

DELEGATED REPORT

Code No: NP/DDD/0124/0068
Property: Stanedge Grange
Unnamed Section Of A515
From Main Road To
Brundcliffe Farm
Newhaven
("The Property")

P.File: PP-12234698
Applicant: Stanedge Grange
Partnership

1. Application

- 1.1 The application is submitted under S.192 of the Town & Country Planning Act 1990 (as amended), with the proposed development described on the Application Form as, *"Proposed Farm Abattoir and Extended Meat Processing Facility located within existing stone building"*
- 1.2 The Property is situated off the A515 between Newhaven and Biggin.
- 1.3 The supporting statement provides that the Property is an established diverse family farm business comprising a livestock farm and farm shop which retails the farm produce.
- 1.4 The total landholding extends to 40 acres (16.187 hectares).
- 1.5 The farm shop and farm business combined provides employment in total for three full time staff and one part time.
- 1.6 The farm shop opened on the 22nd March 2012 and has been trading continually since the date of opening retailing produce from the farm. The shop is sited within an existing outbuilding adjacent to Stanedge Grange farmhouse. In August 2012, additional refrigerated storage was installed within ground floor of the North East section of the subject barn.
- 1.7 The Hartington Nether Quarter Parish Council have been consulted on this application and have not raised any comments or objections to it.
- 1.8 There are no other third party comments received at the date of this report.

2. Submitted Evidence

- Application Form
- Site Location Plan
- Supporting Statement
- Floor Plan
- Additional information provided by email from agent 12.2.2024

3. Evidence on Planning files/Hub

- 3.1 1979 WED1279587 – Erection of Dairy Unit. Granted.
- 3.2 1984 WED0684242 – Erection of Farm Building. Granted.
- 3.3 1994 WED0394119 – Erection of Cattle and Machinery shed. Granted.
- 3.4 2010 NP/GDO/0710/0712 - GDO notification - erection of agricultural livestock building. Prior approval required.
- 3.5 2010 NP/DDD/0810/0783 - Erection of agricultural livestock building. Granted.
- 3.6 2012 NP/DDD/0212/0130 – Advertisement Consent. Granted temporarily.
- 3.7 2012 NP/DDD/0312/0299 - Proposed change of use of agricultural land to create an outdoor menage. Granted.
- 3.8 2016 NP/DDD/0716/0627 - Conversion of redundant farm buildings to tea rooms, kitchen and toilet. Granted.
- 3.9 2017 NP/GDO/0517/0546 - Prior notification of upgrades to existing telecoms equipment. Prior approval not required.

- 3.10 2017 NP/DDD/0817/0880 - Erection of a steel framed building with a canopy and an external muck midden to be used for the housing of livestock along with the storage of straw and hay. Refused.
- 3.11 2022 NP/DDD/0422/0564 - Proposed livestock building and agricultural storage building. Granted.
- 3.12 2023 NP/DIS/0523/0536 - Discharge of condition 7 on NP/DDD/0422/0564. Partially discharged.

4. Legal Framework

- 4.1 The key statutory framework to LDC applications is contained in S.191-S.194 of the 1990 Act. S.192 provides so far as relevant:-
 - (1) If any person wishes to ascertain whether—
 - (a) any proposed use of buildings or other land; or
 - (b) **any operations proposed to be carried out in, on, over or under land,** would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
 - (2) 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.
- 4.2 In determining an application for prospective development under the provisions of S.192 of the 1990 Act, it is for the Applicant to provide such information as is necessary to demonstrate that, on the balance of probability, the proposed development would be lawful if instituted or begun at the time of the application. S.192(2) of the 1990 Act provides that if the Authority are presented with information satisfying them that this is the case, then they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- 4.3 Guidance for the submission and consideration of lawful development applications is contained in the Lawful Development Certificate category to the Government Planning Practice Guidance ("the Guidance"). Paragraph 5 of the guidance states that the application form must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application... *"An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced."*
- 4.4 Planning merits are not relevant to this case, and are not an issue for the Authority to consider in the context of an application for an LDC, the Authority's decision rests on the facts of the case, relevant planning law, and judicial authority. The burden of proof rests with the Applicant to show, on the balance of probabilities, that the proposed development applied for would be lawful at the date of the application.

5. Discussion

- 5.1 The Applicant's case is that the proposed development would not require planning permission as the on-farm abattoir would be ancillary to the main agricultural operations and business. The existing farm shop is already used for the sale of on-farm produce and includes an area used exclusively for the meat processing before sale.
- 5.2 It is proposed to use part of the ground floor of the stone building outlined in red on the Location Plan (Bunting 003) for an abattoir and extended meat processing facility.

- 5.3 No external alterations are proposed to facilitate the use of the existing building for these purposes. The existing building was formerly used as a dairy parlour and was in agricultural use.
- 5.4 Prior to the farm shop being established on the site advice was sought from the Authority who advised that the farm shop would be considered ancillary to the main agricultural business and would not amount to a material change of use requiring planning permission.
- 5.5 The main question for consideration in respect of this application is whether the proposed use of the existing outbuilding for an on-farm abattoir would amount to a material change of use requiring planning permission.
- 5.6 Development is defined in Section 55(1) of the TCPA 1990 as, *"the carrying out of building, engineering, mining or other operations in, on, over, or under land, or the making of any material change in the use of buildings or other land."* Section 55(2) of the TCPA 1990 provides that the following operations or uses of land shall not be taken for the purposes of this Act to involve development of land: *"(e) the use of any land for the purposes of agriculture ... and the use for any of those purposes of any building occupied together with the land so used."*
- 5.7 Agriculture is defined in Section 336 of the TCPA 1990 as including, *"horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins, fur, or for the purpose of the farming of the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly"*.
- 5.8 There is no question that the existing site and buildings are in use for agricultural purposes as part of the farm holding. The applicant has already established a farm shop which was considered to be ancillary to the existing agricultural use and is used to sell produce from the farm.
- 5.9 A use of land includes uses which are ordinarily incidental or ancillary to the primary use. There must be a relationship between the potential ancillary use and the primary use otherwise it may be considered that there are two separate and distinct uses occurring. The question then arises as to whether the proposed abattoir would be considered to fall within the definition of 'Agriculture' or whether it could be considered incidental or ancillary to that agricultural use. There has been a significant amount of caselaw considering the definition of 'agriculture' and uses ancillary and incidental to it and the key cases are considered below. Generally, speaking it has been considered that where land is used for activities in direct furtherance of an agricultural activity the use will be considered to fall within the definition of 'Agriculture'.
- 5.10 In the case of **Williams v Minister for Housing and Local Government (1967) 18 PCR 514 DC** the High Court confirmed that the use of land for agriculture necessarily included the selling of produce grown on the land, but that the selling of products grown elsewhere was not an agricultural use.
- 5.11 The case of **Gill v Secretary of State for the Environment [1985] JPL 710** is directly relevant to the present application, in this case the High Court held that the occasional killing of animals which had been reared and bred on a farm might be within the normal use of land used for agricultural purposes, but that the wholesale slaughter of large numbers of foxes, kept on land for the purpose of producing skins or furs was not within the definition of agriculture. Glidewell J said at page 715 after citing the definition of agriculture: *"The definition itself did not say anything about slaughtering. Counsel for the Secretary of State said that the words "breeding and keeping of livestock" meant precisely what they said; if you slaughter an animal, you are not breeding it or keeping it, indeed you are doing the exact opposite. On the other hand, counsel for the appellant said that if you breed and keep an*

animal such as a fox in order to produce its skin or fur, that necessarily in the end involves its slaughter in order to remove its skin. That of course logically was correct. Therefore, he said either the definition itself, by inference, includes the slaughter of the animal or, if not, slaughter was ancillary and thus, albeit the primary use of the land for agriculture did not include slaughter, slaughter was an ancillary use that could be carried on without planning permission.”..... **“Glidewell J thought that the slaughtering wholesale, that was to say, in any large numbers, of animals kept on the land for the purposes of producing skins or fur was not within the definition of agriculture.** It might be that the occasional killing of animals kept on a farm was either de minimis or could reasonably be considered to be ancillary to normal farming activities. **He was certainly not to be understood as saying that a farmer who had pigs, sheep, poultry or whatever which he reared and bred and who killed some of them, was not behaving within the normal use of his land and was doing something which could be subject to an Enforcement Notice.** But, that was not what was in issue here. What was in issue here and what the Secretary of State was clearly dealing with was the possibility of very large numbers of these creatures being bred, reared and brought up for months, years or whatever it was until they reached full maturity and then slaughtered, which could mean substantial numbers being slaughtered during the course of any one year. That would not be within the definition of ‘agriculture’ in section 336 T CPA 1990.”

- 5.12 There may be exceptions to agricultural uses. For example, in **Winchester City Council v Secretary of State for Communities and Local Government [2007] EWHC 2303 (Admin)** the production of pathogen free eggs was an industrial process and not considered to be ‘agriculture’ for the purposes of the planning legislation. Further, in the case of **Salvatore Cumbo v Secretary of State for the Environment [1992] JPL 366**, the High Court considered that the establishment on a farm of a cheese making business would be outside of the realms of wholly agricultural use and be in the nature of a mixed farming and manufacturing use for which planning permission was necessary. Sir Frank Layfield QC sitting as Deputy High Court Judge cited the definition of agriculture and continued: *“That definition, broad though it was, did not on the face of it, include processing and was addressed to the growing of crops, the rearing and grazing of livestock and activities in direct support of farming on the land. The expressions did not point to the introduction of processing on any significant scale. Ancillary activities he took to be secondary uses that were undertaken in support of primary farming uses and described in that section of the Act....”*
- 5.13 In an American case relating to an on-farm abattoir, it was considered, ***“reasonable to regard the slaughter of animals as a normal and customary part of preparing them for market. It then follows from the acceptably broad definitions of the word “agriculture” that a slaughter house used for the butchery of animals raised on the premises is primarily agricultural in purpose.....*** The fact that an activity such as slaughtering, can become an industrial or business use when removed from an agricultural setting does not mean that activity cannot be primarily agricultural in purpose when it has a reasonable or necessary relation to agricultural activity being conducted on the locus.” (**Modern Continental Construction Co. v Buildings Inspector of Natick 674 N.E 2d 247 (MASS.APP.Ct 1997)**)
- 5.14 In **Main v SSETR & South Oxfordshire DC [1999] JPL 195** it was established that the fact that an activity is relatively small does not mean that it cannot be a primary use of the land. However, that does not mean that scale is not relevant; as the judgment in Main makes clear, whether something is an ancillary use or a primary use is a matter of fact and degree, to be determined on the particular facts of the case.
- 5.15 In a more recent judicial decision, **Millington v Secretary of State for the Environment, Transport, and the Regions [2000] JPL 297** the Court of Appeal had to decide whether the Secretary of State was right in considering an Enforcement Notice appeal, to proceed on the basis that where land is used for the creation of a new product (wine), from produce grown on the land (grapes), the land was therefore no longer being used for the purposes of

agriculture and as such not exempt from planning control. The Court considered the Secretary of State had not been right. According to the Court, *"the proper approach to the root question in this case is.... to consider whether what the Millington's were doing can, having regard to ordinary and reasonable practice, be regarded as ordinarily incidental to the growing of grapes for wine included in the general term agriculture, ancillary to normal farming activities, reasonably necessary to make the product marketable or disposable to profit or whether it had come to the stage where the operations cannot reasonably be said to be consequential on the agricultural operations of producing crops."* Since the Secretary of State had not adopted that approach, the enforcement notice was remitted back to him to make a new decision in the light of the Court's judgement.

- 5.16 Considering the caselaw above, further questions were asked of the applicant with regards to the level of the proposed use of the abattoir and the applicant's agent responded with the following additional information:
- *the abattoir will only be used to process livestock from the farm holding. This process is currently carried out offsite and carcasses are brought back to the farm. All of the meat from these carcasses is and will continue to be processed and retailed through the existing farm shop.*
 - *The abattoir will operate on a Monday of each week with the exception of the weeks when there is a Bank Holiday and then an alternative day has to be agreed with the vets.*
 - *The throughput of animals that my client is currently slaughtering for the shop is-*
 - o *Cattle 2 per month (increasing to 3 cattle per month, see note below)*
 - o *Lambs 8 to 10 per month*
 - o *Pigs 6 to 8 per month*
 - *However, works have recently been completed on the new cattle housing (NP/DDD/0422/0564) allowing the herd size to expand and throughput to increase to 3 cattle per month.*
 - *On completion of the abattoir, the level of use will be as set out above.*
- 5.17 Taking into account the case law cited above, and given the level of use of the proposed abattoir and the fact that it will only be used for livestock reared on the farm site, it is considered that this use would be ancillary to the main agricultural use. The applicant is not proposing to rear and slaughter large numbers of animals, just a small number to be processed and sold in the existing farm shop. The process is considered to be reasonably necessary to make the product marketable in this case and is part of the ordinary business of rearing livestock to produce meat for human consumption on the agricultural holding at Stanedge Grange.
- 5.18 It is noted that should the level of activity change or should the applicant permit animals to be brought to the abattoir from other farms the position would change and an application for planning permission would most likely be required.

6. Conclusion

- 6.1 In light of the above, and on the balance of probability, it is considered that the Applicant has demonstrated that the proposed use of the existing agricultural building as an on-farm abattoir for the slaughter of the farms own animals to supply the on-farm farm shop would be ancillary to the main use of the land for agricultural purposes and would not amount to a material change of use. On this basis the proposed use is considered to be lawful.
- 6.2 It is therefore recommended that a certificate be granted on this basis.

The proposed use of part of the ground floor of the existing stone building outlined in red on the submitted location plan for an abattoir and extended meat processing facility for the slaughter and processing of livestock reared and kept on the agricultural holding at Stanedge Grange for retail through the onsite farm shop being an ancillary use to the main agricultural use and business at Stanedge Grange.

- the abattoir will only be used to process livestock from the farm holding.

-The abattoir will operate on a Monday of each week with the exception of the weeks when there is a Bank Holiday and then an alternative day has to be agreed with the vets.

-The throughput of animals is-

- o Cattle 2 per month (increasing to 3 cattle per month)
- o Lambs 8 to 10 per month
- o Pigs 6 to 8 per month

Nothing in this Certificate relates to the farm shop.

Date:

23rd February 2024

Authorised by:



Joanna Bunting
Assistant Solicitor / Senior Lawyer