



Appeal Decision

Site visit made on 24 January 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6 March 2020

Appeal Ref: APP/C3240/C/19/3235570

Land adjoining Ercall Mill Bridge, High Ercall, Telford TF6 6BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Phillip Broome against an enforcement notice issued by Telford and Wrekin Council.
 - The enforcement notice was issued on 14 August 2019.
 - The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised erection of a building*.
 - The requirements of the notice are (1) Demolish the building shown marked blue on the attached plan and remove all materials arising from the land; and (2) Restore the land to its previous condition.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matters

2. On 17 November 2015 the appellant submitted a prior notification application to the Council of the proposed development of an agricultural building on the land subject to the enforcement notice, referred to by the appellant as Roden Farm. More than a month later, on 22 December 2015, the Council advised the appellant that its prior approval of the siting, design and external appearance of the building under the procedure afforded under Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') was required, and purported to give that prior approval of those matters.
3. The provisions of the Order however require the Council to state, within 28 days, whether or not its prior approval of those matters is required. The expiry of that time period without a response, and with no agreement to extend the period within which to respond, had enabled the appellant to proceed with the proposed building in accordance with the submitted details, subject to the proviso that the building was in fact to be development permitted by the relevant parts of the Order.
4. The appellant thus proceeded, reassured by the Council's correspondence on the matter, to construct the building in accordance with the limited details provided to the Council. The appeal arises because it has since appeared to the

Council that the building does not benefit from permitted development rights and requires planning permission, and its removal is sought.

5. The grant of prior approval, or the expiry of the relevant period without a decision, does not result in a permission for development that would not otherwise satisfy the terms of the Order. In this case, as well as meeting the general provisions of article 3 of the Order, the development must be found to meet the description found in paragraph A of Part 6 and not be excluded by paragraph A.1.
6. It is not uncommon for local planning authorities to express their views, when faced with a prior notification application, about whether a proposed development would amount to development permitted by Class A of Part 6 (or other classes of that and other parts of the Order). However, it is settled law that they cannot make binding determinations about this through the prior notification or approval process. Such a binding determination may be sought, but through the different mechanism of an application for a 'lawful development certificate' under section 192 of the 1990 Act. In this case the appellant recognises that the Council cannot make the barn permitted development if it is not. He states that he has however relied on their assurances on the matter, and has provided copies of correspondence to this effect.
7. That correspondence is not germane to the issues I have to determine in this appeal. In the absence of any prior binding determination by the Council about whether planning permission is required for the building, my task on the appeal on ground (c) is to make that determination. That determination is a matter of law and there is no opportunity for the exercise of discretion.

The appeal on ground (c)

8. On ground (c) the appellant seeks to show that the building benefits from Part 6, Class A permitted development rights and thus that its construction does not constitute a breach of planning control.
9. Development permitted by Class A includes the carrying out on agricultural land, comprised in an agricultural unit of 5 hectares or more, of works for the erection of a building which is reasonably necessary for the purposes of agriculture within that unit. A number of exceptions apply. Development is not permitted by Class A if, amongst other exceptions, it would involve the provision of a building not designed for agricultural purposes (para A.1(d)) or would consist of the erection of a building to be used for the accommodation of livestock within 400m of the curtilage of a protected building (para A.1(i)). In order to make out this ground of appeal the appellant needs to show, to the standard of probabilities, that the building satisfies the description in Class A and does not fall within any of the exceptions of paragraph A.1.

The agricultural unit

10. The land at Roden Farm extends to some 16 acres (around 6.5 ha) and there is no dispute that it has been in agricultural use at all material times. At the time of my site visit it consisted of a single large field and contained around 50 sheep. The prior notification application erroneously identified the size of the agricultural unit as being 200.00 sqm (actually the floor space of the building) but with the site address being the 16 acres alongside the River Roden.

Although the appellant's company also operated, at the time of the prior notification, another farm some 20 miles away, the relevant agricultural unit is Roden Farm, which is an agricultural unit exceeding 5 hectares in size.

Reasonably necessary and designed for agricultural purposes

11. It is appropriate to consider the design and the reasonable necessity of the building together because the relevant considerations overlap to a certain extent. The relevant question, as identified by the Council, is the reasonable necessity for the particular building that is the subject of the notice. The Council's purported approval of the design and external appearance of the building on 22 December was of no legal effect. In the circumstances I do not consider that the Council's previous agreement to the design and external appearance can be determinative of the question whether the building has been designed for agricultural purposes. The Council states that no elevation drawings were provided as part of the application.
12. The building was described in the appellant's prior notification as a 'traditional barn' of brick and timber construction with plain grey roof tiles. The notification form indicated a building 30m long, 6m wide, with a height of 5m to the eaves and 8m to the ridge. A siting plan subsequently submitted however shows the L-shaped building now constructed that differs from those dimensions (by virtue of that L-shape. The dimensions given by the appellant in response to a planning contravention notice ('PCN') in around April 2017 also differ from those given on the notification form).
13. Although described as a 'traditional barn', the appearance of the building departs from the traditional openings commonly found in agricultural buildings. The 5 pedestrian door openings are situated around 3 brick courses above ground level, above the damp-proof course installed, in contrast to the level ground floor openings usually found of any barn entrance and as seen on a number of the photographs of other barns in the area supplied in the course of the appeal by the appellant. A number of window openings appear that are rather larger and set lower than other barn windows; for example, the comparison of the south-eastern elevation with the corresponding barn at Edge Farm, whose 3 smaller windows are set several brick courses higher than at Roden Farm.
14. The south-western side of the building includes 3 large (approx. 6m wide) gable-fronted openings at full height, although partly boarded over at the time of my visit. Photographs supplied by the Council show that, before the enforcement notice was issued, two of these openings arose above the lower brick courses, consistent with the height of the damp proof course. The other one appears to have had a level access as would be expected of a barn entrance or other vehicular access to a building such as a domestic garage.
15. The appellant describes the 3 large openings as being for clear access for modern machinery and the 3 bay design working perfectly for the storage of feed and hay. However, although since removed, with the original construction of the raised brick courses across the base of two of these openings, only one of them appears to have been constructed with vehicular access in mind.
16. The appellant states that hay can be stored for 3 years if not used or sold, and needs to be stored on a 'first in first out' basis so some flexibility is required in the storage building for access to the various different cuts. A 3 bay design is

therefore said to be optimum for this process. The appellant does not explain how this optimal design results from 2 of the bays not having been designed for access by vehicles, or how this results in storage on a 'first in first out' basis. The raised brick courses at 2 of the 3 bay openings appear to me to have seriously compromised the intended function of the agricultural purposes for which the building was said to be designed.

17. At the time of the prior notification application, the appellant described the building as being required for the purposes of livestock sheltering and feed storage. These purposes were re-confirmed in answer to the PCN in around April 2017. The appellant now states that sheep have been on the farm for several years, but at the time of the PCN the land was said to have been used for horse grazing since 2010. It was however then proposed to keep sheep on the land, as has since happened.
18. The building was mostly empty at the time of my site visit, with some hay bales stacked up and a few other items. The appellant explains that owing to the ongoing enforcement proceedings he has not completed the building, for example by not installing a concrete floor, and that the business plans have been slowed. The barn has not been filled with hay because of the prospects of either demolition or the installation of a floor.
19. The appellant explains that, allowing for rotation and access to storage and some setback from the entrance, the maximum storage capacity of the building is 500 cubic metres. It is anticipated that 2 cuts of hay per annum each of some 180 cubic metres will be available at Roden Farm, and the size of the building can accommodate this as well as agricultural vehicles and machinery that need to be kept indoors.
20. It is not stated where, other than this field or in the barn itself, the sheep would be kept during the period of the year needed to generate the 2 hay crops that are anticipated. Nonetheless on the evidence before me I have no reason to doubt that hay crops or other agricultural products (such as the discussed arable options) could be generated to require the capacity afforded by this building. Therefore I do not find that it is unnecessary solely on account of its size. Nor do I find that the quality of the materials or workmanship are in themselves unreasonable. I am however unable to reconcile the size and stated purposes of the building with its design, with only one level ground floor opening as originally constructed, that would not readily allow for the proposed 'first in first out' hay storage except by an inefficient use of the available space.
21. Taking all these matters together therefore I am unable to conclude that the building as constructed prior to the Council's issuing of the enforcement notice did not require planning permission on account of its design and function. It was not reasonably necessary for the storage of feed because its design did not adequately facilitate that use in the stated way proposed. Particularly because of its raised openings, I find that it was not designed as a traditional barn for agricultural purposes and was not reasonably necessary for the purposes of agriculture within the unit.

Distance from protected buildings

22. The building was stated in the prior notification application as being for the housing of livestock (more particularly described as 'sheltering') and this intended purpose was restated in response to the PCN in around April 2017.

The appellant records that he was advised by the Council that the 'livestock' 400m restriction would not apply as the primary use of the barn was for other general purposes rather than for any emergency use for sick animals. The appellant does not deny that the building is intended for the temporary sheltering of livestock in emergency situations. He questions whether one sick sheep housed in a barn for one night of the year means that the barn has to be approved for livestock housing.

23. That being the case, the building is plainly intended for the accommodation of livestock, even if only in emergencies and even if that use is not one of the primary purposes of the building. Although emergencies are by their nature unpredictable, in a farming context they are not highly improbable or unforeseeable. No other buildings are available on the holding for the sheltering of livestock. As this building is intended for such temporary shelter, I find that it consists of a building to be used for the accommodation of livestock. If it lies within 400m of the curtilage of a protected building, it is not permitted by Class A of Part 6 of the Order.
24. The parties dispute whether the building is nonetheless within 400m of a protected building. The appellant suggests that the nearby Mill House and Marl Cottage are occupied in connection with other agricultural units. I have no evidence that this is the case, but the Council additionally refer to the property at Mill Cottage, whose protected status is not disputed by the appellant. Without further information I am unable to find that the appellant has discharged the burden of proof to show that the building is not within 400m of a protected building.

Conclusion on ground (c)

25. For the above reasons I consider that the building does not benefit from permitted development rights and that planning permission is required. The appeal on ground (c) fails.

The appeal on ground (f)

26. The purpose of the notice is wholly to remedy the breach of planning control, and the question on ground (f) is whether the steps required by the notice exceed what is necessary to achieve that purpose. The appellant has suggested various modifications, including blocking up some of the openings and screening the building with trees. Additionally, the appellant made a further prior notification application to the Council recently that proposes a tin-clad building in place of the one that exists. None of these suggestions would achieve the purpose of the notice, however, which is to remedy the breach of planning control by removing the building and restoring the land to its condition before the breach took place. No lesser steps would achieve that purpose and accordingly the ground (f) appeal fails.

The appeal on ground (g)

27. Depending on when the notice comes into effect, the appellant seeks further time to comply with its requirements owing to inclement ground conditions except in the summer months. It is said that the stipulated 4 months would be adequate if starting from the beginning of May. The Council, although remaining of the view that 4 months is sufficient time, do not dispute the appellant's assessment of the ground conditions. I find that, given the date of

this decision letter, the period for compliance falls short of what should reasonably be allowed and therefore I extend the period for compliance to 6 months. I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

28. It is directed that the enforcement notice be varied by the deletion of 4 months and the substitution of 6 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR