The Planning Inspectorate

Appeal Decision

Site visit made on 26 May 2020

by Thomas 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/M0655/X/19/3240705
Broseley Hall Farm, Broseley Lane, Culcheth, Warrington, WA3 4HP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Gerald Lander against the decision of Warrington Borough Council.
- The application Ref 2019/35363, dated 8 July 2019, was refused by notice dated 4 September 2019
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought is described as: "Historic storage of hay bales on hard standing on area of lime store and subsequent temporary storage of road planings".

Decision

1. The appeal is dismissed.

Preliminary matters

2. The appellant submitted a revised location plan[1]. Different to the original location plan it approximately doubled the main site area within the red line, and included the access track. This is the plan the Council made its decision upon and I have also done the same.

3. On the application form submitted to the Council, the appellant appears to have conflated use (for storage) and operational development (the area of hardstanding).

4. Section 4 of the application indicates that the LDC is sought for an existing use which is described in section 5 as *"historic storage of hay bales on hard standing on area of lime store and subsequent temporary storage of road planings"*. Section 6 gives the grounds for an LDC as being that the use began more than 10 years before the date of the application. All this points to an application seeking a certificate for an existing use for storage – that being use for storage of hay bales, lime and road planings.

5. In giving a reason why an LDC should be granted, however, the answer at section 6 states it is because *"The Lawful Development Certificate should be granted for the hardstanding as it has been in existence since 1996",* but the provision of a hardstanding is operational development and not a use of land. For an LDC to be issued for operational development such as that, it would only be necessary to show that 4 years had elapsed since the hardstanding was

[1] Lime store location plan Rev A

substantially complete (s171B(1) of the Act) – but such a certificate would not include any use of that surface.

6. Section E of the appeal form gives a description of what a certificate is sought for and repeats the description of the existing use set out at in section 5 of the application form. As to the actual use subsisting at the time of the application Section E states: *"lime store and subsequent temporary storage of road planings"*.

7. The Council has clearly treated the application as relating to use; for storage of hay bales, lime and road planings, and not operational development. That seems to me to be correct having regard to what was applied for on the initial application form and I have therefore dealt with the appeal on this basis.

8. In appeals against a refusal to issue an LDC, the onus is on the appellant to make out his case on the balance of probability.

Reasons

9. In order for this appeal to succeed, the appellant needs to show that no enforcement action could be taken against the use (s191(2)(a) of the Act), and that it does not contravene any requirements of an enforcement notice in force (s191(2)(b)) at the date of the application. I have been advised that no enforcement notice was in force at the date of the application and thus the latter requirement is met.

10. With regard to the first requirement, the appellant's case is that enforcement action could not be taken because the time for taking enforcement action has expired. For this use, section 171B(3) of the Act sets out the period for taking action as 10 years beginning with the date of the breach. Thus, for this appeal to succeed it would be necessary to show that the use of the site for storage began more than 10 years before the date of the application; continued throughout a 10 year period (such that the Council could have taken action against it at any time had they visited the site); with no material change thereafter.

11. The appellant suggests that the deposits of lime on the site were historically used by the water pumping station to treat the pumped water. However, that is very unlikely. As is made clear in the letter submitted by Mr Brassington, the lime deposits (calcium carbonate) were a precipitated material from an industrial process in which hard water is softened by treating it with sodium carbonate. As such, the lime deposits were not a primary use of land for storage, they were simply a waste by-product, being an ancillary element of an industrial activity (that being the primary use) and which incorporated the area of land used for deposition of lime.

12. The creation and existence of the lime deposits may have been engineering or other operations comprising "operational development" which could have gained immunity after 4 years had elapsed. However, as I noted on my site visit and from the appellant's own evidence, much if not all of the lime has actually now been excavated and re-located forming new mounds outside of the red line indicated as the site area on the application plan. Furthermore, while the lime over the years became part of the land form, its small scale excavation and use by the Broseley Hall Farm to treat the farmland is in my

view a very small ancillary activity serving the primary use of agriculture. It does not amount to a primary use of land for storage.

13. The removal of worn arisings and their deposition in area 'B' indicated in the appellant's Figure 2 to create a hardstanding around 1996 is, as explained previously, not a use of land. The appellant states this area has since been used to store hay bales. However, there is no photographic or other evidence to support his claim and it is refuted by a local resident who has lived opposite the site since 1972 and states bales have only been present there for about 18 months prior to the date of the LDC application. Given this stark conflict in the parties' evidence I am unable to find on the balance of probability that hay bales have been stored there for more than 10 years.

14. It is clear from the appellant's own evidence that more recently, within the last 2-3 years, he has permitted the use of the site for the importation and recycling/processing of materials for use in road surfacing operations in the Cheshire area. That is clearly a new chapter of industrial use of the site which does not and has not formed any part of a storage use of the land.

15. Overall, the appellant's evidence is inadequate and additionally contradicted by other evidence. It fails to show any historic use of the site for storage let alone a continuity of that use over a ten-year period. The appellant has not made out his case and the appeal must fail.

16. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the use of the land for storage of hay bales, lime, and road planings was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

Thomas Shields

INSPECTOR