The Planning Inspectorate

Appeal Decision

Site visit made on 16 November 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/C3240/X/21/3279668
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 refusal to grant a certificate of lawful use or development.
- The appeal is made by Mr Phillip Broome (Roden Farming Limited) against the decision of Telford and Wrekin Council.
- The application Ref TWC/2021/0540, dated 28 May 2021, was refused by notice dated 23 July 2021.
- 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 described as erection of replacement agricultural building.

Decision

1. The appeal is dismissed.

Preliminary matters

2. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the local planning authority is provided with information to satisfy that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, it shall issue a certificate to that effect. In any other case the application should be refused.

3. The subject of this appeal is an application for a certificate of lawful use or development (LDC), not an application for planning permission and the planning merits of the matter applied for do not fall to be considered. The decision will be confined to the narrow issue of determining whether the use described in the application would be lawful if instituted at the date of the application and will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities.

Background

4. The Council issued an enforcement notice on 14 August 2019 in respect of the unauthorised erection of a building. This was the subject of an appeal[1] which was dismissed on 6 March 2020, and the notice upheld with a variation. The notice has not been complied with to date and the building remains in situ.

[1] APP/C3240/C/19/3235570

5. A subsequent LDC application[2] for the erection of a "new green tin sheeted agricultural building" for hay and machinery storage was dismissed on appeal dated 17 November 2020[3].

6. The Inspector for the appeal against the refusal of the LDC application concluded that "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". Accordingly, she considered that it was therefore unnecessary to reach a conclusion as to whether the proposed replacement building, subject of the LDC, was reasonably necessary for the purposes of agriculture.

Main Issue

7. This is whether the Council's decision to refuse an LDC was well-founded. The decision turns on whether the proposal is permitted development under Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

Existing development

8. The appeal site extends to approximately 5.5 hectares[4] of grassland, sited adjacent to the River Roden. The application proposes the erection of an L shaped steel portal frame building. The building would measure 29m x 16m (at its widest points) with a floor area of approximately 214sqm. Notwithstanding this figure, which is provided by the appellant's agricultural appraisal (AA), I calculate the floor area from the plan drawing[5] to be approximately 257sqm.

9. The building would have a maximum ridge height of 7.88m with an eaves height of 4.2m. The building would be constructed around a steel frame with green box profile cladding under a roof covered with grey tiles. Three open entrances, each approximately 5.5m wide with a pitched roof above are proposed along the length of the front elevation.

10. The appellant argues that the building proposed under the LDC would be a new building that would replace the existing building on the appeal site which is the subject of an extant enforcement notice. S181 of the 1990 TCPA 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.

11. In this case, if the appellant complies with the requirements of the notice by demolishing the building in its entirety, 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

[2] TWC/2020/0262
[3] APP/C3220/X/20/3255466
[4] Appendix 4 Appellant's statement – Farm Business Tenancy
[5] Proposed elevations Dwg 01 Rev 02

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.

Would the proposal be permitted development under Article 3 and Schedule 2, Part 6 of the GPDO

12. The Inspector for the enforcement notice appeal[6] stated that at the time of the prior notification application, the appellant described the building as being required for the purposes of livestock sheltering and feed storage. The application for the LDC which is the subject of this appeal proposes that the main requirement for the building is to store baled hay for up to 3 years, along with hay related machinery.

13. Development permitted by Class A of Part 6 of the GPDO includes the carrying out on agricultural land, comprised in an agricultural unit of 5 hectares or more, of works for the erection of a building which is reasonably necessary for the purposes of agricultural within that unit. For a building to be 'reasonably necessary for the purposes of agriculture within that unit', the structure itself and uses carried on within it must be reasonably necessary for the use of the land as an agricultural unit.

14. Figures for 2020 provided by the appellant show that 50 tonnes of hay was produced from the land at Roden Farm, of which 30 tonnes was sold during the first 3 months of 2021. The Council suggest that if these are small conventional bales (which it would seem appropriate as noted from the Ebay sales details in Appendix 2 of the AA and from what I observed on site), this would require 6-7 cubic metres of storage space per tonne or 300 - 350 cubic metres in total. Assuming storage of the 50 tonnes of hay bales to eaves height of 4m, the hay produced on the holding would require up to 87.5sqm of floorspace in the building.

15. The appellant's accompanying AA[7], taking the 'medium intensity' yield prediction, says 41.3 tonnes would be produced per annum with the annual volume being 227 cubic metres. With hay stored up to the eaves height of 5m, the floor area required would be 45.4sqm. Storing 3 years' worth of crop would take up a floor area of 136.2sqm. Though the appellant's final comments suggest different figures, it also indicates that the storage of 3 years' worth of hay would be unlikely to occur as the hay would be produced to sell.

16. The building would also be used to store agricultural machinery to use on the land. The AA provides a list of such machinery, along with approximate dimensions for storage purposes, which shows that the floor area required for such storage would amount to 72.32sqm. The machinery listed as being required for the production of hay crops on the land includes: a compact tractor, loader tractor, forklift, mower, flail mower, trailer and "hire-in machinery" for occasional use. An area of 15sqm is set aside for small tools/workshop area and 12.05sqm for passages.

17. The applicant's submissions show that Roden Farm forage sales were budgeted as totalling £6,425 in 2020/21; £10,600 in 2021/22; and £14,300 in 2022/23. The note to these figures tells me that "Roden Farm produced 52 tonnes of hay in 2020 and at 55 bales per tonne and a sale (retail) price of £5/bale, this is a

[6] APP/C3240/C/19/3235570
[7] By C M R Holt BSc DipFM FBIAC Dated 5 August 2020

gross output of £14,300". It also shows that the land was used for overwinter grazing of sheep which brought in an additional income for Roden Farming Ltd.

18. "Roden Farming Ltd" incorporates two parcels of land, Roden Farm and Valley View 5.2 hectares (13 acres) of land in Ackleton, which is located some 20 miles away in Ackleton. Valley View has permission for an agricultural building of a similar size and design. Although I am not aware of the full circumstances regarding Valley View, the appellant's intention is to farm that land in a similar way, utilising an agricultural building of similar dimensions to the building which is the subject of the LDC appeal.

19. Whilst the appellant has provided information regarding income and expenditure for Roden Farms Ltd, this is a venture that incorporates the additional land at Valley View. Development permitted by Part 6 of the GPDO is only concerned with the need of agriculture within the relevant agricultural unit, which in this case is the holding at the appeal site, Roden Farm.

20. The appeal site is of a finite size and the production of a hay crop twice a year would be, depending on the weather and quality of the land and management practices, similar year on year. Furthermore, while the price of hay may fluctuate through the year and be dependent on supply and demand, it is not a crop that would see a significant increase in price year after year. The appellant expects there to be other opportunities to earn profits from the production of arable crops in future years, once the hay selling enterprise is fully established. However, there is no indication as to what this may entail.

21. The proposed building is of a substantial size in relation to the scale of agricultural activities on the appellant's land. I have no reason to doubt the figures from the Council's agricultural consultants who calculate a floor area at a rate of 6-7 cubic metres per tonne and indeed the appellant's AA provides figures which are similar. Furthermore, it seems to me that storing most of the hay making equipment within the building would be unlikely for such a small operation. I acknowledge that the appellant may own certain elements of hay making equipment and that these would need to be stored. I am aware that there have been acts of vandalism previously at the site and therefore it is questionable whether such expensive equipment would be stored in a partially open fronted building away from other buildings where security would be in the form of welded and locked gates and possible CCTV[8].

22. Furthermore, given that the site was in hay production during 2020, the appellant has not explained where the equipment is stored currently and why such facilities would be no longer available or practicable. Nevertheless, it seems to me that the production of crops on such a small scale would usually be undertaken using hired machinery/contractors.

23. Overall, as a matter of fact and degree, I consider that such a substantial building could not be considered to be reasonably necessary for the purposes of agriculture on this agricultural unit. Certainly, it far exceeds what would be required to support the harvesting, storage and sale of hay taken from the land annually, and the evidence provided does not support a contention that there is a need to store 3 years' worth of hay. Accordingly, I consider the proposal would not be permitted development under Article 3 and Schedule 2, Part 6 of the GPDO.

[8] Dependent on an electricity supply to the barn

Conclusion

24. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR