



Appeal Decision

Site visit made on 17 October 2023

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2023

Appeal Ref: APP/N1730/X/22/3307940

Nyasaland, Crondall Road, Crookham Village, Fleet, Hampshire GU51 5SU

- 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 Richard Potts on behalf of Chartfield Homes (Nyasaland) Limited against the decision of Hart District Council.
 - The application ref 22/00762/LDC, dated 30 March 2022, was refused by notice dated 13 June 2022.
 - 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 the use of bays 3, 4 and 5 as agricultural use and the remaining bays (1, 2, 3, 6, 7, 8, 9, 10) and the workshop building as B2 (General Industrial) and B8 (Storage and Distribution) use.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. There is a discrepancy in the description of the uses set out in the application form and the Council's decision notice. Bay 3 is referred to as being in both agricultural use and as a B2/B8 use. Having reference to the 'Existing Uses Site Plan' submitted with the application I have determined the appeal on the basis that bay 3 is used for agriculture.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

4. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
5. During my site visit, the workshop was in a state of disrepair and I was unable to access it, nevertheless, it was clearly not in use. One of the two barns had

an open frontage with no separation between the bays. A small number of items were stored in the barn, including some windows, a minibus, a small van, 3 bicycles and a small amount of unidentifiable machinery. The other barn, which is split into different bays, contained a large amount of domestic paraphernalia and miscellaneous items across bays 7, 8, 9 and 10. Bay 6 was empty except for a small pile of logs.

6. There is no dispute between the parties that the use of the existing barns has not been abandoned and therefore the appellant argues that they must therefore have a use. The appellant seeks to establish that the appeal buildings are in use as per the description set out in the application form. This is predicated on the basis that the buildings have been described as being in these uses by different parties throughout the extensive planning history of the overall site.
7. I have been referred to a statutory declaration made by Mr Brian Whyatt in support of a planning application submitted in 2018. Whilst I have not been presented with a copy of the declaration, the appellant recites extracts from it. These extracts state bays 2, 3, 4 and 5 were used for the keeping of livestock and livestock feed between 1982 and 2017 and the other bays were used for the storage of farm and landscape vehicles, equipment and machinery for industrial and commercial use over the years between 1982 and 2018. However, there is no evidence that the buildings were in continuous use as such for a period of 10 years or more. In addition, it conflicts with the description of the use for which the certificate is sought, which states bay 2 is in B2 and B8 use, not agricultural.
8. I note the comments received from third parties in response to previous applications made to the Council. Amongst other things, these state the site has been used for non-agricultural uses and the buildings were not in sole agricultural use. However, they make no reference to what uses have actually taken place. The terms 'Non-agricultural' and 'commercial' uses are very vague and could mean any number of uses. Comments do refer to 'storage of non-agricultural equipment and vehicles, spray painting, building materials.' However, there is no indication of how long these uses took place for and whether there were gaps in the use of the buildings for such activities.
9. Specific reference is made to a landscape and driveway contractor using the site for the storage of equipment. However, there is no indication of how long this use took place for or which buildings it took place in. Comments from FACE IT state the land and buildings were in a mixed use between 2003 and beyond 2013. However, the mixed use referred to comprised 'agricultural and non-agricultural related storage and business use' involving 'storage, machinery, car parts, materials, fencing, skips with non-agricultural vehicles.' Again, the description of the uses is vague and makes no reference to which buildings and bays these uses took place in.
10. With regard to the agricultural use of the buildings, the evidence indicates that whilst the buildings have been used to house livestock and feed, this appears to have been on a very small scale. The housing of two cows is more akin to keeping pets rather than an agricultural business.

11. The Inspectors for the two appeal decisions¹ referred to me in respect of the prior approval applications made to the Council both found that the buildings were not in sole-agricultural use as they have been used for other uses too. However, neither of them identifies what the lawful use of the buildings is.
12. Overall, the evidence before me suggests that the buildings have been used for a number of uses between 1982 up until the application was made. However, there is a significant lack of clarity as to what these uses have been; when they took place; which buildings/bays they took place in; whether they were carried out as a single use or part of a mixed use; and, whether they took place for a continuous 10 year period. Consequently, the evidence is not sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of bays 3, 4 and 5 as agricultural use and the remaining bays (1, 2, 6, 7, 8, 9, 10) and the workshop building as B2 (General Industrial) and B8 (Storage and Distribution) use has occurred continuously for a ten-year period prior to the date of the application.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is 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 Walker

INSPECTOR

¹ Appeal Refs: APP/N1730/W/21/3270244 and APP/N1730/W/21/3278777