



Appeal Decision

Site visit made on 10 May 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2021

Appeal Ref: APP/A2335/X/20/3261623

Lower Addington Farm, Birkland Barrow Road, Addington, Nether Kellet, Carnforth LA6 1FJ

- 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 Stonegate Agriculture Ltd against the decision of Lancaster City Council (the LPA).
 - The application Ref 20/00689/ELDC, dated 3 July 2020, was refused by notice dated 18 September 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 erection of 5 silos.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Stonegate Agriculture Ltd against Lancaster City Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the LPA's decision to refuse the application for an LDC was well-founded, with particular regard to whether the development is granted planning permission by virtue of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

4. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development would have been lawful at the time the application was made.
5. Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2. Class A of Part 6 of Schedule 2 indicates that the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operations; which are reasonably necessary for the purposes of agriculture within that unit, is permitted development.

6. The application seeks to establish that the erection of 5 silos on the land was lawful on the basis that the development falls within the parameters of Class A of Part 6.
7. The appellant's case is firstly predicated on the basis that the silos do not amount to buildings but rather are plant and machinery and secondly that the works constitute engineering operations and fall under Class A(b) of Part 6. In contrast, the LPA argues that the silos are buildings and fall for consideration under Class A(a).
8. Article 2 of the GPDO defines building as (a) any structure or erection, and includes part of a building; and (b) does not include plant or machinery. Article 2 defines plant as any structure or erection in the nature of plant and machinery.
9. The Courts, in particular in *Cardiff Rating Authority*¹ and *Skerritts*², have established that there are three primary factors in determining what constitutes a building – size, permanence and physical attachment. The appellant also draws my attention to the findings in *Dill*³ that the erection of the silos does not automatically make them buildings
10. It is said that the silos arrived at the site ready made and were put into place by vehicles with hydraulic tipping gear. Nevertheless, the silos are around 11.2m in height with a diameter of around 3.35m. I saw from my site visit that they are of considerable size and extend above the adjacent poultry building. Moreover, such is the scale of the silos they are held in place by a large metal support structure which is then fixed to a concrete pad measuring around 80sqm in total.
11. The appellant indicates that the silos can easily be removed in one piece. However, permanence does not connote that the state of affairs is to continue forever or indefinitely. The silos are located close to the existing poultry unit and are used for the storage of feed and other products. Their proximity to the existing operation appears to have been done to aid the efficiency of the process. Moreover, the silos have been firmly fixed to a purposefully designed concrete pad. There is no indication that the silos are a temporary measure and taking into account all before me, I cannot see how they can be considered to be anything other than a permanent feature.
12. Likewise, the appellant points out that each silo is fixed to the concrete base by four bolts and therefore capable of being removed with ease. However, the fact that they are capable of being removed with ease does not mean they necessarily will be. Indeed, the fact that the silos have been fixed securely to the ground into a permanent concrete base adds weight to the notion that they are a permanent, physical feature.
13. Turning to the question of whether the silos amount to plant and machinery, in instance, the silos physically stand apart from the poultry business adjacent. Whilst the contents of the silos are fed into a milling machine to supply the feed for the poultry units and thus a fundamental aspect of the poultry operation, the silos themselves are not intrinsically connected to or part of the machinery of that process. The appellant argues that without the silos the

¹ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385

² *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

³ *Dill v Secretary of State for Housing, Communities and Local Government and another* [2020] UKSC 20

milling process could not be carried out. However, it is not explained whether or not the raw materials could be imported directly into the milling process or indeed whether other forms of storage vessels may be appropriate.

14. I note the authorities raised by the appellant in respect of *Haigh*⁴ and *Schofield*⁵. However, taking those authorities into account does not lead me to any different overall conclusion on the salient points here and thus I find the silos do not amount to plant and machinery.
15. Consequently, I find, as a matter of fact and degree, that the erection of the 5 silos amount to buildings for the purposes of the GPDO. As a result, the silos fall to be considered under Class A(a) of Part 6 of Schedule 2 of the GPDO.
16. The appellant argues that the silos fall within the term engineering operations. However, even were engineering operations carried out in the erection of the silos, they have resulted in the erection of a building as I have set out above. On that basis, it follows that I consider the erection of the silos does not amount to engineering operations and thus does not fall for consideration under Class A(b) of Part 6.
17. As a consequence, in order for the development to be granted planning permission by Article 3(1) of the GPDO, it is necessary for the development to meet all the relevant limitations and conditions set out in sub paragraphs A.1 and A.2 of Class A(a). Condition A.2(2) states that development consisting of the erection of a building is permitted by Class A provided the developer applies to the LPA for a determination as to whether prior approval is required before the development is begun. No such prior approval submission has been made in respect of the silos. On that basis, the development does not meet the requisite conditions of Class A. As a result, the development subject of the LDC application would not fall within the parameters of Class A of Part 6 of Schedule 2 of the GPDO and would not therefore be granted planning permission by Article 3(1) of the GPDO.

Conclusion

18. For the reasons given above I conclude that the LPA's refusal to grant a certificate of lawful use or development in respect of the erection of 5 silos 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.

J Whitfield

INSPECTOR

⁴ *Haigh v Charles W. Ireland Ltd* [1974] 1 WLR 43

⁵ *Schofield v Hall* [1975] STC