



Appeal Decision

Site visit made on 30 May 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/E3715/X/19/3236796

Land opposite junction to Monks Kirby off the Fosse Way

- 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 Simon Grogan against the decision of Rugby Borough Council.
 - The application Ref R19/0906, dated 3 June 2019, was refused by notice dated 28 August 2019.
 - 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 siting of two mobile structures for agricultural purposes.
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Decision

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

Procedural Matter

2. The application form sought an LDC for two mobile structures used solely in connection with the agricultural use of the land. The decision notice issued by the Council referred to retention of 2no. mobile structures used for forestry purposes. However, the Town and Country Planning Act says "agriculture" includes...osier land. I have therefore considered the appeal on this basis.

Background and Main Issue

3. The Council refused the application on the basis that the erection and use of the mobile structures does constitute development as defined under Section 55 (1) of the Town and Country Planning Act 1990 (the 'Act') as other operations. The Council assert that insufficient evidence has been provided to support the buildings or their uses falling without Section 55 (2) (e) of the aforementioned act, so the structures and their uses are not considered to comply with this exemption as defined in the aforementioned Act.
4. The Council also held that the structures and their uses as outlined in the supporting documents do not comply with the requirements of Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended, and therefore cannot be deemed to be permitted Development and would have required planning permission.
5. The main issue is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

6. The appellant applied for a Lawful Development Certificate (LDC) on the basis that the structures sited on the land fall outside the definition of development as no building work or material change of use has been made. To succeed on this appeal, the appellant must prove on the balance of probability that the refusal of an LDC was not well founded. This will turn on whether: (i) the siting of the structures is development. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) under S191 of the Act. The proposed development must be considered in the light of the facts and the law.
7. On the land are two mobile structures, one is a metal store that is used for the secure storage of tools and equipment to maintain the land and for the harvesting / maintenance of the willow grown there. The second is a wooden cabin which provides space for the sorting / storing of willow over the winter months and provides shelter from the weather. Water is also harvested via guttering. I saw that both structures are on wheels and appear moveable.
8. S55 (1) sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The Council has assessed the proposal against 'other operations'. Other operations comprise operational development which results in some physical alteration to the land with some degree of permanence.
9. S336(1) defines a building as including 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. Case law has established that there are three primary factors which should be considered in determining what constitutes a building; size; permanence; and physical attachment. No one factor is decisive.
10. Both structures would have been constructed off-site and delivered to the site in their finished form. Both structures are of modest size and no building work appears to have been required on site. The wheels rest directly on the grass and neither structure would be physically attached to the ground but would be held under their own weight. Both structures have a tow bar and could be easily moved subject to the availability of a suitable vehicle. From my inspection of the site neither structure appears to have been in one place for any significant length of time given the condition of the grass beneath. As such, I consider that the mobile structures do not constitute 'other operations' and are not 'buildings' for the purposes of the Act.
11. S55(2) states that the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land... (e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used.
12. It is not disputed that the appellant is harvesting willow from the site, nor is it disputed that the buildings are being used in connection with the harvesting of willow and I saw nothing during my visit to the contrary. Within the metal store items were being stored which could reasonably be used in connection with the harvesting of willow, such as a cutting equipment and willow was being stored within the wooden cabin.

13. The Council assessed the proposal against Schedule 2, Part 6, Class E of the GPDO. The Council asserts that the small scale of the operation does not justify the amount of storage and workspace created by the two structures and that the structures are sited within 25m of Fosse Way, a classified road. However, for the reasons given above, I conclude that no development of the land has occurred. As such, the structures do not fall to be considered against Schedule 2, Part 6, Class E of the GPDO.
14. Thus, for the reasons given above I conclude that the mobile structures do not constitute buildings and no material change of use would arise from the use of the structures which is for the purposes of agriculture. Therefore, I conclude that the proposal does not amount to development as defined by section 55(1) of the Act. As such, planning permission is not required and the siting of the mobile structures is lawful for planning purposes.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusals to grant a certificate of lawful use or development was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Savage

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 3 June 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Section 55(2)(e) of the Town and Country Planning Act 1990 as amended says that "the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used" shall not be taken to involve development.

Signed

M Savage

Inspector

Date 19 June 2020

Reference: APP/E3715/X/19/3236796

First Schedule

The siting of two mobile structures for agricultural purposes.

Second Schedule

Land opposite junction to Monks Kirby off the Fosse Way

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 19 June 2020

by M Savage BSc (Hons) MCD MRTPI

Land at: Land opposite junction to Monks Kirby off the Fosse Way

Reference: APP/E3715/X/19/3236796

Scale: NTS

