The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 07th March 2022

Appeal Ref: APP/J1535/X/21/3279706
London Alpacas, Mount Road, Theydon Mount, Epping Forest, CM16 7PL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr S. Van Oorschot of Mr S.Van Oorschot & Ms V. Tran, London Alpaca Farm against the decision of Epping Forest District Council.
- The application ref EPF/0882/21 CLD, dated 29 March 2021, was refused by notice dated 25 May 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 use of land for the purposes of agriculture (the keeping and breeding of alpacas) including alpaca experiences, as set out in the attached letter dated 29 March 2021 and supporting documents.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by the appellants against Epping Forest District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellants to make out their case to the standard of the balance of probabilities.

4. An LDC application must relate to a specific existing or proposed use, operation, or activity. The relevant date for ascertaining whether an existing development is lawful is the day of the application, in this case 29 March 2021. A description of the use is set out in a letter also dated 29 March 2021 (the March 2021 letter) which was submitted with the appellants' application for an LDC and referred to in the details of the use for which the LDC is sought, as set out in the banner heading.

5. The Council's Decision Notice does not refer to the March 2021 letter in either the description of the use or the particulars set out in the Third Schedule. The Decision Notice also refers to the use not being lawful in terms of s191 or s192

of the Act. Section 192 relates to the lawfulness of a proposed use, but it is clear that the application relates to an existing use.

6. Notwithstanding the contents of the Council's decision notice, I have determined the appeal on the basis that the LDC is sought to establish the lawfulness of the existing use of the land for the purposes of agriculture (the keeping and breeding of alpacas) including alpaca experiences as set out in the March 2021 letter.

Main Issue

7. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

8. The appellant suggests either that the alpaca experiences fall within the scope of the agricultural use of the site or that the alpaca experiences are ancillary or incidental to the agricultural use.

Use for agriculture

9. Agriculture is defined in s336 of the Act and includes the keeping and breeding of livestock including any creature kept for the production of wool, skins, or fur.

10. The Council's evidence is inconsistent in terms of whether it regards the site as being in use for agriculture. In the officer delegated report there is reference to the agricultural use of the planning unit and in its statement to the character of the existing agricultural use. However, the Council's statement also refers to what it considers to be a lack of evidence regarding any agricultural use of the site.

11. The site comprises a large field which has been subdivided into two parts to allow the alpacas to graze on one half and the land to recover from grazing on the other half. There is a shed where the alpacas are fed, and which is available to them for shelter. There were 10 alpacas on the site at the time of my site visit including the latest addition to the herd.

12. With regard to the production of fleeces and fleece products the information provided by the appellants sets out that they are in the process of building up their business. They say that they have not sold any livestock as they are increasing the size of the herd and that they are storing fleeces so that they can produce natural coloured yarn which is more profitable. The appellants have provided evidence of some alpaca fibre being converted into yarn which demonstrates to a limited extent that the alpacas are kept for the production of fleeces and fleece products.

13. The evidence provided by the appellants, the presence of facilities to provide for the keeping of the animals on the land and evidence of breeding leads me to conclude that the site is in agricultural use.

14. The alpaca experiences are described by the appellants in their submissions. In essence visitors attend the site and interact with the alpacas which are there. The alpaca experiences are run by the appellants who are responsible for the care of the animals and there are no facilities on the site for visitors. No other animals are brought onto the site and the alpacas are not taken off-site. The March 2021 letter sets out that alpaca experiences take place between 2 and 5

times a week, involve up to 6 people and last about two hours. This particular use of the site does not fall into any of the activities set out in s336 of the Act.

15. The appellants refer to Millington v SSETR & Shrewsbury and Atcham BC (2000) JPL 297 (the Millington case) in support of their argument that the alpaca experiences fall within the scope of agricultural use. This case concerned the production and sale of wine at a vineyard. It was concluded that the proper approach was to consider whether the activities could, having regard to ordinary and reasonable practice, be regarded as incidental to the agricultural operations of producing the crop. The making of wine, cider or apple juice on this scale was considered to be a perfectly normal activity for a farmer engaged in growing wine grapes or apples.

16. In the appeal case the alpaca experiences are not what can be regarded as normal activities for a farmer keeping and breeding alpacas. On that basis the Millington case does not alter my conclusion that alpaca experiences do not fall within the scope of an agricultural use.

Incidental or ancillary use

17. The appellants also refer to Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207 (Burdle). This case sets out criteria which are appropriate for determining the planning unit which should be considered in deciding whether there has been a material change of use. The appellants and the Council are agreed that the site is the planning unit against which the determination of whether or not a change of use has occurred should be considered. The dispute between them is whether the single main purpose of the site is the keeping and breeding of alpacas to which the alpaca experiences is a secondary activity which is incidental or ancillary.

18. The frequency and duration of the alpaca experiences for which the LDC is sought are not such that they render the existing use of the site a composite use where sometimes the keeping and breeding is the primary use and on other occasions the alpaca experience is the primary use. The appellants confirm that this is the case and refer to the keeping, breeding and production of alpaca products as a 24 hour, 365 day activity. Similarly, there are not defined areas within the site where the alpaca experiences take place such that physically separate and defined areas are used for a different main purpose. Thus, the use of the site does not fall within the second or third criterion of Burdle.

19. In respect of the first criterion of Burdle. This is where there is a single main purpose of the occupiers use of the land which in this case is the keeping and breeding of alpacas to which secondary activities may be incidental or ancillary.

20. An incidental use is one which is functionally related to the primary use whereas an ancillary use is likely to be part and parcel of the main use. I have established that the alpaca experiences do not fall within the scope of agricultural use, therefore they do not form part and parcel of the main use and cannot be regarded as ancillary to the agricultural use of the site.

21. In order to be regarded as an incidental use, the alpaca experiences would have to be shown to be functionally related to the agricultural use. Whilst the activities undertaken by customers are similar to those carried out on a day to day basis by the appellants in terms of visiting the animals, the purpose of

their visits is recreational and unconnected with the keeping and breeding of alpacas.

22. Drawing all of these points together I do not find that the alpaca experiences are either within the scope of the agricultural use of the site or that they are incidental or ancillary to the agricultural use.

Other matters

23. The appellants say that the Council arbitrarily increased the number of alpaca experiences when it considered the application for the LDC. However, my finding that the alpaca experience element of the business is not within the scope of nor incidental or ancillary to the agricultural use is not dependent on the number of events.

Conclusion

24. 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 land for the purposes of agriculture (the keeping and breeding of alpacas) including alpaca experiences, as set out in the attached letter dated 29 March 2021 and supporting documents 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.

Sarah Dyer

Inspector