



Appeal Decision

Site visit made on 22 July 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2025

Appeal Ref: APP/E3335/X/24/3341866

**Land at Park Farm, New Court, Lullington Lane, Lullington, Frome, Somerset
BA11 2PF**

- 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 J Saunders against the decision of Somerset Council.
 - The application ref 2023/1844/CLP, dated 25 September 2023, was refused by notice dated 8 January 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 a use of the building as a hotel falling within Class C1 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.
-

Decision

1. The appeal is dismissed.

The Development

2. The description of the development given in the LDC application differs from that referred to in the LDC decision notice. The description in the LDC decision notice is more concise and has been used by the appellant in their appeal form. I have, therefore, used this description in the banner heading above, but have added the full reference to the relevant class of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order).
3. On a separate matter, I have seen reference in evidence to the 'conversion' of the building to a hotel, which might imply that works or operations are also proposed. To be clear, the development subject of this appeal, and for which the LDC is sought, is a material change of use of part of the building alone. The proposed development does not include any works or operations.

Main Issue and Main Considerations

4. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this 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 they 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 LDC is well

founded. In this respect, the burden of proof is on the appellant to show that the development referred to in the application would have been lawful if begun at the time of the LDC application. The test of the evidence is on the balance of probability.

5. It is the appellant's case that the proposed development would be permitted by Class R of Part 3, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, hereafter referred to as Class R. This permits the change of use of agricultural buildings to a flexible commercial use, which includes a use falling within Class C1 (hotels) of Part C, Schedule 1 of the 1987 Order. The main consideration in this case is, therefore, whether or not the development would benefit from the planning permission granted by Class R if instituted or begun at the time the LDC application was made.
6. R.1. sets out the circumstances where development would not be permitted by Class R. R.1.(a) of Class R informs that development is not permitted by Class R if the building was not used solely for an agricultural use as part of an established agricultural unit:
 - (i) on 3 July 2012;
 - (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or
 - (iii) in the case of a building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date development under Class R begins.
7. Having regard to the reasons for refusal of the LDC application and the case made by the parties, the first main dispute is whether or not criterion R.1.(a) of Class R is satisfied in this case. The second main dispute appears to be whether or not the material change of use can be carried out.
8. At this stage it is worth noting that the material change of use described in the LDC application applies to part of an existing open sided building, described as a Dutch barn. The floor space of the part of the Dutch barn to which the LDC application relates is no more than 150 square metres. As the definition of a building at paragraph 336 of the 1990 Act includes 'any part of a building', I have no reason to conclude that the provisions of Class R could not apply to the change of use of part of the existing Dutch barn.

Reasons

9. Turning to the first main area of dispute in this case, in referring to the provisions of R.1.(a), the appellant relies on the historical evidence of the use of the building and says that on 3 July 2012 and at the date that the LDC application was made the lawful use of the building was for agriculture. In this regard, it is important here to note that the circumstances referred to in R.1.(a) relate to the use of the building at particular times, and not to the **lawful** use of the building at those times. There is a difference between the two. For the purposes of R.1.(a), it is of no consequence whether or not the use of the Dutch barn for agriculture is or was lawful. Indeed, having regard to the provisions of section 55(2)(e) of the 1990 Act, the use of the

building for agriculture might well be regarded as lawful. This does not mean that it is or was used for these purposes at the times specified in R.1.(a).

10. In addition to this, I can see that the appellant has approached R.1.(a) to suggest that there is only a need to consider one of the three sub-criteria. This approach is not, however, correct. R.1. is worded in the negative. If the circumstances of a case accord with any of those described in the sub criteria of R.1.(a) (or, indeed, with any of the circumstances described in the rest of the R.1. criteria), the development would not be permitted by Class R. In other words, for development to be permitted by Class R, it is necessary for none of the circumstances described in R.1.(a) (and in the rest of the R.1. criteria) to apply to the case. Furthermore, as with the 'or' after criterion R.1.(d), the 'or' after criterion (a)(ii) makes it clear that (i) to (iii) are a list of alternative circumstances, which must all be considered, and none of which must apply in order for development to be permitted.
11. I acknowledge that the circumstances described in sub-criteria (a)(i) and (a)(ii) are mutually exclusive, because the first relates to a building **in use** on 3 July 2012, and the second relates to a building **not in use** on that date. However, sub-criteria (a)(i) and (a)(iii) are not mutually exclusive. Neither are sub criteria (a)(ii) and (a)(iii). Even if a building was either used solely for an agricultural use as part of an established agricultural unit on 3 July 2012 (i.e. sub-criterion (a)(i)), or it was not in use on that date, but was last used solely for an agricultural use as part of an established agricultural unit, it is still necessary to consider whether or not the circumstances of a case are also those described in sub-criterion (a)(iii). While I will come to sub-criterion (a)(iii) later in this decision, I consider first the provisions of (a)(i) and (a)(ii).

Was the building in use on 3 July 2012 and, if so, was it used solely for an agricultural use as part of an established agricultural unit? - (a)(i)

12. The appellant's evidence concentrates on a time before the 3 July 2012, which relates to high court proceedings. He says that this demonstrates that the Dutch Barn was in agricultural use 'in at least 1994'. Whilst I have no reason to dispute what this evidence demonstrates with regard to the use of the building at the time of these court proceedings, there is little in the appellant's evidence regarding how the building was used on 3 July 2012 and how the building has subsequently been used.
13. In making their case, the Council refer to the evidence of an interested party who has made representations on this appeal. The interested party has provided aerial imagery of the building over a number of years in which I can see domestic vehicles parked or stored in the building. These photographs are dated February 2008, 2011 and June 2020. All were, therefore, taken after the 1994 date referred to by the appellant.
14. In addition to this, the interested party informs that they have lived as neighbours to the appeal site since May 2001 and that since that time they have only ever seen the building used for 'car parking and as a basic residential store in association with the adjacent converted barn'. This account of the use of the building is consistent with the Crispy Cowley 2016 sales particulars for the building and the adjoining residential property, which have been provided by the Council. This refers to the Dutch barn and informs that it provides 'covered parking for eight cars'.

15. The appellant does not dispute that the building has been used in the way set out by the Council and the interested party. Furthermore, there is no suggestion from the appellant that the vehicles referred to by the interested party are in any way part of an agricultural use, rather than a use associated with the adjoining dwelling or a separate parking or storage use.
16. The appellant acknowledges that there is a lack of evidence with regard to the use of the building on 3 July 2012. This does not, however, mean that the building was not in use on that date. Indeed, having regard to the evidence before me, the building might well have been in use on that date for the parking or storage of vehicles. The evidence is not, however, so specific as to lead to a conclusion that the building was more likely than not in use for this purpose on 3 July 2012. Neither is it sufficient to demonstrate that, on the balance of probability, the building was in use on 3 July 2012 for an agricultural use as part of an established agricultural unit. In view of this, I turn to consider sub-criterion (a)(ii).

Was the building in use before 3 July 2012 and, if so, was it last used solely for an agricultural use as part of an established agricultural unit? - (a)(ii)

17. In response to the comments made in the officer's report, the appellant refers to R.1.(a)(ii) and suggests that the building was in use in accordance with this. As to accord with this criterion would mean that the development would not be permitted, I have no doubt the appellant's case is in the alternative, that is that the development does not accord with (a)(ii).
18. The evidence clearly demonstrates that the building was in use before 3 July 2012. I must, therefore, consider whether or not the last use of the building was solely for an agricultural use as part of an established agricultural unit.
19. The appellant refers to the documents relating to the court proceedings in suggesting that the last use of the building was for the purposes of agriculture. He does not, however, describe what agricultural activities have taken place in the building since the 1994 date referred to. Nevertheless, he suggests that there is no evidence to contradict the appellant's claims. This is not the case. The evidence I refer to above indicates that since 1994, there has been a use of the building for purposes other than agriculture. None of this evidence is disputed by the appellant. Instead, it is suggested that this is of no relevance. On the contrary, this evidence is highly relevant to the provisions of R.1.(a). It demonstrates that since 2001 the building has been used for purposes other than for agriculture, on the balance of probability.
20. I acknowledge that the building has not been sold and that permission has not been granted for the use of the building for purposes other than for agriculture. I also note that the vehicle parking or storage use of the building is not a use that has been found to be lawful. This does not change that this use of the building has occurred and does not alter my findings above.
21. Having regard to the evidence before me, whilst I have no doubt that the building was in use on 3 July 2012, the appellant has failed to demonstrate that the last use of the building was solely for an agricultural use as part of an established agricultural unit, and that the circumstances of this case do not comply with those described in R.1.(a)(ii). On this basis, I can only conclude that the development would not have been lawful as it would not have been permitted by Class R if instituted or begun at the time the LDC application was made.

Was the building brought into use after 3 July 2012 and, if so, has it been used solely for an agricultural use as part of an established agricultural unit for a period of at least 10 years before the date the LDC application was made? – (a)(iii)

22. Even if it were demonstrated that, notwithstanding a use of the building for the parking and storage of vehicles, the last use of the building prior to the submission of the LDC application was nevertheless solely for an agricultural use as part of an established agricultural unit, I cannot be satisfied that the proposed development would be lawful, having regard to sub-criterion (a)(iii). This sub-criterion describes a building which ‘was brought into use after 3rd July 2012’. This applies equally to a building, the use of which has changed to agriculture after 3 July 2012, as well as to a building that was first used for agriculture after 3 July 2012.
23. The written evidence of the interested party and the aerial photographs taken in 2020 demonstrate that, since 3 July 2012, the building has been used for purposes other than agriculture, on the balance of probability. As I note above, whether or not the use of the Dutch barn for vehicle parking or storage is lawful is of no relevance in this case. Indeed, this use of the building may well have been intermittent throughout the period described by the interested party and carried out without the benefit of planning permission. It does not change that this has been a use of the building since 3 July 2012, on the balance of probability.
24. If it were the case that the last use of the building before the LDC application was made was for agriculture (perhaps because there has been a change from the alternative use observed by the interested party back to an agricultural use), the evidence indicates that, on the balance of probability, this agricultural use could not have commenced before 3 July 2012. Accordingly, for the purposes of R.1.(a)(iii), the building would have been brought into an agricultural use after 3 July 2012. In these circumstances, it is necessary for the appellant to demonstrate that the building has been used solely for the purposes of agriculture as part of an established agricultural unit for a period of at least 10 years before the date the LDC application was made. This has not been demonstrated by the appellant.
25. For the reasons given above, even if the last use of the building before the LDC application was made was for the purposes of agriculture, I am not satisfied that the circumstances of this case would not be those described in R.1.(a)(iii). For this reason, the material change of use of the building to a use as a hotel would not have been lawful as it would not have been permitted by Class R if instituted or begun at the time the LDC application was made.
26. Having regard to my conclusions above, it is not necessary for me to consider the second matter in dispute between the parties.

Conclusion

27. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for a use of the building as a hotel falling within Class C1 of Part C, Schedule 1 of the 1987 Order 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.

J Moss

INSPECTOR