The Planning Inspectorate

Appeal Decision

Site visit made on 16 March 2021

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 13 April 2021

Appeal Ref: APP/Y3615/X/20/3261684
Land known as Scouts Farm, West of A3, Grove Heath Road, Ripley, Surrey GU23 6ES

- 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 Tom Senior (Winter Park Farming), against the decision of Guildford Borough Council.
- The application Ref 20/P/00922, dated 19 June 2020, was refused by notice dated 26 August 2020.
- The application was made under section 191(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 the construction of an agricultural concrete hardstanding and an unbound access track.

Decision

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

Application for costs

2. An application for costs was made by Mr Tom Senior against Guildford Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The Council's officer report highlights that the operational development has commenced but has not been completed and that on that basis it has treated the application as a LDC for proposed development under s192 of the 1990 Act[1]. However, the Council's decision notice refers to s191 of the 1990 Act and the refusal of an application for a LDC for existing use or development. To my mind, the latter is the correct approach. The application form explicitly describes the application as being for "existing development".

4. S191(2) of the Act explains that operations are lawful if no enforcement action may be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. In this case the Council confirm that there was no enforcement notice in force at the date of the application.

5. Where a LDC is sought, the onus is on the appellant to demonstrate on the balance of probabilities that the development would have been lawful. If there is no evidence to contradict or make the appellant's version of events less than

[1] The Town and Country Planning Act 1990 as amended (the 1990 Act)

probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Planning merits form no part of that assessment, which must be considered in the light of the facts and the law.

6. For the avoidance of doubt, although both parties refer to the fencing erected at the site, that does not form part of the application made and therefore my assessment as to whether a LDC should be granted.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. That turns on whether or not the agricultural hardstanding and an unbound access track benefitted from the planning permission granted by Article 3 and Schedule 2, Part 6, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

8. That 'permitted development right' allows, subject to limitations and conditions, the carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, of development including the provision, rearrangement or replacement of a private way and the provision of a hard surface where the development is reasonably necessary for the purposes of agriculture within the unit.

Reasons

9. The appeal relates to an access track and hardstanding within a field measuring approximately 3.4 hectares, accessed directly off Grove Heath Road. The appellant explains that the business operations of the site can be split into two main categories: the growing of grass through the year which is then sold as hay; and the farming of honey via the keeping of bees in hives.

10. The Council refused to grant the LDC on the basis that the land was not in use for agriculture for the purposes of a trade or business and that the operations are excessive for the activities taking place and potential future activities, and so were not reasonably necessary for the purposes of agriculture within the unit.

11. Under s191(4), the relevant time for ascertaining whether the existing development is lawful is the date of the LDC application, which in this case is 19 June 2020. However, for the purposes of Part 6, "agricultural land" means land which, before the development is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business[2]. Therefore, whether it was lawful on the date of the application depends on whether the land met that definition, on the balance of probabilities, before the hardstanding and access track works were carried out, in December 2019.

12. The appellant contends that the site already benefited from an established agricultural use when he purchased it in August 2019. The Council's view is that there is no conclusive evidence to that effect. However, what did or did not take place on the appeal site prior to August 2019 is of little relevance in this case because the appellant says that he implemented his own agricultural uses immediately after purchasing the land. August 2019 therefore effectively marks a new planning chapter for the land, against which the provisions of Part 6, Class B must be considered. There is no requirement to demonstrate that the

[2] Part 6, Paragraph D.1(1)

land has been used for agriculture for 10 years as suggested because the use of land for agriculture is excluded from the definition of development under s55(2)(e) of the 1990 Act.

13. The Council confirm that the evidence provided of the hay crop and beekeeping would constitute agricultural uses of the land. Having regard to the definition of "agriculture" set out in s336 of the 1990 Act[3], I agree. The next step is to consider whether those uses are for the purposes of a trade or business.

14. The appellant explains that both sides of the business have been operational on other land in Hertfordshire for a number of years prior to the purchase of the appeal site. His statutory declaration (SD) explains that after taking ownership of the land in August 2019, he expanded his agricultural business onto it with immediate effect.

15. Although the evidence relating to the appellant's agricultural use of land in Hertfordshire is not directly relevant, it is of some assistance insofar as it provides a background and context to his intentions for the appeal site. In that respect it points towards it being less likely that the agricultural activities taking place between August and December 2019 were on a 'one-off' basis.

16. The appellant's SD states that he operates an agricultural business growing and selling hay and that taking a hay crop and investment in ground preparation for additional crops across the site had taken place prior to any development being carried out. Although the appellant has provided what are purported to be photographs of the field prior to be being cut for hay, and after, they are undated and do not form part of the SD. Nevertheless, sales records of hay are referenced in the SD, including those from September and December 2019. That sale is corroborated in a SD by the purchaser of the hay for £1,792.50, who also states that he witnessed the hay being cut on the land. I've noted the comments from interested parties that the grass in 2019 was topped and left but I have no further evidence to that effect.

17. The appellant's wife sets out in her SD that she has been a bee keeper since 2015 and that she keeps bees for the purposes of producing honey to sell as part of her business. She explains that after taking ownership of the site in August 2019 she moved five bee hives onto the site from the site in Hertfordshire, producing approximately 75lbs of honey. The SD also refers to and exhibits dated sales records from September through to November 2019, as well as May 2020. Many of the sale records refer to the Bee Lady website and to that end there is a screen grab from the same advertising Surrey Honey.

18. Although the Council accepts that the hives have been on the land since August 2019 and that a small crop of honey was taken, it raises concern that the value of the sales records do not match the higher value stated. However, the SD refers to the records as examples of commercial sales and based on the prices charged, 75lbs of honey does equate to a value of £1,125.

19. The Council's view is that the beekeeping activities are small scale and suggest a de minimis use on the land, generating a low value and amount. Combined with the single crop of hay, the Council state that the income produced is insufficient to be of a commercial scale and cover costs and maintain a

[3] The definition includes the keeping of livestock (including any creature kept for the production of food) and the use of land as grazing land

livelihood. On this basis, the Council's position is that the uses did not amount to a trade or business at the time the work commenced.

20. However, in the case of *Mckay and Walker*[4] it was held that if an attempt is being made to establish a farming enterprise, and there is nothing to suggest that the activity is as an eccentricity or a hobby, then lack of profit does not prevent the enterprise from being a trade or business. *Kerrier DC*[5] also held that a low level of income is not conclusive in respect of a trade or business.

21. I recognise that the keeping of bees to produce honey could potentially amount to hobby farming. However, the five hives with forage area on site and the income generated, in combination with the Hertfordshire site, do not indicate that to be so in this case. Moreover, I find it unlikely that hay farming would be pursued on a hobby basis.

22. It is also unsurprising, given that the land was purchased in August 2019, that the appellant was restricted to one crop of hay before works were carried out. Similarly, I accept that the crop of honey would have been greater if the hives had been on site earlier than August 2019. Evidence of land management activities after December 2019, such as weed spraying, overseeding and cutting back hedgerows with the intention to improve yields are less important but nevertheless do add weight to confirming the business intention and commitment to establish a farming enterprise before the works were carried out. Indeed, following the refusal of the LDC, the Council granted planning permission[6] for the erection of an agricultural building and twin wheel access track on the land.

23. I note the submission from an interested person that the hives were monitored over a week in 2020 and that no bees were seen. However, I have limited details of this relatively short timescale outside the critical period.

24. The Council's Officer report refers to two appeal decisions in cases where the Inspector did not accept that there was a trade or business. However, those decisions have not been provided and I am not aware of the information submitted in support of the related applications. In any case, I have determined the current appeal on the basis of the evidence before me. That includes three SDs which are signed and witnessed by a commissioner for oaths, thereby carrying significant weight. Evidence is also provided of a County Parish Holding and Single Business Identifier from the Rural Payments Agency. The photographic evidence is undated and carries less weight. However, although I agree that the subdivision of the field would appear to make hay farming more difficult, those photographs do show that a tractor is able to move through the gates within the field.

25. I am therefore satisfied, on the balance of probabilities, that the land was in use for agriculture for the purposes of a trade or business before the development was carried out, thereby meeting the definition of 'agricultural land'.

26. The next step is to consider whether the development was reasonably necessary for the use of the land as an agricultural unit, which again does not carry with it any connotation of profit or business viability.

[4] McKay & Walker v SSE & South Cambridgeshire DC [1989] JPL 590
[5] Kerrier DC v SSE & Stevens [1995] EGCS 40
[6] Application Ref: 20/P/01613 - granted 29 December 2020

27. As noted, August 2019 effectively marks a new chapter in the planning history of the site by the creation of a new ‘agricultural unit’. Whether or not such development was reasonably necessary prior to that point is not therefore relevant as it likely formed part of a different agricultural unit.

28. The access track provides access to the hardstanding from the entrance to the site. If the hardstanding is found to be reasonably necessary, it follows that the access to it must be so.

29. It is unlikely that it could be argued that the size of the hardstanding is reasonably necessary for the agricultural use associated with keeping five hives on the land. However, the appellant asserts that the hardstanding has been designed specifically for what is actually needed, allowing him to store his own haymaking equipment on site and thereby removing the ongoing costs associated with relying on contractors to supply services which would make the business unviable in the long term.

30. The appellant explains that the design of the hardstanding allows multiple vehicles, items of machinery and equipment to be on the hardstanding at the same time without blocking each other in. The equipment referred to comprises a mower, tedder, roller, baler, drill, spreader, harrows, aerator, subsoiler, tractor and trailer, all of which a commercial hay producer has confirmed would be required to carry out operations to produce hay to a good standard. The appellant states that without the hardstanding it is not possible to buy, own and keep the machinery. A hardstanding usage layout plan has been provided which shows how these items would be accommodated, whilst also accommodating a loading area and two car parking spaces and access along its length.

31. It is likely that much of the associated equipment and machinery would have been required to produce the first crop of hay prior to the development commencing, whether that be by the appellant or contractor. I also accept that to protect equipment and machinery it is preferable that it is kept on an area of hardstanding rather than grass. Moving machinery and equipment around on grass would also quickly result in the area being churned-up with associated operational difficulties.

32. I am therefore satisfied, on the balance of probabilities, that the agricultural concrete hardstanding and an unbound access track was reasonably necessary for the purposes of agriculture within the unit.

Other Matters

33. In response to the Council’s concerns, the appellant has confirmed that the LDC does not include kerbstones, which are due to be removed if work is allowed to continue on site. I shall therefore amend the description to make that clear.

34. I have read comments from interested parties that the appellant’s intention is to use the land for a dog day care but that is not a matter for me to consider or speculate.

Conclusion

35. I find the appellant's evidence to be sufficiently precise and unambiguous to demonstrate that at the time of the application the agricultural hardstanding and unbound access track benefitted from the planning permission granted by Part 6, Class B of the GPDO.

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

Richard S Jones

INSPECTOR

The Planning Inspectorate

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 19 June 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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:

The development benefitted from the planning permission granted by Article 3 and Schedule 2, Part 6, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Richard S Jones

INSPECTOR

Date 13 April 2021
Reference: APP/Y3615/X/20/3261684

First Schedule

The construction of an agricultural concrete hardstanding and an unbound access, excluding kerbstones

Second Schedule

Land known as Scouts Farm, West of A3, Grove Heath Road, Ripley, Surrey GU23 6ES

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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 April 2021

by Richard S Jones BA (Hons), BTP, MRTPI

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Reference: APP/Y3615/X/20/3261684

Scale: NTS