



Appeal Decision

Site visit made on 24 April 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2023

Appeal Ref: APP/Y0435/X/21/3285698

Long Stocking Farm, North End Lane, Ravenstone, MK46 5AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended, against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Armstrong against the decision of Milton Keynes Council.
 - The application ref 21/01780/CLUP, dated 8 June 2021, was refused by notice dated 4 August 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 the extraction of stone.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr S Armstrong against Milton Keynes Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the proposed development set out on the Council's decision notice differs to that provided on the application form, and a different form of words is provided by the appellant on the appeal form. I have therefore adopted the description set out by the appellant on the application form, as this was the basis upon which a LDC was sought, and thus it forms the basis of my determination.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well-founded. This turns on whether the proposed operations would have been permitted development having regard to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

5. An application made pursuant to section 192 of the Act¹ seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful. If, on application under that section, the local planning authority are provided with information satisfying them that the proposed operations would be lawful if instituted or begun at the time of the application,

¹ The Town and Country Planning Act 1990, as amended

they shall issue a certificate to that effect; and in any other case shall refuse the application.

6. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC), which is instead considered in light of the facts of the case and the law. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful at the date of application.
7. The appeal relates to an area of agricultural field measuring 50 metres by 100 metres as part of a wider agricultural holding known as Long Stocking Farm. The appellant seeks to demonstrate that the extraction of stone from this area would be permitted development.
8. Schedule 2, Part 6, Class C of the GPDO states that the winning and working on land held or occupied with land used for the purposes of agriculture of any minerals reasonably necessary for agricultural purposes within the agricultural unit of which it forms part is permitted development. This however is subject to various limitations and conditions.
9. Paragraph C.2 of the same section states that development is permitted by Class C subject to the condition that no mineral extracted during the course of the operation is moved to any place outside the land from which it was extracted, except to land which is held or occupied with that land and is used for the purposes of agriculture.
10. The proposal would involve the extraction of approximately 1,500 cubic metres of stone which the appellant states is required for the re-surfacing of an existing farm track, gateways and hard standing on the farm. They state that no minerals would be exported from the farm.
11. However, this is a significant quantity of stone, and I have been provided with no evidence to support the appellant's intentions for the use of this mineral. I have no details of what tracks, gateways and/or areas of hardstanding would be resurfaced by the extracted mineral, or indeed if these fall within land which is held or occupied with the land that forms the application site. Nor do I have any evidence to suggest that the extent of the re-surfacing works would necessitate the quantity of stone that is to be extracted.
12. The appellant considers that there is no requirement under paragraph C.2 to prove that the minerals extracted would not be exported and that the operation would only be deemed to be unlawful if this condition were to be breached during the course of the operation and not before. Nevertheless, the appellant is seeking a LDC for a proposed development, and therefore the burden of proof is firmly on the appellant to demonstrate, on the balance of probability, that the proposal would comply with all of the limitations and conditions set out under the relevant provisions of the GPDO.
13. Furthermore, the appellant suggests there is no evidence that the condition set out in paragraph C.2 would not be capable of being discharged. However, conversely I found no substantive evidence to suggest that the condition would be satisfied as part of the proposal.
14. I acknowledge that if the condition were to be breached during the operations, the Council could pursue enforcement action. However, this does not alter my assessment of the application for a LDC for proposed development.

15. Consequently, in the absence of evidence to demonstrate that the proposal would meet the condition set out in paragraph C.2, it is unclear whether this condition would be satisfied. Therefore, it has not been demonstrated, on the balance of probability, that the proposal would qualify as permitted development.

Other Matters

16. The Council is concerned that the proposed stone extraction would not be possible without the construction of a private way to transport the quarried mineral from site to where it is to be used. Therefore, they consider that the proposal is also unlawful without the grant of prior approval for a private way made pursuant to the provisions of Schedule 2, Part 6, Class A, paragraph A.2 of the GPDO. However, this is merely speculation and goes beyond the scope of what the appellant has applied for, that being a LDC for proposed stone extraction. While a private way might be required to facilitate the extraction of such a significant quantity of stone, this does not form part of the appellant's proposal.

Conclusion

17. The appellant has not demonstrated, on the balance of probabilities, that the proposed extraction of stone would be permitted development, having regard to the relevant provisions of the GPDO. Therefore, in the absence of an express grant of planning permission it has not been demonstrated that the proposed development would be lawful.
18. 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 extraction of stone 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 M Tweddle

INSPECTOR