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| |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | | **Report to be read in conjunction with the Decision Notice.** | | | | | | | | | | **Signed:** | **Officer:** | BT | **Date:** | 14/11/23 | **Manager:** | **LH** | **Date:** | **15/11/23** | |  | | | | | | | | | | | | | | |
| **Application Ref:** | | | 3/2023/0746 | |  |
| **Date Inspected:** | | | 17/10/23 | |
| **Officer:** | | | BT | |
| **DELEGATED ITEM FILE REPORT:** | | | | | **REFUSAL** |
|  | | | | | |
| **Development Description:** | | | | Certificate of Lawfulness for existing use of agricultural building as a dwellinghouse. | |
| **Site Address/Location:** | | | | Land at Pendleton Road, Wiswell, BB7 9BZ. | |
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| **CONSULTATIONS:** | | | | **Parish/Town Council** | |
| N/A | | | | | |
|  | | | | | |
| **CONSULTATIONS:** | | | | **Highways/Water Authority/Other Bodies** | |
| N/A | | | | | |
|  | | | | | |
| **CONSULTATIONS:** | | | | **Additional Representations.** | |
| Although no public consultation was undertaken two representations were received expressing concern about issuing a certificate given the site’s enforcement history and reason for allowing the building for agricultural use, and also raising concerns about planning considerations. | | | | | |
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| **RELEVANT POLICIES AND SITE PLANNING HISTORY:** | | | | | |
| Town and Country Planning Act 1990, Section 171(B); Section 191  National Planning Practice Guidance: Lawful Development Certificates | | | | | |
| **Relevant Planning History:**  **3/2022/0345:**  Discharge of conditions 3 (Materials) 7 (Replacement Trees) and 8 (Boundary Treatments) from planning permission 3/2018/0989. (Approved)  **3/2018/0989:**  Proposed extension to existing agricultural building. Regularisation of the existing building (Approved)  **APP/T2350/C/23/3318459:**  Land on North-west side of Pendleton Road, Wiswell (Ongoing) | | | | | |
|  | | | | | |
| **ASSESSMENT OF PROPOSED DEVELOPMENT:** | | | | | |
| **Site Description and Surrounding Area:**  The application relates to a parcel of land situated on the North-western edge of Wiswell. The land parcel in question comprises an elongated strip of grassland bound by trees on all perimeters which extends to the North-west from Pendleton Road. Access to the land parcel is from Pendleton Road via a gated field access with an area of hardstanding comprised of loose aggregate sited just inside the site’s field access point. A single pole with three mounted CCTV cameras lies directly adjacent to the aforementioned area of hardstanding. The remainder of the site contains a trailer mounted solar panel array, greenhouse building, vegetable garden and a building approved for agricultural use located approximately 50 metres away to the South-west of the site’s access which forms the basis of this application. Residential properties border the South-eastern corner of the application site with the wider area comprising a mixture of woodland, agricultural land and open countryside. | | | | | |
| **Proposed Development for which consent is sought:**  This is an application for a Certificate of Lawfulness to establish use of a building approved for agricultural use as a single dwellinghouse for a continuous period in excess of four years. It is the applicant’s claim that they have continuously utilised the agricultural building in question as a single dwellinghouse from May 20th 2019 through to the present day. As such, the applicant seeks confirmation of the above in the form of a Lawful Development Certificate. | | | | | |
| **Observations/Consideration of Matters Raised/Conclusion:**  The lawfulness of the existing use in question rests upon a detailed assessment of the supporting information provided as part of the application in relation to the provisions of Section 171(B) of the Town and Country Planning Act (1990) (the Act).  Section 171(B) of the Act provides timescales whereby unauthorised development becomes immune from enforcement action and as such becomes lawful as follows:  *(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*  *(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*  *(3) 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.*  In this instance, it is the applicant’s claim that they have continuously utilised the agricultural building in question as a single dwellinghouse from May 20th 2019 through to the present day therefore the lawfulness of the existing use in question rests upon a detailed assessment of the supporting information provided as part of the application in relation to the provisions of Section 171(B) (2) of the Town and Country Planning Act (1990) (the Act).  National Planning Practice Guidance states:  *‘The applicant is responsible for providing sufficient information to support an application…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.’*  In terms of supporting evidence, the application’s supporting statement is limited to sworn affidavits from friends and family of the applicant attesting to the continuous residential use of the building in question for a period in excess of four years and numerous photographs (with no time stamp) of the building’s interior. Notwithstanding this, no other information or evidence has been provided (in the form of Council Tax bills, utilities bills for water, receipts for equipment / materials used to convert the building in question, receipts for contractor work, documents with the building’s address on etc) to unequivocally demonstrate continuous use of the agricultural building in question as a single dwellinghouse for a continuous period in excess of four years.  Also of relevance is a planning enforcement notice which was served by the Council to the applicant on February 8th 2023 with respect to the carrying out of engineering operations and other installations within the application site including the creation of hardstanding areas, erection of CCTV cameras and the installation of a trailer mounted solar panel array. This enforcement notice is currently the subject of an ongoing appeal. Whilst the enforcement notice in question does not relate to the unauthorised use of the site’s agricultural building, there are numerous assertions within the applicant’s enforcement notice appeal statement which contradict the claims made within the supporting statement submitted as part of the current planning application.  The applicant’s enforcement notice appeal statement (dated March 2023) refers to the building in question as an ‘agricultural building’ and sets out a detailed argument so as to justify retention of the unauthorised works in question for the purposes of supporting the agricultural use of the site. No reference is made to any residential use of the site. Moreover, the building in question is also referred to as an ‘agricultural building’ within a request for pre-application planning advice submitted in July 2022 regarding the *proposed* conversion of the building in question to a dwellinghouse (building status also denoted as empty / storage in notes for pre-application plans). In addition, the applicant is listed as residing at an address in Oswaldtwistle, Lancashire in supporting documentation (from March 2023) with respect to the enforcement notice appeal and this same address is also listed as the applicant’s place of residence for previous planning application 3/2022/0345 (March 2022). Furthermore, it also understood that officers had been unable to gain access to the interior of the building in question to confirm its use at the time of writing of the Council’s own enforcement notice appeal statement. Taking account of the above, it is considered that sufficient evidence exists to contradict or otherwise make the applicant’s version of events less than probable in this instance.  Even if the Council were to accept the applicant’s assertions and supporting information as sufficient (NB this is not the Council’s position), Section 191 (3) of the Town and Country Planning Act (1990) (the Act) states:  *‘For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—*  *(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.’*  A Breach of Condition Notice was served to the applicant on December 17th 2021 in relation to numerous planning breaches pertaining to approved planning application 3/2018/0989, with the notice in question specifically requiring the applicant to cease all non-agricultural use of the building in question. As such, the alleged unauthorised use of the building in question cannot be considered lawful due to the provision of a Breach of Condition Notice being served during the period of four years beginning with the date of the alleged breach. Consequently, the alleged unauthorised use of the building in question for a continuous period in excess of four years is not considered lawful by virtue of contravening Section 191 (3) (b) of the Town and Country Planning Act (1990) (the Act). | | | | | |
| **RECOMMENDATION**: | | That the certificate of lawfulness be refused for the following reason: | | | |
| **01:** | A Breach of Condition Notice was served to the applicant during the period of four years beginning with the date of the alleged breach. Consequently, the alleged unauthorised use of the building in question for a continuous period in excess of four years is not considered lawful by virtue of contravening Section 191 (3) (b) of the Town and Country Planning Act (1990) (the Act). In addition, the Council’s evidence make’s the applicant’s version of events less than probable and there is no good reason to accept the applicant’s case that the use of the building should be considered lawful by virtue of Section 171 (B) (2) of the Town and Country Planning Act (1990). | | | | |