



Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 13 January 2025

Appeal Ref: APP/E2001/X/24/3344492

Garth Pheasantry, Crofts Lane, Hollym, Withernsea HU19 2BZ

- 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 Anne Ives against the decision of East Riding of Yorkshire Council.
 - The application Ref 24/00035/CLP, dated 8 January 2024, was refused by notice dated 23 February 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 the proposed use of a building within Use Class E.
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Decision: the appeal is dismissed

Procedural matters

1. This appeal turns on the interpretation of the Town and Country Planning (Use Classes) Order 1987 (UCO), as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020. It does not require me to make any subjective planning judgments in terms of, for example, the effect of the use on the character and appearance of the area. I am therefore satisfied that I can determine this appeal on the written evidence submitted and that there is no need for me to visit the appeal site.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (the 1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

3. The former Use Class B1 (Business) included any *industrial* process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash or grit (emphasis added). Uses in that Use Class now fall within Use Class E (g)(iii) in the UCO as amended.
4. The building in question has been used a hatchery pursuant to a planning permission granted in 2003. Since 2004, eggs have been imported directly from France and hatched out in the hatchery.
5. As the appellant points out, the word 'hatchery' is not defined in the 1990 Act or the UCO, and is not defined judicially. The Oxford English Dictionary (OED) defines a hatchery as:

An establishment in which fish or poultry eggs are hatched in controlled conditions.

6. In terms of the wording used in former Use Class B1 of the UCO, the OED defines industrial as:

Of or relating to productive work, trade of manufacture, esp. mechanical industry or large-scale manufacturing

7. The OED defines industry as:

Economic activity concerned with the processing of raw materials and manufacture of goods in factories

8. The OED defines manufacturing as:

To make (a product, goods etc) from or out of raw material; to produce (goods) by physical labour, machinery etc.

9. Applying the definitions in the OED to the use of the building in question as a hatchery, I firstly note that the eggs are imported from abroad and then kept in controlled conditions until such time as they hatch. Nothing is actually made or manufactured there. Nothing is processed there. No raw materials are involved. No physical labour or machinery is involved – the eggs hatch of their own accord, albeit under the ideal conditions that are provided.
10. I accept entirely that the use does not create any of the potentially troublesome impacts which would harm amenity and would have taken it out of the former B1 Use Class, now Class E (g)(iii). But I do not consider the use to be similar to any industrial process on a production line of materials in and products out. The use is not industrial in nature. I am not even convinced that it is a process as such.
11. The appellant has not demonstrated, on the balance of probability, that the use taking place on the date the LDC application was made was a use that lawfully falls into Use Class E(g)(iii). I therefore conclude that the council's decision to refuse the LDC was well founded.

Paul Freer
INSPECTOR