



Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 11 August 2023

Appeal Ref: APP/C3240/X/22/3311004

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 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Phillip Broome (Roden Farming Ltd) against the decision of Telford and Wrekin Council.
 - The application ref TWC/2022/0742, dated 17 August 2022, was refused by notice dated 2 November 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is a replacement barn of steel frame and steel sheeted construction with tile roof.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the required information is included with the application and appeal documents, a decision can be reached on the papers.
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 development described in the application would be lawful if instituted at the date of the application, 17 August 2022, and will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of a 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 appeal¹ which was dismissed on 6 March 2020, and the notice was upheld with a variation. The notice requires the demolition and removal of the building described as being for the purposes of livestock sheltering and feed storage, and restoration of the land by 6 August 2021. The notice has not been complied with to date and the building remains in situ.
5. Following the dismissal of the enforcement notice appeal, an LDC application² for the erection of a 'new green tin sheeted agricultural building' for hay and

¹ APP/C3240/C/19/3235570

² TWC/2020/0262

machinery storage was dismissed on appeal dated 17 November 2020³. The appeal decision concluded that the appellant failed to demonstrate, on the balance of probabilities, that 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 Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). It was considered unnecessary to reach a conclusion as to whether the proposed replacement building was reasonably necessary for the purposes of agriculture.

6. A second LDC application⁴ for the erection of a replacement steel, portal frame building was dismissed on appeal dated 31 January 2022⁵. The decision concluded that such a substantial building could not be considered reasonably necessary for the purposes of agriculture and that it far exceeded what would be required to support the harvesting, storage and sale of hay taken from the land annually. Furthermore, the evidence provided did not support a contention that there was a need to store 3 years' worth of hay. Accordingly, it was considered that the proposal would not be permitted development under Article 3 and Schedule 2, Part 6 of the GPDO.

Main Issue

7. The main issues with this appeal is whether the Council's decision to refuse the LDC application was well-founded. The decision turns on whether the proposal is development permitted by Article 3 of the GPDO granted by virtue of Schedule 2, Part 6.

Reasons

The site

8. The appeal site extends to approximately 6.05 hectares⁶ of grassland, sited adjacent to the River Roden. It is located to the east of the B5062 between the villages of High Ercall and Roden and surrounded by countryside. The LDC application proposed the erection of an L shaped agricultural storage building. The building would measure 29m x 16m (at its widest points) with a floor area which I have calculated from the plan drawing⁷ to be approximately 257sqm.
9. The building would have a maximum ridge height of 7.88m with an eaves height of 4.2m. It 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 proposed building would be a new structure that would replace the existing brick and timber clad building on the appeal site which is the subject of an extant enforcement notice. Section 181 of the Act 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.

³ APP/C3220/X/20/3255466

⁴ TWC/2021/0540

⁵ APP/C3240/X/21/3279668

⁶ Rural payments parcel details

⁷ Proposed elevations Dwg 01 Rev 02

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 GPDO, be permitted and could therefore be lawful. So long as the appellant complies with the enforcement notice before commencing development under the GPDO, the fact that the proposed 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. 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 agriculture 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 and the land must be in use for agriculture for the purposes of a trade or business.
13. For the purposes of Class A, "agricultural land" means land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden⁸.
14. The appeal proposal before me provides that the building is needed to store hay, some for up to 3 years. In addition to up to two hay crops taken annually, the appellant expresses an intention to grow different crops on the land in 8 sections each approximately 0.1 hectare in size. The building would also be required to store agricultural machinery that would be used on the land.
15. The previous appeal examined the capacity of the building and the hay production on the land and concluded that the proposed building was of a substantial size in relation to the scale of the agricultural activities on the land. It considered that the appeal site was 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 it was acknowledged that the appellant may own certain elements of hay making equipment and that these would need to be stored, the security of the equipment was raised due to previous acts of vandalism at this isolated site, and the partially open fronted design of the building. It was also noted that while hay crops had been taken from the land, the machinery would have been brought to the land when required thus querying the need for it to be stored in the proposed building, particularly on such a small parcel of land.
16. It was concluded that such a substantial building would not be reasonably necessary for the purposes of agriculture on the land. It was considered to far exceed what would be required to support the harvesting, storage and sale of hay taken from the land annually, and the evidence provided did not support a contention that there was a need to store 3 years' worth of hay.

⁸ D1 – Interpretation of Classes A to C, Part 6 of the GPDO

17. The submissions for the appeal before me rely on the same proposal as with the previous appeal with the need for the building for the hay production and storage of machinery. However, the appellant intends to grow additional crops on the land. These arable options would comprise of garlic, flowers, ginseng, herbs, landscaping trees and shrubs, mushrooms and ornamental grasses. It is said that these crops would need to be stored in wooden crates within the proposed building and it is estimated that this would require a floor area of approximately 60-80sqm. In addition, the appellant notes that a forklift mini telehandler and attachments, plough attachment, seeder and sprayer would be required for these other farming operations and estimates a further 20m² of machinery storage within the new building would be needed. They conclude that the total floor area required would be 219.5 – 239.55sqm. While these figures are taken from the previous appeal decision for the hay and machinery requirements, they do not account for the land for hay lost to growing the proposed new crops or the reduction in the floor area required for the storage of hay inside the proposed building.
18. Notwithstanding these forecasted figures, there is no substantive evidence provided to show that the land is in agricultural use generating an income for the purposes of a trade or business. The appellant's Supplementary Agricultural Appraisal dated 30 April 2021 predicted that the land would be turning a profit and provided a 3-year farm budget to November 2023, a year on from the refusal of the LDC application. The land has at some time been used for grazing sheep and it is probable that hay crops have been taken as evidenced by photographs and what was seen at site visits, and there was also evidence of small amounts of hay sales for horse feed around 2020. Photographs have been provided showing wrapped bales and grazing sheep. However, these are the same as the ones submitted with the previous appeal in 2021 although the metadata shows them to have been taken on 14 November 2022.
19. The land has been in the ownership of the appellant for several years and had the land been operating as a trade or business, evidence could have been supplied in the form of accounts, invoices or tax returns. The appellant says they are VAT registered and submit annual accounts relating to the farming business at Roden but none have been provided in relation to any agricultural activities. In the absence of cogent evidence, it has not been demonstrated to my satisfaction that there is a business or trade operating from the land, and I am not persuaded that the proposed building is reasonably necessary for agricultural purposes.
20. The Council also considered that the proposed building was not designed for agricultural purposes. As highlighted by Reading Agricultural Consultants (RAC) for the Council, the barn as designed with three open frontages, fully enclosed rear and end walls and a sealed roof would not allow adequate ventilation through the building. It is considered that this may be problematic in maintaining the quality of the stored hay and other crops now proposed and for the need for sufficient natural air flow. I note the appellant says that the building would have gaps in addition to the three large openings, however this is not supported by any evidence.
21. The appraisal by RAC also raised concerns about the suitability of the building due to the L shape design, and access with regard to safe manoeuvring. Modern agricultural buildings are of a simple rectangular form to allow for ease of storage, access and manoeuvrability. This would be more essential in a

building proposed to store a crop that needs to be accessible throughout the year as and when bales are purchased. Accordingly, I have no reason to doubt the Council's stance and I consider that the appellant has not demonstrated that the building is designed for the purposes of agricultural within the unit.

22. Overall, I consider that, on the balance of probabilities, it has not been demonstrated that the land was in an agricultural use at the time of the LDC application, that is 17 August 2022. Notwithstanding this, I am also not satisfied that the building is designed or reasonably necessary for the purposes of agriculture within the unit. As a matter of fact and degree, the substantial scale of the building far exceeds what would be required to support the harvesting, storage and sale of crops that are proposed to be grown on the land. While similar buildings on other land belonging to the appellant may have been considered lawful or granted planning permission, the lawfulness of this proposal is determined on the evidence presented. Accordingly, I consider the proposal would not meet the requirements set out in the GPDO and therefore would not be development permitted by virtue of the rights conveyed by Article 3 and Schedule 2, Part 6 of the GPDO.

Conclusion

23. 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