

Appeal Decision

Site visit made on 6 September 2016

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMI

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

Decision date: 10 October 2016

Appeal Ref: APP/A2470/X/16/3141867

Land adjacent to Lyndon Top, Lyndon Lane, Oakham, Rutland LE15 8RN

- 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 Mr Philip Kerry against the decision of Rutland Council.
 - The application Ref 2013/1088/CLE, dated 9 December 2013, was refused by notice dated 11 December 2015.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is to station a timber shed on the land for use ancillary to fruit growing or other horticultural uses of the land.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the timber shed constitutes operational development and, if it is, whether it is lawful for any reason.

Reasons

Preliminary matters

3. Where an LDC is sought, the onus of proof is on the appellant and the standard of proof is on the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, a LDC should be granted. The application is to be determined on the evidence at the time that the application was made.
 4. The timber shed is located on a site which comprises a small grassed plot of land with some 20 to 30 vines planted upon it, and the rest laid to grass. In the corner of the land is the shed the subject of this appeal. The appellant when seeking Counsel's opinion specified that the vineyard at Rutland Water comprised some 5.66ha (14 acres) overall with some 4000 vines planted and more proposed. His intention as stated then was to sell the freehold interests of a number of small vineyards at Rutland Water- which may only be about 200 or so square metres in size with the purchasers being invited to assist with the maintaining and activity in connection with their large vineyards and cider orchards which cover several acres.
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5. On my site visit, it appeared that the vines were predominantly within the centre of this larger site with small plots enclosed by established hedges surrounding the central area. There were also fruit trees in the central area. Mostly the edge plots were laid to grass. I saw that two plots similar to the appeal land also had sheds of a similar size. On enquiry as to whether I could venture onto the plots I was informed that they were in separate ownership. A plan has been submitted with the appeal showing the whole of the wider site divided into plots although on my visit it appeared that the most obviously defined plots were around the edges of the site.
6. The Council has brought to my attention the advertisement of plots for sale by Moores estate agents, which says that "several have erected timber sheds for the secure storage of tools and equipment and for taking breaks etc. Whilst the plots are not sold with any planning permission implied, we are not aware of any notices received by individuals over the erection of these sheds." It is not for me to consider the planning merits of the shed or to consider any other sheds but solely to consider whether this shed is lawful.
7. There is a dispute between the Council and the appellant about the current use of the appeal plot and the wider site. I note that an inspector in determining an appeal in respect of limestone tracks made comments about the business operating from the site at that time¹. Nonetheless, this application does not seek to establish the lawfulness of use, in particular, whether or not the use constitutes horticulture, albeit that matter has a bearing on whether or not the shed is lawful.

Whether operational development

8. S55(1) of the Town and Country Planning Act 1990 (the Act) defines the two limbs of development as being operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use of any buildings or other land. The first comprises activities which result in some degree of permanence, whilst the second comprises activities carried out in, alongside or on the land.
9. A building is defined by s336 of the Act as including any structure or erection. Furthermore, building operations include other operations normally undertaken by a person carrying on a business as a builder. Case law has established three primary factors which are decisive in determining what can be considered a building.² These are the size, which is generally taken to mean to be constructed on site rather than being brought onto site, permanence, and physical attachment. No one factor is decisive and whether something constitutes a building is a question of fact and degree.
10. Here the building dimensions are not given in the application. The appellant states in the appeal documents that it measures some 3m by 3m. I saw that it is roughly square and although not measured on my site inspection, it seemed to roughly accord with those dimensions. I consider this to be modest albeit significant in size. The floorspace of a chicken shed held not to be operational development in another case brought to my attention was significantly larger.³

¹ APP/A2470/A/13/2191981 paragraph 11

² Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385 and Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2PLR 102

³ Tewksbury BC v Keeley 2004 EWHC 2594

Nonetheless, it has double doors containing glazing, providing the access into the shed and single panels to each side containing a window of roughly equivalent size to those in each door panel. To each side elevation of the shed there is a further glazed panel and the rest is timber. It has a shallow mono pitch roof sloping to the rear. It is sufficiently high to enable a person of average height to stand up within it.

11. According to the appellant, the shed was brought on to the site in pieces and was then constructed on site. It was not therefore brought onto site already constructed. It is not argued to be a caravan, which is designed to be moved. As a matter of uncontested fact, the appellant has stated in the appeal that it was erected by shed erectors of a timber shed manufacturer.
12. Whilst the construction methods may be rudimentary in terms of hammering nails or screwing or bolting sections together, and such skills may be within the ability of some non professional people, these are nonetheless the skills of a builder. The small stilts on which the shed rests because the site slopes, appear purpose made. Furthermore, because of the size of the shed it would have needed more than one person involved in the construction. These all point towards the shed being a building for the purposes of s336 of the Act and comprising operational development.
13. As far as permanence is concerned, there is no suggestion that the shed was intended to be sited on the land for a temporary period. The shed has not been demonstrated to be designed to be dismantled once erected. Neither has it been demonstrated that the shed is intended to ever be dismantled.
14. The appellant specifies in the appeal that the shed will be moved around the site as and when required, but there is no persuasive purpose for that. That there are different lengths of what appear to be purpose made stilts installed for this particular location would make that difficult. The shed has not been moved since it was erected, which is stated on the application form to have been in November 2013. Moving it on the plot or the wider site would not remove the significance of its presence in planning terms.
15. The material used in the shed is predominantly timber, which with care and timber treatment would last for many years, and could be easily repaired. Permanent, in the context of planning control as established in *Skerritts*, does not necessarily mean everlasting. These matters all lend weight to the shed being a building.
16. The timber stilts which serve to jack up the front of the shed ensure that the floor inside is level. They therefore have a structural role to play in the assembly of the shed. There was no concrete plinth laid underneath the shed but the largest stilts have metal covers where they are embedded in the ground which would protect them from rotting. Some stilts to the side rest on timber slats. Although the shed does not have foundations or a concrete base, some of the stilts are embedded to some degree. They are of significance for structural reasons and indicate a degree of attachment.
17. Finally, I have considered whether an ordinary person would think this to be a building.⁴ Given that the shed has walls and a roof and one can say it was

⁴ Re St Peter the Great, Chichester [1961] 2 All ER 213

- built, having considered all the matters raised earlier, I consider the answer to be that an ordinary person would describe it as a building.
18. Whether or not the shed is used in connection with fruit growing or other horticultural uses of any land does not affect my determination as to whether it comprises a building.
 19. Taking all these reasons together, I am satisfied that as a matter of fact and degree in the circumstances of this case, the shed comprises a building, which amounts to operational development.
 20. The appellant has not put forward any arguments to show that the building is permitted development under any development order because he argues that it does not amount to operational development or a material change of use. I have already given my conclusion that it is operational development. The Council has not granted planning permission for the shed.
 21. Operational Development is also lawful if no enforcement action may be taken in respect of it and it is not in contravention of any enforcement notice that is in force. No enforcement notice has been issued in respect of the shed. Nonetheless, the appellant has not provided any evidence to lead me to believe that the shed is immune from enforcement action by virtue of the 4-year rule. Whether or not the Council has taken any enforcement action against any other building nearby is not a matter for me to consider in the context of this appeal which only concerns whether or not this shed is lawful.
 22. For all the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of stationing a timber shed on the land for use ancillary to fruit growing or other horticultural uses of the land at land adjacent to Lyndon Top, Lyndon Lane, Oakham, Rutland LE15 8RN was 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.

Julia Gregory

Inspector