



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2024

Appeal Ref: APP/E2340/X/24/3341882

Pine Garth Farm, Coal Pit Lane, Colne BB8 8NR

- 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 G Whiteoak against the decision of Pendle Borough Council.
 - The application ref 24/0043/CEA, dated 23 January 2024, was refused by notice dated 28 March 2024.
 - The application was made under section 192(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 and operational development for the conversion of an agricultural building to 2 no. dwellings*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the appellant's appeal form since none was given on the original application form. It is not the same as that used by the Council in their decision notice however, under section 192 there is no implied power to modify the description of the proposed development.
3. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under section 192 is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and the proposed development given the points in dispute.

Background

5. The appellant applied for prior approval, as required by paragraph Q.2(1) of Part 3 Class Q of the GPDO¹, for the change of use of an agricultural building and associated operational development to form two dwellings in November 2023.

¹ Article 3(1) Schedule 2, Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

6. There is no dispute that the application was received by the Council and no suggestion that it did not meet the necessary requirements to make it valid. However, the Council did not validate or take any further action in respect of the application, and as such failed to issue a decision within the statutory period, which is not in dispute.
7. Consequently, prior approval is deemed to be granted. However, as the appellant noted, development may only lawfully begin after prior approval is deemed to be granted if the development is carried out in accordance with the submitted plans and *it is in fact permitted development* [my emphasis]. The appellant submitted the application subject of this appeal, to seek to demonstrate that the development could be lawfully implemented.
8. Development is not permitted by Class Q.1(a)(i) if the site was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013.
9. The interpretation to Part 3 at paragraph X sets out that “agricultural building” means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and “agricultural use” refers to such uses.
10. The Council acknowledged that the building was, on the balance of probabilities, used solely for agricultural purposes on 20 March 2013. The matter in dispute is whether the agricultural activities taking place on 20 March 2013 constituted a trade or business.

Main Issue

11. The main issue is whether the Council’s decision to refuse to grant an LDC was well-founded.

Reasons

12. The appellant lives at Pine Garth Farm from where he operates a commercial contracting business alongside the agricultural unit, which consists of the appeal building and around 7.5 acres of land.
13. In 2007 planning permission was granted for a livestock building on land at Pine Garth Farm, broadly east of the appeal site, reference 13/07/0559P. According to the Council, a statement submitted with that application detailed that the agricultural enterprise at that time comprised 200-300 rearing poultry and that the applicant intended to retire from non-farming activities and expand the agricultural enterprise with 30 breeding ewes and six dairy calves to be sold as store cattle.
14. The appellant contended that whilst the approval predates March 2013, it nevertheless indicates a level of agricultural activity and where the presence of 200-300 rearing poultry cannot be reasonably described as a hobby.
15. However, the Council stated that rather than retiring from non-farming practices, the contracting business continued as the primary use of the property. Moreover, the approved building was constructed in around 2009 and has been used since its erection by the contracting business. The appellant did not dispute this. Indeed, it is stated in their submissions that they have now

- decided to retire from the contracting business and will concentrate on their farming activities.
16. The appellant submitted images which show sheep in the appellant's fields dated 2009 and 2011, and contended that the presence of a sheep flock, where the sheep are not kept as pets or given names, indicates an on-going trade or business.
 17. The appellant also submitted a statutory declaration in which he stated that the building was used solely for agricultural purposes on 20 March 2013 and in the years preceding and afterwards, his neighbour Michael Crawshaw helped him with his landholding, and in 2013 used some of the building for his own lambs. It is also stated that rates were never paid on the building as it has always been in use for agriculture. This information is corroborated in the statutory declaration of Michael Crawshaw, where he also referred to the appellant tending to his sheep, and to helping the appellant with the movement of his sheep and hay making.
 18. However, the dispute is whether the activities constituted a trade or business. As established in the cases of *McKay & Walker v SSE & South Cambridgeshire DC [1989] JPL 59017* and *Kerrier DC v SSE [1995] EGCS 40*, it is not essential that an agricultural enterprise be profitable, viable, or of a particular scale, to be considered a trade or business for the purposes of the GPDO.
 19. The Council acknowledged that previous levels of agricultural activity, in around 2007, would have constituted a trade or business. However, there is scant evidence to demonstrate that the activities continued at that scale, or about the scale and nature of the agricultural activities taking place on 20 March 2013, including for example in respect of the number of sheep or hay yield.
 20. I acknowledge that records in respect of animal movements do not have to be kept after five years and that income and expenditure forms part of the general household finances.
 21. However, the absence of any documentary evidence of sales or accounts does not help give any greater clarification as to the nature of the activities and I cannot conclude, on the balance of probabilities, that the activities amounted to a trade or business as required by the Order. As such the proposed development would fail to meet the Class Q.1(a) requirements and would not be permitted by Part 3 Class Q of the GPDO.
 22. In this LDC appeal, as stated above, the onus of proof rests with the appellant to demonstrate, on the balance of probabilities, that the proposed development would constitute permitted development. That burden has not been discharged in a precise and unambiguous manner.
 23. It follows that the Council's refusal to grant a certificate of lawful use or development in respect of the *change of use and operational development for the conversion of an agricultural building to 2 no. dwellings* 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.

Felicity Thompson

INSPECTOR