

Appeal Decision

Site visit made on 9 September 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Appeal Ref: APP/Z4718/X/24/3347064

1 Pleasant Pastures, New Hey Road, Scammonden, Huddersfield, HD3 3FT

- 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 Paul Naylor (PN Plant Sales) against the decision of Kirklees Metropolitan Council.
 - The application ref 2022/CL/91718/W, dated 13 May 2022, was refused by notice dated 13 June 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is use of the building on the location plan for the repair and refurbishment of plant and machinery.
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Decision

1. The appeal is dismissed.

Reasons

2. In order for an LDC to be granted under section 191 of the Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability. The planning merits of the development being sought are not before me.
3. The LDC section of the National Planning Practice Guidance advises in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
4. The main issue is whether the Council's refusal to issue an LDC was well-founded. That turns on whether the appellant can demonstrate, on the balance of probability, that the building shown with the red edged line on drawing No. 02, dated February 2015, has been used continuously for a period of ten years for the repair and refurbishment of plant and machinery and hence is lawful by virtue of section 171B(3) of the Act which states '*in the case of any other breach of planning control, no enforcement action may be*

taken after the end of the period of ten years beginning with the date of the breach'.

5. The appellant's evidence of at least ten years continuous use of the building for the repair and refurbishment of plant and machinery comprises VAT returns, an operator's license certificate and renewal, insurance documents and V5C documents. The evidence is that the building was erected pursuant to planning permission 2004/94859 as a *'fodder storage and cattle rearing shed'* and hence was approved to be used for agricultural purposes. The Council claims that the agricultural building was substantially completed in 2006 and this has not been disputed by the appellant.
6. I am satisfied, based on the submitted evidence, that PN Plant Sales has been an entity registered at the property known as Pleasant Pastures since 2008. There have been transactions relating to this address. However, the VAT returns do not provide a clear picture of the transactions in so far that no invoices or receipts for repairs and/or refurbishments have been submitted to support the claim made by appellant. Furthermore, VAT returns do not in themselves prove that the subject building has been used in connection with PN Plant Sales and used continuously for at least ten years for the repair and refurbishment of plant and machinery.
7. In addition to the above, I agree with the Council that plant sales and hire is different to the repair and refurbishment of plant and machinery. While the operator's license and vehicles registered to PN Plant Sales indicate that a flatbed lorry could be parked at the property, this does not in itself mean that the appeal building has been used for the repair or refurbishment of plant or machinery. It is conceivable that a commercial vehicle has been parked on the wider landholding, and, if repairs and/or refurbishments have taken place, that this has taken place elsewhere. It is also conceivable, in the absence of clear evidence, that this may have taken place away from the site.
8. The above casts doubt about the appellant's claim that the building has been used for the repair and refurbishment of plant and machinery. There is no clear objective evidence from the appellant to show actual use of the subject building. There are, for example, no dated photographs showing use of the building internally, or indeed any statutory declarations from customers, visitors and/or staff relating to how and when (i.e., specific dates and times) the subject building was allegedly used for the repair and refurbishment of plant and machinery.
9. While the appellant's evidence does include a signed letter from a plant sales company based in Sheffield, as well as other letters from parts companies indicating that they have supplied parts and/or replaced windscreens for plant or machinery since 2008, it nonetheless remains possible that such parts or windscreen replacements may have related to plant connected with an agricultural use of the wider landholding. The evidence is not sufficiently precise in this regard in the context of the Council's evidence that *'the applicant outlined within their previous planning applications that the land/buildings are used for agriculture'* and *'in previous officer visits to the site between 2015-2017, there was no evidence from photographs that a commercial business was operating alongside any agricultural use or independently if the agricultural use had previously ceased'*.

10. While the Council states that there were a small number of JCBs present on the site in 2015, the appellant's evidence does not provide the level of precision and clarity needed to demonstrate that these were on the site to be repaired or refurbished, as distinct from being used for agricultural purposes or simply parked, and, importantly, that any associated repair and refurbishment business was actually being operated from the subject building rather than from elsewhere.
11. There are also signed letters from visitors to the site including from Mr Schofield of J B Schofield and Sons Ltd. In his letter he says that he has *'bought scrap metal from PNP Plant Sales constantly since 2008'* and *'during the time I have dealt with PNP Plant Sales they have operated out of the building shown red below'*. The sale of scrap metal is quite different from the claimed use of the building for the repair and refurbishment of plant and machinery. This therefore casts doubt about the appellant's claimed repair and refurbishment use.
12. The appellant's statement of case states *'before any plant is sold it is repaired to uplift the value. This is the same as any vehicle sales business, the vehicle is bought at a low value, it is repaired and then sold at a higher value'*. While I have found that the appellant's evidence is not sufficiently precise in terms of proving a continuous ten years use of the appeal building for the repair and refurbishment of plant and machinery, this comment casts doubt, in any event, about the claimed use in so far that it is unclear whether the appellant is actually claiming use for the repair, refurbishment and sale of plant and machinery, the latter of which is a materially different mixed use to that which is the subject of the LDC application.
13. I note the appellant's comment that planning application 2020/93739 (dated 4 November 2020) for demolition of the agricultural building and the erection of a new agricultural building was withdrawn *'as the planning officer at the time stated that the building was not being used for agricultural purposes'*. I have not been provided with any written evidence to support the claim made that the planning officer said this, but, even if such a comment was made, given the date of this planning application it would not in itself equate to evidence of ten years continuous use of the building for the repair and refurbishment of plant and machinery prior to the date of the LDC application.
14. In considering the above, it is also noteworthy that in the planning application form for the above withdrawn planning application, the applicant stated that the red edged planning application site, which included the appeal building the subject of this appeal, was in *'agricultural'* use. This casts doubt about the claim made by the appellant that the appeal building was being used for the repair and refurbishment of plant and machinery at this time.
15. The burden of proving relevant facts in this appeal rests on the appellant. On the balance of probability, I find that the evidence is not sufficiently precise or unambiguous to prove that the building has been used continuously for at least ten years for the repair and refurbishment of plant and machinery.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of use of the building on the location plan for the repair and

refurbishment of plant and machinery 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).

D Hartley

INSPECTOR