



Appeal Decision

Site visit made on 19 October 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal Ref: APP/C3240/X/20/3255466

Roden Farm, Ercall Mill Bridge Junction to High Ercall, High Ercall, Telford TF6 6BE

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Phil Broome against Telford and Wrekin Council.
 - The application Ref TWC/2020/0262 is dated 16 March 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is erection of new green tin sheeted agricultural building.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant appealed against a failure to give notice within the prescribed period. The Council determined the application following the submission of the appeal, on 9 July 2020. The Council certificate sets out that the Council would have refused the application on the basis that the proposed development is development in respect of which an enforcement notice served pursuant to S172 of the Town and Country Planning Act 1990 (as amended) is currently extant and that the proposed use or development is not reasonably necessary for the purposes of agriculture.

Main Issue

3. Whether, if the authority had refused the application its refusal would have been well-founded.

Reasons

4. An application under S192(1)(b) of the Act¹ seeks to establish whether any operations proposed to be carried out in, on, over or under land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the

¹ Town and Country Planning Act 1990 (as amended)

- applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
5. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
 6. The Council issued an enforcement notice on 14 August 2019 in respect of the unauthorised erection of a building. This was then the subject of an appeal, reference APP/C3240/C/19/3235570 which was dismissed, and the enforcement notice upheld with a variation. The enforcement notice has not been complied with to date and the building remains in situ. The appellant raises concerns with some of the conclusions reached by the Inspector, however, I am not aware that the Inspector's decision has been challenged through the courts. Significantly, it is not disputed that there is an enforcement notice in force on the site which requires the demolition and removal of the building currently in situ and restoration of the land.
 7. The appellant states that the building proposed under the LDC is a replacement barn to be erected after the old barn has been removed and is not a retrospective application for the existing barn. S181 of the Act sets out that compliance with an enforcement notice does not discharge the notice. However, it does provide that where a planning permission is subsequently granted for the same development or some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the permission.
 8. In this case, if the appellant complies with the requirements of the notice by demolishing the building, removing the resultant materials from the land and restoring it, any subsequent works would be new development which could, subject to compliance with the relevant parts of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO), be permitted and could therefore be lawful. So long as the appellant complies with the enforcement notice before commencing development under the GPDO, the fact that the development is very similar to the development being enforced against is not relevant.
 9. Part 6, Class A of the GPDO permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of works for the erection of a building...which are reasonably necessary for the purposes of agriculture within that unit. Such development is granted subject to the developer, before the beginning of the development, applying to the local planning authority for a determination as to whether the prior approval of the authority will be required.
 10. The appellant submitted an application, dated 10 September 2019, for prior notification of a proposed agricultural building under Schedule 2, Part 6 of the GPDO. The building is described as a replacement steel framed barn with tin sheeted sides to replace existing brick and timber structure, grey roof tiles and is proposed for feed and farm machinery storage.
 11. The Council wrote to the appellant on 9 October 2019, more than 28 days following the date on which the application was made, declining to determine

the application for prior approval for the siting of an agricultural building on the basis that it would require the Council to retrospectively determine a planning application which would permit development that was subject to an extant enforcement notice. However, applications for prior approval are, by definition, not applications for planning permission and so the Council had no power to decline to determine the application.

12. Where prior approval is deemed to be granted, the development subsequently undertaken is only lawful if it is carried out in accordance with the submitted plans and it is in fact Permitted Development (PD). In order to be PD, the land to which the application relates must be agricultural land comprised in an agricultural unit of 5 hectares or more. Paragraph D.1 in Part 6 of the GPDO defines "agricultural land" as land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden. Although the Council describes the appeal site as 'a parcel of agricultural land' in its appeal statement, this does not mean it meets the definition set out in Paragraph D.1 of Part 6 of the GPDO. There must be an existing agricultural use and this must be a business, not a hobby.
13. In relation to the previous appeal at the site, the Inspector stated within paragraph 10 of her decision letter that 'there is no dispute that it (the land at Roden Farm) has been in agricultural use at all material times'. The Inspector's conclusion on this matter would have been based upon the evidence submitted by the parties and the fact that this matter was not, at the time, disputed. This is not, in my view, a binding determination that the land is agricultural land for the purposes of Paragraph D.1 of Part 6 of the GPDO, particularly since, whether the land is agricultural land for the purposes of Part 6 of the GPDO is now in dispute.
14. The appellant states that he purchased the land in 2009 and it has been in continuous agricultural use prior to the purchase and since. The farm operating company is identified as Nilsoft Ltd and the land is registered with the Rural Payments Agency (RPA) for farm single payment and has a Parish Holding Number 35/225/0245. The appellant advises that since 2015 sheep have been grazed and that baling was due to start in 2017 but has been put on hold due to enforcement activity.
15. The Council, however, states that the appellant has not demonstrated that any agricultural use of the land is for a trade or business and that from the information available it considers this is highly improbable. Consequently, the Council considers it unlikely that the land can be classed as agricultural land as defined under paragraph D.1 of Part 6 of the GPDO.
16. The appellant submitted an Agricultural Appraisal (AA) produced by Charles Holt, dated 5 August 2020, in support of the appeal which sets out that Mr Broome's family farm was at Edge Farm, which was sold in 2017 in order to release capital. Edge Farm comprised 44 acres and was run as a sheep and hay producing holding with 20 acres of winter wheat. Mr Holt concludes that Mr Broome is a farmer and that the land he occupies at Roden Farm is agricultural land. However, the evidence submitted generally supports the fact that Edge Farm was operated as a business, not Roden Farm. Indeed, it is confirmed in the report that all sheep were sold in 2017 prior to the completion of the sale of Edge Farm and that Mr Broome grew winter wheat at Edge Farm but to date,

this has not continued at Roden Farm. Whether or not Mr Broome is a farmer is not the test as to whether the land in question would meet the requirements set out in the GPDO.

17. Much of the documentation provided by the appellant relates to the Edge Farm address. More recent documentation relates to an address known as 'The Birches'. Although the documentation shows farm machinery has been hired, it doesn't indicate where the machinery has been used or for what purpose and photographs showing farm machinery don't appear to have been taken at the appeal site.
18. An extract from a Sage Line 50 Financial Controller document entitled 'Grass and Hay sales' has been submitted in support of the agricultural use of the site. The document includes entries between November 2013 and August 2018, however, the details contained within the document relate to barley and wheat, which the appellant doesn't grow at Roden Farm, as well as hay and includes detail of '20 acre wheat'. This points towards the details relating to parcels of land other than the appeal site.
19. A letter provided by G Thomas states 'we have grazed sheep with Phil Broome at both Edge Farm and Roden Farm over the last few years'. However, no detail is provided as to what this entailed. The appellant has provided two documents entitled 'movement document under the Sheep and Goats (Records, Identification and Movement)(Wales) Order 2015, dated 20 October 2018 and 2 December 2018 respectively. The address of Mr Thomas, which he explains he has been farming for 23 years with his wife, is detailed as Bethesda, which is a significant distance from the appeal site. The sheep are identified as being in Mr Thomas' ownership on the movement records. Given the likely cost of moving animals between the two sites, I consider it highly unlikely that Mr Thomas would have used the appeal site on a regular basis.
20. I don't doubt that sheep have grazed at the site. Indeed the previous Inspector saw sheep during her site visit and photographs provided through the appeal also show sheep grazing the land at different times. Nevertheless, the presence of sheep within the land is not itself evidence that the land has been used for the purposes of a trade or business. As confirmed within the AA, Mr Broome sold his sheep prior to the sale of Edge Farm. A Sage Line 50 Financial Controller document entitled 'Grazing at Roden Farm' has been submitted which indicates an invoice issued on 1 November 2018 for grazing. There are no other transactions identified within the Sage extracts specifically for Roden Farm.
21. The appellant has submitted a series of invoices from Nilsoft Limited, addressed as 'The Birches'. The invoices dated 09 July 2019, 29 October 2019 and 23 April 2020 are to G Thomas for grazing and those dated 8 September 2020 for 'standing grass' and 26 September 2020 for 'grazing' between August 9 to November 9 are to B Powell. However, the invoices do not detail the land to which the invoices relate. Had the appeal site been used for grazing between 9 August 2020 and 9 November 2020, I would expect to have been able to see sheep, or some other livestock animal, within the photographs taken by the Council, dated 8 October 2020 or during my site visit. However, bales were present within the site, which would suggest that the site hadn't been grazed but rather had been used to produce silage or haylage.

22. The Council has stated that over the past year [sic], the use of the building has been negligible and has provided photographs which show the building being used for the storage of building materials, including bricks and breeze blocks. The appellant suggests that this is in connection with works required at the building. However, the building that is currently in situ is required to be demolished. As such, I consider it unlikely that the appellant would restore the building just for it to be demolished. Furthermore, given the construction of the building is in brick, wooden cladding and roof tile, I consider it unlikely that the breeze blocks stored in the building would be required for its repair. It is more likely that the building materials were being stored for use off site which points towards the building being used for purposes other than agriculture. A planning unit comprising a mixed use of agriculture and some other primary use does not benefit from Part 6 rights.
23. The appellant has provided a policy schedule for Smallholders Bespoke Commercial. However such documentation is not evidence that the appeal site is used for the purposes of trade or business. It is not unusual for owners of smallholdings operated on a hobby basis to secure insurance since liabilities would still need to be covered.
24. The Council has provided information from Companies House which identifies the nature of the business as 'Other business support service activities not elsewhere classified'. The Council has also drawn my attention to the appellant and his company being the applicant for a housing development in Telford, reference TWC/2018/0478. This leads me to conclude that although the company Nilsoft Ltd is identified as a business for the purposes of payments by the Rural Payments Agency and has a CPH number and employers' liability insurance, the main purpose of the business is unlikely to be agriculture.
25. The appellant has modified the design of the building in an attempt to address the points raised by the Inspector in relation to the previous appeal. In particular, it is proposed that the openings of the building would be level with the field; there would be no windows or doors in the building except three large front openings; and the barn would not be used for the accommodation of livestock. However, since I have found that the land does not comprise agricultural land for the purposes of applying Part 6 of the GPDO, the appeal cannot succeed on the basis of such modifications and it is therefore unnecessary for me to reach a conclusion as to whether the proposed building is reasonably necessary for the purposes of agriculture.
26. Whilst prior approval has previously been granted on the site, the prior approval procedure set out under Part 6 makes no provision for any determination to be made as to whether the development would be PD. Any determination by a Council in this regard, either in relation to the appeal site or buildings elsewhere, cannot therefore purport to decide that question.
27. The appellant has failed to demonstrate, on the balance of probabilities, that at the time of the application the appeal site was agricultural land comprised in an agricultural unit which was so used for the purposes of a trade or business, as required by Class A of Part 6 of the GPDO.

Conclusion

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a new

green tin sheeted agricultural building was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Savage

INSPECTOR