The Planning Inspectorate

Appeal Decision

Site visit made on 13 March 2018

by Simon Hand MA

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

Decision date: 20 March 2018

Appeal Ref: APP/J1860/X/17/3176902
Field Ridge, Bromyard Road, Cotheridge, Worcester, WR6 5LP

- 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 P Burgoyne against the decision of Malvern Hills District Council.
- The application Ref 17/00135/CLPU, dated 2 February 2017, was refused by notice dated 7 April 2017.
- The application was made under section 192(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 the erection of two steel portal framed buildings.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Reasons

2. The site occupies a rural location along the Bromyard Road. It is common ground that it was granted planning permission (12/01640/FUL) for the change of use of two buildings to Class B1 Use. A plan has been provided showing those two buildings and the proposed area of parking and turning. Following that a new planning permission was granted (13/00160/S73) removing a condition relating to single business use but permitted development rights for subsequent changes of use were removed under condition 6. The lawful use of the site is thus B1 and it seems it is agreed the buildings were used for industrial processes in class B1(c).

3. The appellant therefore argues that he can exercise the permitted development rights granted by Part 7, Class H to erect two further industrial or warehouse buildings, subject to a number of limitations. The Council oppose this on two grounds. Firstly, the current use is not B1(c) but either B8 or sui generis as it involves storage of building materials associated with a roofing contactor's business. This use is unlawful and cannot benefit from permitted development rights. If I do not agree then a condition attached to 13/00160/S73 has still not been complied with. That condition stated "*The change of use hereby permitted shall not commence until an area has been properly laid out, consolidated, surfaced, drained and the spaces demarked on the ground within*

the application site for the parking of 9 cars and the loading and unloading of commercial vehicles and for cars and commercial vehicles to turn so that they may enter and leave the application site in a forward gear. These areas shall thereafter be retained and kept available for those uses at all times". The Council contend that as that condition has not been satisfied it is not possible to be sure that the limitation in H.1(f) that development is not permitted if "*the development would lead to a reduction in the space available for the parking or turning of vehicles*" can be met. The Council further say that having visited the site it is clear that no parking spaces are marked out and there is insufficient hardstanding for turning and unloading so this condition has clearly not been satisfied. Further work will be needed to meet that condition so it is quite possible that H.1(f) will not be met.

4. I agree that unlawful uses do not benefit from permitted development, but it is not clear the current use is unlawful. The Council opened an enforcement investigation some time age and in February 2015 wrote to the appellant (who owns the site) and the operator to inform them the Council were investigating an alleged breach of condition and that the current use of the land appeared to be a builder's merchant which was unlawful. The letters invited an application to regularise the use. As no application was made a further letter was sent in December 2015 threatening enforcement action. The officer's report for the LDC application was written in April 2016 and the Council's comments on the appeal were written in October 2017. It does not seem that by then an enforcement notice had been issued and as far as I am aware there has still been no enforcement notice issued.

5. The LDC application poses the question would the 2 proposed buildings be permitted development by Class 7, Part H as the site has a lawful use of B1(c). The answer to that is yes. I cannot make a determination as part of this appeal as to what the current use is or whether that amounts to a breach of condition. The Council can make such a determination by issuing an enforcement notice but have declined to do so. Consequently, there is no impediment to issuing the LDC because the Council suspect there might be a use on the site that might be in breach of a condition and so is unlawful.

6. I also cannot make a determination as to whether condition 7 attached to planning permission 13/00160/S73 quoted above has been satisfied or not. I would note however, that it requires amongst other things for the site to be marked out showing where 9 cars will be parked and how commercial vehicles can load, unload and turn so they do not need to reverse out of the site. These are simple matters of fact that can be seen on site. The failure of the Council to require a scheme for approval does not relieve the appellant of the obligation to still carry out the requirements of the condition. As I saw on site this has not been done as there appeared to be no markings on the hardstanding and although there would seem to be plenty of hardstanding much of it was taken up with outside storage and so is cnot available for parking or turning.

7. H.1(f) states that development is not permitted if it would lead to a reduction in the space available for parking and turning of vehicles. There clearly is space available on site for the parking and turning of vehicles and that space is not affected by the proposed new buildings. The site of the proposed new buildings is overgrown and on rising ground and would not be suitable for

parking or turning facilities without considerable excavation works, it would not seem likely to me that it was ever envisaged as part of the hardstanding for the two existing buildings. I do not think, therefore, that the erection of the proposed buildings would reduce the amount of space available on the site for parking and turning and so H.1(f) is not breached. Whether or not the Council might at some time in the future issue a breach of condition notice and whether that would require more hardstanding to be made available which might encroach onto the site of the proposed buildings is entirely conjecture. Thus on the date of the application it would seem to me the proposal was permitted development and I shall issue a certificate accordingly. However, that certificate is predicated on the lawful use of the site being industrial. If it transpires that was not the lawful use of the site on the date the application was made then the certificate would have no value.

Simon Hand

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 February 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: The lawful use of the site is for B1(c) uses and the operations proposed are permitted development if the development is within the curtilage of an industrial building or warehouse.

Signed

Simon Hand
Inspector

Date : 20 March 2018
Reference: APP/J1860/X/17/3176902

First Schedule

The erection of two steel portal framed buildings

Second Schedule

Land at Field Ridge, Bromyard Road, Cotheridge, Worcester, WR6 5LP

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 March 2018

by Simon Hand MA

Land at: Field Ridge, Bromyard Road, Cotheridge, Worcester, WR6 5LP

Reference: APP/J1860/X/17/3176902

Scale: not to scale

