

Appeal Decision

by T Shields DipURP MA MRTPI

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

Decision date: 29 May 2020

Appeal Ref: APP/A0665/X/20/3246214

Land at Ball Lane, Kingsley, Frodsham, Cheshire

- 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 Steven Oultram against the decision of Cheshire West and Chester Council.
 - The application Ref 19/00414/LDC, dated 31 January 2019, was refused by notice dated 15 October 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is minor changes to the existing front elevation of the existing agricultural building approved under 05-1619-FUL to improve animal welfare and security on site.
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Decision

1. The appeal is allowed and attached to this decision is a LDC describing the existing development which is considered to be lawful.

Procedural Matter

2. The agricultural building subject of the appeal was granted planning permission in 2005 (Council Ref. 05-1619-FUL). The drawings relevant to this appeal are those that were approved in 2005 together with a series of recent photographs which show the subsequent changes to the original design and construction of the front elevation (partial infilling with concrete block and timber boarding, leaving a full height entrance).

Reasons

3. The works carried out are not inconsequential building works and constitute "development" as defined in section 55 of the Act.
 4. On agricultural land comprised in an agricultural unit of between 0.4 and 5 hectares in area, Article 3 and Class B(a), Part 6, to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the Order) grants planning permission ("permitted development") for the extension or alteration of an agricultural building where the development is reasonably necessary for the purposes of agriculture within the unit.
 5. The Council's sole reason for refusal of the application was that the development was not permitted development under Class B(a) since it was not subject of a prior approval application in respect of its external appearance, as required by condition B.5(2)(a) of Class B.
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6. However, condition B.5(2) only relates to extension or alteration of buildings that are situated on article 2(4) land. Such land is listed in Part 2 of Schedule 1 to the Order (National Parks and adjoining land and the Broads). Given that the building is not located in a National Park, adjoining land or the Broads, the alterations are not in conflict with condition B.5(2).
7. The Council do not point to any other conflict with the Order and there is no other evidence before me which would lead me to take a different view. Hence, I find that the development carried out was permitted development within Class B(a), Part 6 of Schedule 2 to the Order.

Conclusion

8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of minor changes to the existing front elevation of the existing agricultural building approved under 05-1619-FUL to improve animal welfare and security on site at Ball Lane, Kingsley, Frodsham, Cheshire was not well-founded and that the appeal should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 31 January 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations were permitted development within Schedule 2, Part 6, Class B(a) of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Thomas Shields

INSPECTOR

Date 29 May 2020

Reference: APP/A0665/X/20/3246214

First Schedule

Minor changes to the existing front elevation of the existing agricultural building approved under 05 1619-FUL to improve animal welfare and security on site as shown on the submitted application drawings and photographs.

Second Schedule

Land at Ball Lane, Kingsley, Frodsham, Cheshire

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 29 May 2020

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Not to Scale

