curtilage. Whilst I have taken into consideration R.4, which provides an interpretation of "flexible use", this does not alter the provision made in Class R that a building is a prerequisite for the permitted change of use. In this case, the storage use that has been undertaken does not involve a building and is not therefore permitted by Class R.
6. Furthermore, even if I am wrong and Class R does permit the change of use of land only, then that land must be within the curtilage of the agricultural building. Paragraph X provides for interpretation of Part 3, and advises that "curtilage" means, for the purposes of Class Q, R or S only:
- (a) *The piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or*
 - (b) *An area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,*
- whichever is the lesser.*

In this case the appeal site, although close to, the appeal site is not immediately beside or around the agricultural building. Moreover, it is larger in area than the land occupied by the agricultural building. Consequently, the land does not fall within the curtilage of the building and the change of use that has taken place would not have been permitted by Class R.

Conclusion

7. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use of development in respect of change of use from 'Agricultural Use' to 'B8 Use' 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.

Elizabeth Pleasant

INSPECTOR

¹ My emphasis.