



Appeal Decision

Site visit made on 30 January 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 29th February 2020

Appeal Ref: APP/Z3825/X/18/3213420

Longmead Farm, Marringdean Road, Billingham RH14 9HF

- 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 Bruce Stocker (S J Stocker and Sons) against the decision of Horsham District Council.
 - The application Ref DC/17/2820, dated 19 December 2017, was refused by notice dated 21 September 2018.
 - 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 use for agriculture and storage of agricultural machinery, feed and things associated with agriculture.
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Decision

1. The appeal is dismissed.
2. Notwithstanding the conclusions which I have reached on the basis of the application as submitted and the evidence provided, the pertinent issue is whether the condition on planning permission granted on 16 May 2002 (Council's Reference BL/57/02) (the 2002 consent) requiring it to be demolished can still be enforced. Although there is little evidence on this issue, it would seem possible the appeal building has never ceased to be a lawful agriculture building but this question is not before me. I have been asked to determine specifically whether there has been 10 years of continuous use and on that basis the evidence would suggest not
3. Although I am empowered to issue a certificate for any lawful use that is demonstrated and I am not limited to solely what has been applied for, in this case there is simply insufficient evidence to reach any conclusions other than on the specific question of a 10 year continuous use

Procedural Matters

4. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

5. The appellant was asked to provide a copy of the invoice from Shufflebottom Limited which was referred to in his submission. This has been provided and I have referred to it in my decision. As this information was before the Council when the application was made, there is no prejudice to them in my consideration of it.
6. The Council has submitted aerial photographs in response to my request for copies of the aerial photographs that are referred to in its officer report. I do not consider that the appellant would be prejudiced by my consideration of them.

Main Issue

7. The main issue is whether the Council's decision to refuse the application for a LDC was well-founded.

Reasons

8. The appellant has set out in his application form that he is seeking a certificate for an existing use. In this case it is necessary for the use as an agricultural building to be established for at least 10 years up to the date of submission of the application. This is the test which falls to be considered under 171B (3) of the Town and Country Planning Act 1990 (as amended) (the Act) and relates to 'any other breach of planning control'.
9. The appellant argues that the agricultural building was the subject of a planning condition requiring its removal which was attached to the 2002 consent. On this basis he contends that the building has been in use for at least 20 years. Furthermore, he has provided an Affidavit which refers to a shed which was constructed in 1979.
10. On the basis of aerial photographs, the Council contend that the central part of the building was not capable of being used between 2007 and 2012. This was assumed to be as a result of the fire damage which was noted in the planning condition attached to the 2002 consent. During that time the Council consider that the central part of the building was not able to be used because it had no roof.
11. The central section of the building currently has a roof, but the Council says that this part of the roof was repaired/reinstated post 2012. Aerial photographs are referred to which were attached to the Delegated Applications Assessment Sheet and which have now been submitted. These photographs clearly show that only part of the building had a roof in 2007 and 2012.
12. The appellant does not argue with the contention that there was no roof to the central part of the building between 2007 and 2012. Moreover, it is clear from the photographs provided by the appellants that the central part of the roof has been altered. I observed that whilst the uprights in the central section of the building appear to be consistent with the supporting frame of the rest of the building, the corrugated roof and its horizontal beams are of a different vintage.
13. There are a number of buildings on the farm which undermines the reference to 'the Shed' in the Affidavit because it is not clear which building this is. However even if I regard 'the Shed' as the building which is the subject of the appeal, the Affidavit makes no reference to repairs to the roof of the building

and does not clarify whether or not there was a period when the building was effectively incomplete and incapable of use. Whilst the Affidavit states that the Shed has not been used for any other purpose, in this case the point at issue is not whether there has been an intervening use but whether the building has been on site in its current form and in use for agricultural purposes.

14. The appellant also refers, in his statement in support of his application, to an invoice from the company that supplied and erected the building permitted under the 2002 consent, Shufflebottom Limited. However, again it only defines the situation at the time of the construction of the new building and not whether the building was on site and available for use in its entirety including during the period when the Council contends it was not available.
15. The responses to the LDC questionnaires are either insufficiently detailed to provide certainty regarding the continued use of the building or do not cover the relevant 10-year period.
16. In summary, the appellant argues that the Council has not provided any evidence to contradict the appellant's version of events. However, the aerial photographs bring into question whether the building has been on site and capable of use in its entirety for 10 years leading up to the submission of the application for a LDC. On the basis of this evidence and nothing to contradict it from the appellant, it has not been demonstrated on the balance of probability that the building has been in use for agriculture and the storage of agricultural machinery, feed and things associated with agriculture for 10 years.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use for agriculture and storage of agricultural machinery, feed and things associated with agriculture 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.

Sarah Dyer

Inspector