
Appeal Decision

Site visit made on 30 January 2017

by D H Brier BA MA MRTPI

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

Decision date: 16 February 2017

Appeal Ref: APP/H0900/X/16/3152602
The Close, Mealsgate, Cumbria CA7 1DJ

- 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 Digit Resource Management Limited against the decision of Cumbria County Council.
 - The application Ref 2/15/9008, dated 13 July 2015, was refused by notice dated 15 February 2016.
 - 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 the mixing of lime with sewage sludge on an existing concrete pad to enable its spreading on agricultural land as an agricultural fertiliser.
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Preliminary Matters

1. A fair proportion of the appellant's case addresses matters such as the role of biosolids in agriculture, the benefits for the farming activity at The Close, and the absence of substantiated complaints about the use. As I see it, these submissions go to the merits of the use. Such matters lie outside the ambit of the section 195 appeal and therefore carry little weight in this context. My decision will focus on the question of the lawfulness of the use.
2. Concern has been expressed about the handling of the LDC application. As it is not within my remit to pass judgement on the Council's conduct, I shall refrain from taking a view on this matter.

Appeal

3. In essence, the appeal is based on the premise that the use in question, namely the mixing of lime with an organic fertiliser, in this case sewage sludge, is a farming activity. The use takes place on a farm, the mixing process is relatively simple, involving the use of a mechanical shovel, and the mixed material is spread on the land as a means of improving its fertility. On the face of it these are persuasive reasons for concluding that the appellant's case is well-founded. This is perhaps all the more so given the Council's acceptance that the importation of biosolids, mixing this with lime, and subsequently spreading the material onto the land as an organic fertiliser does not need planning permission by virtue of being an agricultural activity covered by section 55(2)(e) of the 1990 Act.
 4. Insofar as The Close is concerned, the Council's stance is perfectly understandable. The use in question seems akin to other activities, such as the
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importation of animal feedstuffs, fertiliser, seeds and the like, which would normally be regarded as being characteristic of, and part and parcel of, a typical farming enterprise. However, as noted by the appellant, the mixed materials are not used solely at The Close, they are also supplied to other farms elsewhere.

5. The information provided to the Council by the appellant indicates that approximately 16,000 tonnes of sewage sludge have been delivered to The Close per annum, along with some 800 tonnes of lime. It is also stated that about 3,000 tonnes remain on the farm, while the rest is transported to spreading locations on other farms.
6. From the appellant's figures it appears that only a relatively small proportion – about 18% – of the material mixed at The Close is used on the land there. Most of the material imported to the farm is subsequently transported away from it after it has been mixed. This strongly suggests to me that, for the most part, the activity, especially the associated comings and goings, is not directly linked to the agricultural operations at The Close. Instead, the evidence points to the main focus of the activity being the processing and distribution of material for use away from the appeal site.
7. I accept that the daily average number of vehicular movements this gives rise to is unlikely to be unduly large, and there are occasions when there is little activity at the site, as appeared to be the case when I visited it. Be that as it may, although the use in question is closely linked to agriculture, the particular nature of the use is such that, as a matter of fact and degree, it has altered the character of the use of The Close to the extent that it cannot reasonably be regarded as part and parcel of the agricultural use of the land, or incidental to it. Accordingly, therefore, I find that the use in question constitutes a material change of use and so is development as defined in section 55 of the 1990 Act. Mindful that it is not claimed that the use has acquired immunity through the passage of time, in the apparent absence of any relevant planning permission, I am not satisfied that the use in question has been shown to be lawful.
8. I have taken into account all the other matters raised, including the appellant's concerns regarding what the submission of a planning application might entail. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.
9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the mixing of lime with sewage sludge on an existing concrete pad to enable its spreading on agricultural land as an agricultural fertiliser 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.

Formal Decision

10. I dismiss the appeal

D H Brier

Inspector