



Appeal Decision

Site visit made on 5 July 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 4 August 2021

Appeal Ref: APP/Y1138/X/20/3264420

Winscott Barton, Road from Rew Cross to Winscott Cross, Newton St Cyres, Devon EX5 5AL

- 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 Richard Browne against the decision of Mid Devon District Council.
 - The application Ref: 20/00317/CLU, dated 20 February 2020, was refused by notice dated 29 June 2020.
 - 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 described as: "The planning unit comprises the Property used for agricultural purposes. The Property consists of approximately 489 acres and is principally used for arable. There are also a number of buildings on the Property which are used for a variety of agricultural uses such as the storage of agricultural equipment and machinery, use as a workshop, and the storage of fertiliser, straw and grain. Please refer to the supporting Opinion, Statutory Declaration and maps for further details".
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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 existing use which is found to be lawful.

Procedural Matters

2. At Winscott Barton, which is a large mainly arable farm covering 489 acres, there is a range of large modern agricultural buildings. Three of these, known as the Grain Storage Building, the Maize Pit and lean-to, and the Middle Shed (hereinafter referred to as "the Buildings") are used by Crediton Milling Company (CMC) to store agricultural feed prior to onward distribution. The appellant's evidence sets out that while the levels of feedstuff storage fluctuate over the year, in general terms between one and two thirds of the floor area of the buildings has been used as such by CMC. No more than one third of the floorspace is used for agricultural purposes.
3. To regularise the use of the buildings, the appellant submitted a LDC application for the use of the Buildings as a mixed use of agricultural storage and commercial storage (Class B8) (LPA Ref: 19/01208/CLU). The application plan defined the buildings. That application was refused. The Council accepted that a change of use had occurred, but it was not satisfied that a material change of use had occurred over a continuous ten year period. In making this

decision the Council also took the view that the buildings are part of the wider planning unit of Winscott Barton.

4. The appellant subsequently made a second LDC application which is the subject of this appeal. On the basis of the Council deciding that the planning unit covered 489 acres, the case was made that the extent of the use of the buildings by CMC was de minimis and thus did not constitute a change of use when compared with the size of the unit as a whole ie. the whole 489 acres. In refusing this LDC application the Council took the view that a material change of use had occurred, but it had not been demonstrated on the balance of probabilities that this had occurred for a continuous period of 10 years up to the date of the application.
5. Despite the position taken by the Council on the extent of the planning unit, it seems to me that the unit of occupation where the CMC storage use is occurring is limited discretely to the buildings. It is not occurring anywhere else on the farm. The Council has not supplied a copy of the Counsel's opinion to back up the position it has taken in respect of the extent of the planning unit. Furthermore, whilst feedstuffs are commonly found on farms, CMC is clearly storing products/feed which is a use unrelated to the agricultural use at Winscott Barton. Also, because some of the floorspace in the buildings is still in agricultural use, what is occurring is a mixed use of two activities with one not being incidental or ancillary to the other. Against this background, as a matter of fact and degree, the planning unit for consideration in this appeal is the buildings and that is for a mixed use of agriculture and storage.
6. Although the LDC application before me was submitted based on the case that there has been no material change of use across the entire 489 acres, there is submitted evidence claiming to show that the use occurred over ten years ago. That evidence has been before the Council and it was clearly considered when determining the application. The basis of such a case was also made related to the first LDC application and this has been extensively referred to by both sides. There is no injustice if I was to concentrate my consideration of the appeal accordingly or in me defining what I consider is the appropriate planning unit. I am also obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate on the basis of some error or misunderstanding in the application.
7. I have outlined in the banner heading above the description of the use applied for as it appears on the application form. In various documents however, including the Council's decision notice, use is made of a shorter description which is "existing use of buildings and land on the 489 acre holding for agricultural use, including commercial storage within 3 buildings".
8. Nevertheless, the description of the existing use needs further refining in light of what I have set out above. Furthermore, under s191(5)(b) of the 1990 Act, a certificate should describe the use and identify it by reference to its class in the Town and Country Planning (Use Classes) Order 1987. In this case, that is Use Class B8 (Storage) and there does not appear to be any dispute about that. Also, it would be important to define the extent of the mixed use applied for as a benchmark against which any potential future fluctuations in the uses could be assessed. Consequently, the LDC description should be "A mixed use of agriculture with no more than two thirds of the floorspace of the buildings being used for commercial storage of animal feedstuffs (B8)".

9. There is no planning permission for this use and the appellant relies on the use being lawful due to s191(2)(a) of the 1990 Act which sets out that uses are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired. The relevant time period in this case is under s171B(3) of the 1990 Act which is that “no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach”. Given that the date of the LDC application was 20 February 2020 (hereinafter referred to as the “material date”), the breach needed to have begun by at least 20 February 2010.

Main Issue

10. Therefore, the main issue is whether the mixed use referred to above has, on the balance of probability, subsisted for a substantially uninterrupted basis for at least ten years by the date of the LDC application. The burden to make out the case successfully rests with the appellant.
11. The outcome of the appeal is a legal determination. As such, there is no place to consider matters of planning merit, such as what may be residential amenity or highway safety consequences of the mixed use on neighbours and the local highway network.

Reasons

12. The appellant has submitted a statutory declaration which declares that for the preceding 10 years prior to the date of the declaration, that being 11 July 2019, the Buildings have been used in line with the levels of mixed use the subject of the LDC application. It also states that the use by CMC started in 2003 when the buildings became surplus to the agricultural needs of the farm at Winscott Barton. The evidence from the appellant is backed up by similar statutory declarations from the Managing Director of CMC and the Raw Materials and Intake Manager at CMC. All three declarations have been made under the Statutory Declarations Act 1835 which have been witnessed and signed in the presence of a solicitor. Against this background, the declarations are sworn first-hand evidence about the use of the Buildings over at least the requisite 10 years period and they should be afforded significant weight.
13. The above evidence is supplemented by other letters from persons who either know the appellant as friends or in business capacities, such as agricultural contractors/specialists or other employees of CMC. Although the letters are not statutory declarations, they are further corroborating evidence that tallies with and add further weight to the case made out by the appellant.
14. The Council has not produced any of its own evidence that would directly contradict or undermine the weight to be attached to the appellant’s version of events. It has though pointed to what may be holes in the financial evidence submitted by the appellant in the form of, for example, a lack of invoices and the interpretations of bank statements. Also referred to are letters of objection and concerns raised by local residents about the application, with the concerns about lorry movements stemming back further to since around 2018 which might indicate that the intensity of use, thus resulting in a material change of use, has only occurred in more recent times.
15. Regarding the financial evidence the appellant accepts that a complete set of invoices was not sent for all years. This is explained by standard record

keeping practices, some were lost during a building project and a computer failure. Differences in some figures between the first and second LDC applications have also been explained. There is nothing from the Council to dispute the points made. Moreover, with this appeal the appellant has, in any event, supplied details from his registered accountant confirming that the farm's annual accounts show storage and handling income from CMC from at least 1 April 2008. This ties in with the statutory declaration from CMCs Managing Director. Although the figures do not cover to beyond the material date, the appellant has supplied his own figures to show the feedstuff storage arrangement continued past the material date. These figures are also not challenged. Given the source of this information and the lack of any evidence to undermine its credibility, I also attach this significant weight.

16. It does appear that around September 2018 Newton St Cyres Parish Council did minute a report about excessive commercial and agricultural traffic using Langford Road and the Parish Council has continued to minute such reports and concerns. This tallies with the representations made by objectors when the Council considered the first LDC application (which was submitted on 11 July 2019 and refused on 18 December 2019) and has followed through to the time when the second LDC was considered (received by the Council on 20 February 2020 and refused on 29 June 2020).
17. However, I note that CMC's mill was damaged by a fire on 14 June 2019 which created a temporary need to store more products at Winscott Barton. Works to replace the production line and storage facilities at the mill were not completed until June 2020. The appellant's own figures for this period show an increase in income from CMC as a result. It seems to me that it was not surprising to find more CMC lorries going to and from the farm during this temporary period, which coincides more or less with the timeframe when the LDC applications were being submitted and considered by the Council.
18. That is not to say that the CMC storage use intensified to become a material change of use only then, because there is nothing to directly contradict and materially undermine the levels of use set out in the statutory declarations referred to above, and to which I have already attached significant weight. Moreover, while I do not seek to discredit the evidence from objectors or their concerns, some of them only reference heavy goods vehicles and these maybe associated with other firms. I note from one objector, for example, that CCTV images show there are lorries from several firms going past the property in Langford Road. The appellant has also confirmed that some of the firms referred to deliver and collect from several farms in the area. Furthermore, the appellant has given examples of other developments in the area over the time when residents have noticed more HGVs on the local roads. These may explain the increased lorry movements, including some that might explain lorries on local roads from September 2018. This has not been disputed by the Council.
19. There is very little direct first-hand substantive evidence from objectors showing how the appeal buildings have or have not actually been used over the relevant timescale. Taken in the overall round, the objector concerns do not have sufficient weight to make the appellant's claims about how the appeal buildings have been used less than probable or that the material change of use has only occurred over the last few years. I note one objector has raised that certain information from the appellant has been supplied with the appeal and not at the application stage. However, an appellant is entitled to adduce

evidence at appeal that seeks to counter the position taken by a local planning authority when deciding to refuse an application for development. That information has been before the Council and it has had the opportunity to comment on it.

20. I find that, as a matter of fact and degree, the appellant's evidence is sufficiently precise and unambiguous to show that on the balance of probability the use of the buildings at Winscott Barton for a mixed use of agriculture with no more than two thirds of the floorspace of the buildings being used for commercial storage of animal feedstuffs (B8), subsisted on a substantially uninterrupted basis for at least ten years by the date of the LDC application. Therefore, by virtue of s191(2)(a) of the 1990 Act, the use is lawful.

Conclusion

21. For the reasons given above I 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.

Gareth Symons

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 20 February 2020 the use described in the First Schedule hereto in respect of the land (3 buildings) 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:

The use had subsisted on a substantially uninterrupted basis for at least ten years by the date of the application for a Lawful Development Certificate under s191(1)(a) of the Town and Country Planning Act 1990. Consequently, the time limit for taking enforcement action has expired and under s191(2)(a) of the 1990 Act the use is now lawful.

Signed

Gareth Symons

Inspector

Date 4 August 2021

Reference: APP/Y1138/X/20/3264420

First Schedule

A mixed use of agriculture with no more than two thirds of the floorspace of the buildings being used for commercial storage of animal feedstuffs (B8).

Second Schedule

Land at Winscott Barton, Road from Rew Cross to Winscott Cross, Newton St Cyres, Devon EX5 5AL.

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: 4 August 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

Land at: Winscott Barton, Road from Rew Cross to Winscott Cross, Newton St Cyres, Devon EX5 5AL

Reference: APP/Y1138/X/20/3264420

Scale: Do not scale.

