

Appeal Decision

Site inspection on 27 February 2017

by John Whalley

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

Decision date: 06 March 2017

Certificate of Lawful Development - appeal ref: APP/U4610/X/16/3157102 Clay Lane Farm, Clay Lane, Allesley, Coventry CV5 9DH

- The appeal was made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by Coventry City Council to issue a Certificate of Lawfulness, (LDC).
- The appeal was made by Mr S O'Donnell.
- The application, No. LDC/2016/0824, dated 15 March 2016, was refused by a notice issued on 3 June 2016.
- The application was made under s.191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful development was sought was described in the decision as: Use of building as an agricultural barn.

Summary of decision: The appeal fails. An LDC is not issued

Appeal building

1. The appeal concerns a recently severely wind damaged building at the road frontage end of a group of agricultural buildings at Clay Lane Farm, Clay Lane, Allesley. The pitched roofed building covered an area of about 15m x 10m.

Considerations

2. The appeal building has an unusual history. A 2 storey building erected in much the same position as the current building was the subject of enforcement action and a subsequent failed appeal in September 2003. The building was demolished following a prosecution for failure to comply with the notice. The requirement to remove all materials arising from the demolition was not met, the building's almost intact roof having been left on site. That was the status reported to the Council's Planning Committee in their appeals' monitor in October 2006.
3. New concrete block walls were erected and the old roof fitted on top. However, according to the Appellant, Mr O'Donnell, the appeal building had been in existence and in agricultural use since at least 12 May 2006, the earliest date recorded by Google. Evidence of the building and its agricultural use for more than 10 years was purportedly confirmed by 10 signed letters from neighbours.
4. I am not persuaded that the appeal building had gained a lawful use. Examination of a series of Google Earth aerial photographs dating back to 2001 shows the following:
 - a) January 2001 – no building in the appeal building's present location.

- b) May 2006 – the roof, similar in outline to that now fitted to the present appeal building, of a building, or, according to the Council, just the roof of the mostly demolished 2003 appeal building, is close to the position of the present appeal building, but is clearly set at a different horizontal angle or azimuth.
 - c) January 2010 – as May 2006.
 - d) June 2013 – apparently as May 2006.
 - e) April 2015 – the roof is in a different azimuth position to that shown in the images for May 2006 to June 2013. The roof appears has been rotated anticlockwise such that the northwestern corner of the present building is some 7m from the 'L' shaped concrete block wall, about 2m less than shown on the May 2006 – June 2003 photographs.
5. From the above, it seems that the appeal building was erected in an unfinished form between June 2013 and April 2015. It is likely that the May 2006 to June 2013 aerial photographs show, as the Council suggest, the 2003 appeal building's roof placed upon the ground and not fixed on top of the present appeal building. Otherwise, the rotation of the position of the roof by several degrees cannot be sensibly explained. Far from showing 10 years' agricultural use of the present appeal building, it was not shown that the operational development to erect the uncompleted building had gained lawfulness. A planning permission was issued on appeal in January 2006 for the erection of a hay store and calving pens. That was subject to pre-commencement conditions. The Council said they had not been discharged. There was therefore no planning permission for the erection of an agricultural building.
6. As to the use of the building, it has to be shown that, on the balance of probabilities, the agricultural use of the appeal building started more than 10 years before the date of the application for an LDC on 15 March 2016 and had been carried out continuously for that period, to the extent that the Council could have taken enforcement action at any time in that period. The Court of Appeal case of *Thurrock BC v SSETR & Holding (CoA 27.2.02)* is authority for that position. The burden of proof in a legal ground of appeal such as this lies with the Appellant, (*Nelsovil v MHLG [1962] 1 WLR 404*). As well my serious doubts that the building itself was a lawful structure, Council officers who visited the farm in 2015 and 2016 concluded that the appeal building was not being used for agricultural purposes. It was being used to store building materials. Any significant break in an unlawful use would mean that the period in which to gain lawfulness would restart upon the re-commencement of that unlawful use. There was scant evidence to show that the Council's refusal to issue a certificate of lawful development for the agricultural use of the application building was unsound.

FORMAL DECISION

7. The refusal by Coventry City Council to issue a Certificate of Lawfulness for use of building as an agricultural barn at Clay Lane Farm, Clay Lane, Allesley, Coventry CV5 9DH was justified. A certificate of lawfulness is not issued.

John Whalley

INSPECTOR