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## Appeal Decision

Site visit made on 20 November 2025

by **Grahame J Kean B.A. (Hons) Solicitor, MRTPI, MiPROW**

an Inspector appointed by the Secretary of State

Decision date: 10 March 2026

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**Appeal Ref: APP/T2350/X/25/3359247**

**Isaacs Farm Barn, Parsonage Lane, Chipping, Preston PR3 2GJ**

- 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 Andrew Hodgkinson against the decision of Ribble Valley Borough Council.
  - The application ref 3/2024/0525, dated 20 June 2024, was refused by notice dated 21 August 2024.
  - The application was made under section 191(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 B2 general industrial use of land and buildings in association with an agricultural contractor and welding business.
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### Decision

1. The appeal is dismissed.

### Reasons

#### *Legal framework*

2. By s191(2) of the 1990 Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
3. The appellant H claims that the appeal site underwent a material change of use (MCU) to use as an agricultural contractor and welding business, based on s171B which provides for immunity in the case of “*any other breach of planning control*” after the end of the period of ten years beginning with the date of the breach.
4. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) specifies the contents of a certificate of lawful use application, which includes a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North. The lack of reference to how the land is accessed does not mean, contrary to the appellant’s assertion, that such matters relating to access may not be relevant.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Schedule 2, Part 2, Class B – means of access to a highway, grants permission for “*the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).*”

6. Parsonage Lane is an unclassified road maintainable at public expense. However, Class B would not apply to permit such an access if there is no linked permitted development. Furthermore, by Article 3(6) of the GPDO the permission granted by Schedule 2 does not, except in relation to development permitted by certain classes not relevant here, authorise:  
  
*“any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons”.*
7. The application was made on 20 June 2024, therefore the relevant date to consider is 20 June 2014, by which time a use of the appeal site for the activities claimed should have been instituted and carried on continuously, for a period of at least ten years, albeit that it is claimed in the application form that the uses applied for began on 1 March 2011.
8. The application form stated that the relevant use class was B2 – general industrial. As of September 2020, the former B1 Use Class was merged into the new Class E (Commercial, Business and Service). The B2 (General Industrial) use class remains a separate and distinct use. The appropriate use class for an agricultural contractor's site depends on the nature and impact of the operation. Welding operations tend by their nature to produce fumes, noise, and potential fire risks.
9. Class E includes the use, or part use, for “...*(g) (iii) 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, dust or grit.*”
10. By s193(4) an LDC may be issued under s191 for the whole or part of the land specified in the application; and, where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them. This is reflected in the relevant procedural guide<sup>1</sup> which states that part of what is described in the application may be found lawful and an LDC may be issued for that part of the application only. However, it does not provide for the grant of an LDC for a different use to that applied for.

### *Background*

11. In the late 1990s Isaacs Farm Barn was converted to a dwelling where H's grandparents lived after the farm owners retired from the farm. H grew up on the appeal site, living with his grandparents. Planning permission 3/97/0298 was granted for the conversion of the property to a dwelling.
12. The property appears never to have been split into 2 sections, it being one property known as Isaacs Farm Barn. Indeed, the appellant confirms that the entirety of the red line planning boundary for the application is included in the LR title number for Isaacs Farm Barn. Furthermore, when the property was marketed recently there is no evidence that it was advertised other than as a domestic property albeit with outbuildings and it was not divided in any way. In addition, the Council confirms that no part of the property is registered for non-domestic business rates and there is no record of any request for any exemption.

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<sup>1</sup> Certificate of lawful use or development appeals: procedural guide, Updated 1 December 2025, paragraph 6.3.4.

13. In April 2011 H adopted the business name of Ashcon, an agricultural contracting enterprise. In April 2015 H moved out of the appeal premises when he married and lived in Oakenclough until 2019. The appeal site was the operational base for H's business and his home address for the time being was used as a correspondence address to avoid paperwork being sent to his grandparents' home. In or around 2020 when H's grandfather passed and his grandmother moved out, H returned to the appeal site with his own family where he states he has lived to date.
14. Whilst the location plan shows the whole property, the site plan SP/AH/430 excludes the residential part to the north-east together with the main driveway, the appellant stating with reference to Article 39 of the DMPO, that it would "*be inappropriate to include the remainder of the Isaacs Farm Barn property within the red edge as the Appellant is not claiming use of these areas for his business.*"
15. The appellant references three entrances to the site in his statement. The first is the drive at the north-east part boundary which leads into the residential part of the property (excluded from the application). The second entrance is in the middle, it does not give vehicular access into the site but it seems the appellant's van is typically parked there at the front. At the other end, the south-west boundary, clearly a vehicular access has been created but there has been no application for permission to do so and no pre-application enquiry.
16. The appellant does not consider that matters of access, public footpaths, boundary treatments and trees are relevant. However, by his own admission he recognises the dangerous location at the south-west boundary. It is stated in terms that H:  
  
*"facilitates the area to the south-west of Isaacs Farm Barn for the storage of tractors and machinery. The existing access to this part of the site has very poor visibility in both directions due to the topography of the road, and gaining access to site can result in the road being blocked for a short period, particularly when the Appellant is manoeuvring into position to reverse into the site. This area is almost directly opposite Isaacs Farmhouse."*
17. The appellant's use of the verge at the north-east boundary is explained thus:  
  
*"Parking on the verge at this point does not block any part of the highway. Use of this area of land is ad hoc...in the interests of residential amenity and highway safety. It is not proposed that this area of land forms part of the Application."*
18. In my view having visited the site, I agree that the access on the south-west boundary has poor visibility onto Parsonage Road in both directions. Clearly if the appellant is manoeuvring into position to reverse into the site and blocking the road at this location, it is potentially a very dangerous situation.
19. I recognise that the appellant seeks to mitigate the danger by also using a highway verge by the appeal site further up to the north-east but that is really beside the point. To the extent that any use of the appeal site for the use claimed involves the use of a vehicular access created without lawful authority otherwise obtained, that access would not benefit from permitted development rights under Class B as described above because although it is an unclassified road, its use creates an obstruction to the view of persons using Parsonage Lane so as to be likely to cause danger to such persons. It also appears to be an access formed or enlarged to accommodate storage or parking of vehicles and equipment thereon, which is not a lawful purpose of highway land, whether used for vehicles or pedestrians.

20. Furthermore, treating the grass highway verge as a regular private parking place (ad hoc is a misdescription) would not be a lawful use of the highway, and could be an offence under various highways legislation, yet the use claimed, by the appellant's admission, has to involve use of this location outside the site.
21. Apart from the creation/enlargement of a vehicular access on the south-west boundary, public footpath 0312013 runs through the appellant's land in this part of the site where there is a stream alongside. The footpath leads or should lead into the adjoining field along a grass sward. S, who has lived opposite the appeal site for several years, knows the appellant well and knew his parents well, alleged that fencing, gate, and a stile were removed by the appellant, the ground was levelled and trees removed in the process. S further alleges that H cleared the site and the stream of all trees before being prevented from culverting the stream by the relevant authority, his intention being "*to create an entrance and turning area for the large lorries one [sic] what is farmland and as previously said a very dangerous bend in a dip.*"
22. In response, the appellant does not dispute this version of events save that 1) there is no enforcement notice in force, 2) the culvert issue is not relevant to the appeal and 3) there "*has always been an agricultural access to Isaacs Farm Barn at the north west [sic] corner of the site*". This latter point is ambiguous as to which access he intends to refer. Having regard to the available google imagery there may have been a vehicular access via a gate at the south-west boundary, however historically this may have been used to access the fields beyond when the property was part of the farm holding.
23. Moreover, the video imagery referenced by the interested person shows a vehicle and trailer parked at the rear of the house in the yard to which the driveway leads, suggesting how integral is the use of this part of the property but excluded from the application. Furthermore, it indicates that there is no through access from the appellant's land at the south-west boundary directly into the yard because of the jumble of outbuildings that separates the two. This reinforces my impression that the use of the yard is heavily dependent on the residential driveway.
24. As to the south-west boundary access it appears to have been enlarged later to accommodate the appellant's vehicles, machinery and so forth, and fencing and gate removed. It would also appear that the line of the public footpath, which is also a highway, is liable to obstruction due to the appellant's activities in storing agricultural equipment on this part of his land.
25. It is also not disputed by the appellant that all deliveries and exits are through the driveway of the domestic part of the property where the appellant has 3 young children. In reply it was said that this is not a relevant matter. I disagree. The interested person expressed concern about the safety of the work area and vehicles coming into contact with children of the family. Whilst a legitimate concern, the more relevant issue for this appeal is that it demonstrates that the use claimed for is dependent for its existence on another location adjacent to but outside the area the subject of the application for the certificate. I consider that the application is misleading in representing that the use of this driveway is irrelevant.
26. The appellant's agricultural contracting business includes loaning out vehicles and equipment machinery and equipment which he needs to store or park somewhere. H is wont to work long hours, returning home often "*when it has already gone*

*dark*". Similarly, with the welding business, the appellant has to use vehicles to transport materials and equipment to and from the appeal site. There is only one recognisable vehicular entrance into the site, ie the driveway at the north-east boundary excluded from the application. The vehicular access at the south-west boundary has also facilitated, or is to be regarded as part and parcel of, the use.

27. It would appear from the invoices over the years that a very substantial amount of work has been performed outside the appeal site, ie on farms or other premises. In my view it is likely that some welding work was undertaken in one or more of the outbuildings at the site (none is specified in terms) but it is also likely that if by June 2014 it had reached the level where the impacts on the amenity of the area were being felt, this would have manifested itself in some way, for example through concerns expressed by the neighbour S, but this did not happen.
28. There is no planning law requirement for a property to be correctly registered for local tax. However, it is unexplained why the alleged use of the appeal site has never been registered for non-domestic business rates during the relevant period.
29. In my view, registration would normally, and reasonably, be expected to flow from a change from a residential use to a distinct primary B2 use for an agricultural contracting and/or welding business at the premises which is claimed to have existed since 2011. The Council received no request from the appellant for any kind of exemption therefrom. The absence of such registration and payment of business rates provides indirect evidence in conflict with the appellant's version of events.
30. Furthermore, the planning unit over which the claimed business operates must be able to operate lawfully in its entirety. Clearly, the appellant makes substantial use of the highway verge<sup>2</sup> at the north-east boundary outside the application site whilst the precise position regarding the appellant's encroachment onto the verge at the south-west boundary is unclear due to the alterations made to his land around the public footpath to facilitate the storage of the appellant's vehicles and equipment.
31. The relevant period began in June 2014, however H's appeal statement has it that in 2019 he "*decided to expand Ashcon to include welding and fabrication services.*" This is corroborated by H's personal statement that "*in October 2019 I took the step to expand Ashcon to include my own welding and fabrication services*". However, in the following paragraph he states:  
  
*"the land and outbuildings at Isaacs Farm have provided storage for my contracting machinery, together with any other necessary materials and equipment, as well as providing a welding workshop, since 2011."*
32. An article from Farm Contractor magazine, dated September 2015 referred to H buying an aerator "*last year after a spell in New Zealand*". H was reportedly also looking into setting up his own silage operation and is reported to have said "*If the opportunity arises I'll be looking at a forage wagon due to the lower purchase, running and labour costs, and it's a system I had a lot of experience with when I was in New Zealand.*"

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<sup>2</sup> A verge alongside a highway may or may not constitute part of the highway but there is no reason to suppose in this case that it is not since it lies between the rural road and well-defined boundary hedges and there is nothing I saw in the condition of the road or the circumstances to indicate the contrary position. See *Attorney General v Beynon* [1969] 2 WLR 1447.

33. Aerial imagery prior to 2020 does not assist in determining whether equipment or machinery was in the appeal site itself. The imagery from October 2021 and May 2022 appears to show a tractor, trailer and additional machinery to the front of the property and outside the appeal site. Access to the buildings within the appeal site appears to be achievable only via the driveway that serves the residential part of the premises located outside the land edged red on the application site plan.
34. H's statement and those of his business associates each append a plan of the appeal site that, in line with the application, excludes the part of the property at the north-east boundary which contains the main driveway into the property, however the evidence suggests that the only proper vehicular use in connection with the business would indeed be through this driveway.
35. Appendix C to H's statement is a list of invoices from 2011 to 2019 in chronological order. The invoice dated 4 August 2014 gives the appeal site as H's address, however the next invoice is dated 8 April 2015 and the address of the business has changed to Millers Cottage, Oakenclough. It is a significant gap but not explained. However, a fuller set of invoices is set out in the appellant's facts and grounds papers which do contain invoices spanning the gap in Appendix C.
36. Whether the business invoices bear the appeal site as its address or Millers Cottage, many contain details of work done "on site" which having regard to the detail provided in many cases if not most probably refers to the client's site, as work was done for a locally based welding and fabrication specialist, or in relation to the agricultural component, on farms in the area.
37. Despite the continuity evidenced by the invoices, the magazine article refers to a period when he was in New Zealand, suggesting that H took a break from the business in 2014, but this is not mentioned in H's personal statement.
38. The net profit sum for H's business has fluctuated. No point is made about the amount or trend year on year, as the accounts are provided expressly to demonstrate continuity of the business. The continuity of the business itself, Ashcon, is evident from the invoices, but whether his operations can be linked to an actual B2 industrial use at the appeal premises is uncertain.
39. The nature of the appellant's business is such that he is out on-site doing field work or at various client locations including hiring out vehicles and equipment. Use of the workshop within the appeal site appears to have been for welding.
40. In my view the level of welding activity being carried on in the premises is ambiguous to say the least. The date of October 2019 tallies with an advertisement on 14 October 2019 in which H states "*very excited to announce that we are now offering welding and fabrication services alongside our contracting services!*" It is not therefore possible to conclude with any confidence that before 2019 this aspect of the claimed use had become a primary use in its own right.
41. I take into account, although not itself determinative, the low impact of the use within the application site prior to 2019 and lack of evidence that any industrial process undertaken within the workshop or other outbuildings had, up to that time manifestly caused a detriment to the amenity of the surrounding area, which would have suggested a B2 industrial use as claimed by the appellant.

42. Significantly, the evidence fails to establish a clear link between the appellant's business activity and a continuous use of the buildings and land in question without making use of other land adjacent to but outside the application site, such as the driveway into the residential part of the property and the verge used at the north-east boundary to park the vehicles used for his business.
43. It is clear that the use applied for cannot operate without several vehicles and associated equipment such as trailers, agricultural machinery and the like. The use involves such vehicles and equipment being parked or stored either 1) within the driveway excluded from the application site for deliveries; 2) on the highway verge without lawful authority adjacent to the application area; and/or 3) within the boundary of the appellant's land but where a public footpath once physically<sup>3</sup> ran through to the fields beyond and is now altered to form an access to the highway, or to enlarge an existing access, to facilitate storage of more vehicles and equipment where the access is in a dangerous location, again without any apparent lawful authority. Contrary to the appellant's suggestion I consider these matters are relevant to consider when examining the lawfulness of the actual use being carried on.
44. In my view, the totality of the appellant's evidence, on its own, is insufficiently precise and unambiguous to support the existence of a continuous Class B2 industrial use throughout the relevant period on the land identified on the application site plan.
45. The Council's own evidence in relation to lack of any payment of non-domestic business rates or registration therefor, also weighs in the balance.
46. I find, on the balance of probabilities, that the appeal site has not been used as a Class B2 agricultural contractor and welding business on a continuous basis throughout the relevant period. Therefore, having regard to s191(2) of the 1990 Act, the development the subject of the appealed application is unlawful as enforcement action may still be taken.

### **Conclusion**

47. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a B2 use comprising agricultural contractor and welding business 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 (as amended).

*Grahame J Kean*

INSPECTOR

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<sup>3</sup> Despite it now being difficult to ascertain the path on the ground at the junction with Parsonage Lane, the maxim "*once a highway always a highway applies*" and it is the duty of the relevant body, Lancashire County Council to assert the public's right to use it.