



Appeal Decision

Site visit made on 26 May 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Appeal Ref: APP/W1850/X/19/3232067

Green Gables, Ledbury, Herefordshire HR8 2PZ

- 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 Mrs Ann Coppock against the decision of Herefordshire Council.
 - The application Ref 184082, dated 31 October 2018, was refused by notice dated 9 May 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 for the keeping of animals, namely horses and rare breed poultry, ducks, geese and turkey.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Ann Coppock against Herefordshire Council. This application is the subject of a separate Decision.

Main Issue

3. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the development would be lawful if begun at the time of the application for the certificate. The planning merits of the development are not relevant to the appeal and there is no planning application before me. Accordingly, the main issue is whether the Council's decision to refuse the application was well-founded.

Reasons

4. The Council argues that there has been a material change of use of the land since 2013 involving a change from the use of the land for keeping horses to a mixed use of the land for keeping horses and poultry. The initial question is whether the land has been used for the keeping of horses and poultry prior to the 10 year period before the application was made.
5. The only direct evidence comes from that submitted by the appellant. This takes the form of 11 statutory declarations, including two from the appellant herself, one from Mr Chris White who has helped the appellant with keeping birds on the site, with the rest coming from friends, neighbours and acquaintances familiar with the site.

6. The Planning Practice Guidance says that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
7. The best evidence is usually from the owner or occupier who will be in the best position to say exactly what has happened on the site over the last 10 years. Mrs Coppock's evidence is clear in saying that there has not been a year since 2008 when there were no ponies or ducks, chickens, geese and turkeys kept on the land. This has not been refuted by the Council. The supporting evidence in the way of photographs, prize badges and the sworn statements of others reinforces that, on the balance of probabilities, animals, namely horses and rare breed poultry, ducks, geese and turkey have been kept by the appellant for at least for the 10 years preceding the date of the application.
8. However, whilst the submitted evidence provides specific details in relation to the few ponies kept on the land over the requisite period, it is lacking in specifics as to numbers of birds present on the land at any one time, where on the land they were kept or what physical structures and how many were present at any one time. Accordingly, I am unable to form a clear picture of the scale and character of the use over time, or whether all the animals and birds were kept over the whole site, or whether that use was material in respect of the whole site.
9. Moreover, a change took place in 2013 with the introduction of the emus, and then rheas (the ratites). It is clear from the evidence that the keeping of these larger birds took place alongside the keeping of the other animals referred to above. The Council says that a material change of use took place in 2013, when the larger birds were introduced, so that there was a break in the period of continuous use of the keeping of horses and poultry to a mixed use involving the keeping of ratites as well as the horses, rare breed poultry, ducks, geese and turkeys.
10. In terms of the nature of the use, the ratites appear to have been kept for the same reasons as the other birds, namely for breeding and showing, with some incidental meat and egg sales. Although the birds are considerably larger than the largest of the other birds, the turkeys, I consider that the larger size alone does not amount to a material change. The Council points to the need for the birds to be housed in pens formed of substantial fencing, and the appellant's photographs taken in 2015/2016 and in 2018 show a series of linked metal Heras fence panels, about 2m high, which make a significant impact on the appearance of the land.
11. An intensification of a use, or a change in the way that use is carried out may amount to a material change of use, if the character of the use has changed significantly. The extensive amounts of fencing enclosing large birds appear to be very different in character from an open field, grazed at will by ponies and fowl, and is in stark contrast to the appearance of the land shown in the aerial photograph of the site taken in 2014 submitted by a neighbour, which appears to show 3 ponies and a few unpenned white birds and few structures or enclosures near to the roadside boundary.

12. As a result in the change brought about by the keeping of the ratites on the land, there may have been a material change of use during the relevant period. The evidence is not sufficiently precise and unambiguous for me to be able to be able to establish a full picture of the use prior to 2013 or to establish whether there has been a material change in the use of the land since that time. Thus, on the balance of probabilities, I am unable to conclude that the use claimed is lawful.

Conclusion

13. I find that the Council's decision was well-founded, and that the appeal should be dismissed.

JP Roberts

INSPECTOR