



Appeal Decision

Site visit made on 5 January 2022

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2022

Appeal Ref: APP/C1625/X/21/3282040

Land at Barton End, Horsley, Nailsworth, GL6 0QQ

- 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 Joy Main against the decision of Stroud District Council.
 - The application Ref P20/12327/CLE, dated 15 July 2020, was refused by notice dated 21 October 2020.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is: The use of the land as agricultural land, as defined in Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs J Main against the decision of Stroud District Council. That decision is the subject of another decision.

Preliminary Matters

3. The application form is usually used for the description of development sought. However, this merely stated 'See covering letter', along with reference to 'agricultural' elsewhere in the form.
4. I wrote to parties asking for their views on an amended description I proposed. This intervention was based on my reading of the submissions. These showed that, given the planning history of the site, the reason for the certificate was to allow the subsequent erection of an agricultural building. That would not have resulted from an assessment as to whether the use was simply agricultural. Both agreed to the use of my amended description and I have used it in my Header, above.

Main Issue

5. The main issue in the appeal is to determine whether the Council's decision to refuse the application for a certificate of lawfulness was well-founded.
6. The land to which the appeal relates lies on the south side of a steeply sloping combe. It is a little over 5ha in size and largely grassed, with a number of individual trees and a small area of woodland. There is a small shed on the

- land, which was enclosed by stock-proof fences, and I saw a small number of sheep and ponies when I visited.
7. The site lies within the Cotswolds Area of Outstanding Natural Beauty but, as this appeal only deals with questions of lawfulness, the effects of what is proposed on the landscape are not relevant.
 8. A certificate appeal is to be assessed on the basis of whether the use that is its subject was lawful on the day that the application was made. The onus is on the Appellant to demonstrate that this was the case, on the balance of probability.
 9. In 2020, the Appellant sought prior approval¹ for the erection of an agricultural storage barn under the terms of Schedule 2, Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). This was refused and the decision was taken to appeal².
 10. In the appeal decision, which was allowed, the Inspector set out that under the terms of Class A he was solely charged with determining whether prior approval would be required in respect of the siting, design and external appearance of the building. He explained that the prior approval regime does not allow for a determination as to whether the agricultural building is permitted development (PD). He also found that, given the evidence before him, he had "no alternative but to accept that the land is in agricultural use".
 11. Following the issue of the appeal decision, the Council wrote to the Appellant reiterating the Inspector's comment on whether the proposed shed would be PD. The Council said that there was doubt in this regard, and the submission of an application for a certificate of lawful use was suggested. The decision on the consequent application forms the subject of this appeal.
 12. The Council refused to issue a certificate for 5 reasons. Some of these were self-evidently not reasons for refusal, but explanatory comments relating to the reason for refusal. In essence, the Council's reason for refusing to issue the certificate is that the land was not being put to agricultural use that would allow for the erection of a storage shed. It was on this basis that I suggested the change of description.
 13. The PD right in Class A allows for

"The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of—

(a) works for the erection, extension or alteration of a building; or

(b) any excavation or engineering operations,

which are reasonably necessary for the purposes of agriculture within that unit."
 14. Therefore, in respect of this appeal, there are two tests in Class A: whether the land is in agricultural use; and whether that land is part of an agricultural unit, (it is over 5ha). The remaining tests in Class A (a) and (b) are not relevant to this appeal.

¹ Council reference S.20/0751/AFPA

² APP/C1625/W/20/3259703

15. Agriculture is defined in Section 336 of the 1990 Act as including "*horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly*".
16. The activities listed in s336(1) include the breeding and keeping of livestock and the use of land for grazing land. However, established case law³ sets out that agriculture does not include the breeding and keeping of horses, which involves activities other than just putting the horses out to graze. As the Council's statement puts it, there is often a fine distinction between the two.
17. There is no dispute between the main parties that the land was used for agriculture up until 2019, when the Appellant bought the land. Prior to this, the land was owned and farmed by Mr Roger Blackwell, who made a statutory declaration that the Council says "makes it clear that the site was wholly agricultural and formed part of a wider agricultural enterprise up until the point of sale to the applicant in 2019". A statement of truth made by Mr Bernard Courts sets out that the land was used for grazing and was part of the agricultural enterprise run by Mr Blackwell until 2019 and thereafter in collaboration between Mr Main and Gables Farm.
18. The Council did not have any information of its own to refute the Appellant's position in her application for prior approval. Its position relied on third party comments, made in response to the application. These alleged, amongst other things, that the land had been used for the riding and feeding of horses and was used almost exclusively for equestrian purposes. It was not, therefore, in their opinion being used for agricultural purposes. In the Case Officer's Review into that application, this evidence was assessed, and the Officer stated that "it is considered that the land is agricultural land". As I have said, the Inspector found this to be the case when determining the consequent appeal.
19. Representations were made by third parties, including the Horsley Parish Council, in respect of this appeal proposal. Whilst it was acknowledged that the land was used for agriculture by its previous owner, the third parties say that this has not been the case since the Appellant took over ownership. In this period, it has been used for the keeping of horses for leisure purposes, with riding occurring and supplemental feed brought in. Photographs in support of this position have been submitted.
20. The Council gave limited weight to the photographs, as it could not be sure where and when they were taken. After visiting the site, I have little doubt that they are scenes of the land.
21. It seems that one of the photographs does show a horse being ridden just inside the land. The Appellant's evidence that this was a one-off and was for the safety of her 5-year-old daughter is plausible. This use on one occasion, with the evidence showing it was only just inside the gate, is *de minimis* and would not trigger a material change of use. Otherwise, I note that there are no

³ *Belmont Farm v MHLG* [1962] 13 P&CR 417;

- other photographs of horses being ridden on the land, despite the assertions of its continuous equestrian use.
22. The photographs showing various tubs and jump wings on the land do not definitively show the land to be in an equestrian use, and I find the Appellant's reasoning for their presence to be credible. I find likewise with her explanation that the green tub in the photograph, from which a horse is possibly eating, is used to provide in-feed veterinary treatments.
23. The photographs show that hay has been brought to the site as feed for the horses. This, as the Appellant states, is not a concentrate feed of the type referred to by the Council in its email of 11 August 2021. She further states that this type of forage food is given to all manner of agricultural livestock and is provided here for health reasons. I do not agree that what has been shown to be a limited use of imported hay has triggered a material change of use.
24. The Appellant states that the horses graze the land, rather than being kept there. Furthermore, she stresses categorically that the horses are not exercised in the field and never have been. I have not been provided with substantive evidence to the contrary on either of these assertions. Therefore, as a matter of fact and degree, and on the balance of probability, I find that the land was in agricultural use at the time that the application was made and, thus, the first of the tests in Class A is met.
25. However, the use of the land for agriculture does not necessarily, of itself, accord with the term 'Agricultural Land' in Class A. It is interpreted, for the purposes of Class A, in paragraph D.1. of Part 6 of the GPDO. It says that this means "land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden".
26. There is a difference between this interpretation and the reference in Class A, A.1.(b) that sets out where the development referred to in Class A would not be permitted. Its reference to an "established agricultural unit" applies to land where development carried out under Classes Q or S of Part 3 of the GPDO have occurred. As this is not the case here, it is not relevant to my assessment.
27. That the land is in use for agriculture has been shown to be established on the balance of probabilities. Of the three further provisos in paragraph D.1., there is no evidence before me to show that the land is a dwellinghouse or a garden. This leaves the requirement for the land to have been used for the purposes of a trade or business at the time that the application to the Council was made.
28. There is no stated requirement that the trade or business should have achieved a particular financial footing or that a particular number of stock should be kept on the land. Those sorts of issues would seem to feed into the assessment in Class A of what was "reasonably necessary" in terms of, for example, a building for the purposes of agriculture on the unit. The proviso is simply that a trade or business should have been run from the land at that time.
29. The Appellant produced an 'Agricultural Business Plan' (ABP) showing 3 Phases of development of the business. Phases 1 and 2 set out a 5-year plan where sheep are farmed to produce breeding stock, meat, and wool for the premium market. The ABP, which is undated, is simply couched in the future tense and I

- cannot deduce from it whether a trade or business had commenced at the time that the application was made.
30. The Appellant refers to her fencing of the land with sheep-proof fencing and the extensive clearance of scrub and weeds. This does not show that a trade or business was being run from the land at that time.
31. In her Appendix 17, she provides evidence⁴ in the form of 'Movement Documents', of sheep being brought to the site. This Appendix also includes dated photographs, which the Appellant says are of these sheep. As their dates tally with those on the Movement Documents, and this evidence has not been challenged, I take them to be as claimed.
32. Paragraph 2.7 of the Appellant's statement states that Appendix 17 shows how Phase 1 of the ABP was being implemented. This might be the case; however, as I have said, this needed to have been the case at the time that the application was made. The Movement Documents are dated 8 May 2021, 1 August 2021 and 18 August 2021. These post-date the application and do not, therefore, provide evidence to show that, on the balance of probability, this was agricultural land for the purposes of Class A at the time of the application being made.
33. Other photographs in Appendix 17 are entitled "Field Improvements, (Fencing, topping field and clearing bramble) 2019, 2020, 2021". That from 2021 again post-dates the application and is irrelevant. I do not doubt that the other two illustrate works from that time; however, I cannot similarly determine that these illustrate that there was a trade or business at the time and that this was agricultural land for the purposes of Class A.
34. That photographs of "Grazing livestock 2019 & 2020 – in collaboration with Ruskin Mill Trust" were taken on the land at those times is not questioned. These need to be viewed in conjunction with the Statement of Truth by Bernard Courts, a Researcher and Consultant Advisor to the Ruskin Trust. He says that the land was grazed collaboratively between the Appellant and the Ruskin Trust, which owned land immediately adjacent to the Appellant's land.
35. Mr Courts' evidence is ambiguous on the matter of whether this amounted to a trade or business. He says that up to 2019 the land was used as an agricultural enterprise by Mr Blackwell, "and subsequently with a collaboration between Mr Main and Gables Farm" [owned by the Ruskin Trust]. To my mind, this does not demonstrate that, on the balance of probability, the land was used as a trade or business.
36. My overall finding is that it has been shown that the land was in agricultural use, in line with part of Class A of Part 6 of the GPDO, at the time that the application to the Council was made. However, it has not been demonstrated on the balance of probability that it was used as part of a trade or business at that time, which is another test to be passed in Class A.

Conclusion

37. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of The use of the land as agricultural land, as defined in Schedule 2, Part 6, Class A of the Town and

⁴ DEFRA and Eid Cymru Movement Documents for sheep movements

Country Planning (General Permitted Development) (England) Order 2015 (as amended) 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.

R Curnow

INSPECTOR