



Appeal Decision

Site visit made on 29 January 2024

by Graham Wraight BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 February 2024

Appeal Ref: APP/R1038/X/23/3317595

Land north of Main Road, Main Road, Troway, Marsh Lane S21 5RR

- 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 Albert Rowland against the decision of North East Derbyshire District Council.
 - The application ref NED/22/00714/LDC, dated 13 July 2022, was refused by notice dated 6 October 2022.
 - 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 erection of an agricultural building.
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. In July 2020 the appellant submitted an application¹ to determine if prior approval was required for the proposed erection of a building for agricultural use under Schedule 2, Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GDPO). It is common ground between the parties that the Council did not, within the 28 day period set out in Schedule 2, Part 6, Class A.2.(2)(iii) of the GDPO, make any determination as to whether such approval was required or notify the applicant of their determination. The appellant then applied for the certificate of lawful development that is subject to this appeal in order to seek confirmation that it would be lawful to construct the building that was subject to that application.
3. Owing to the failure by the Council to make a determination or notify during the 28 day period, there is nothing in the conditions set out in Schedule 2, Part 6, Class A.2. of the GDPO which would prevent the appellant from beginning the development of which they notified the Council in July 2020. However, development is only permitted by that class if it is carried out on agricultural land and if the building is reasonably necessary for the purposes of agriculture within that unit. The Council contend both that it has not been demonstrated that the land was in agricultural use and that the building is not reasonably necessary for the purposes of agriculture within the agricultural unit to which it relates. The appeal parties agree that the proposed building would otherwise meet the conditions and limitations of Schedule 2, Part 6, Class A, including that the agricultural unit exceeds 5 hectares.

¹ NED/20/00593/FL

4. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. This turns on whether it would have been lawful to undertake the development on the date that the application for the certificate for lawful development was made due to the provisions of Article 3(1) and Schedule 2, Part 6, Class A of the GDPO, with specific reference to whether the development would have been carried out on agricultural land and whether the development would have been reasonably necessary for the purposes of agriculture within the agricultural unit.

Reasons

5. In an appeal relating to a lawful development certificate, the burden of proving relevant facts rests with the appellant, and the test of the evidence is the balance of probability. The appellant's own evidence does not have to be corroborated by "independent" evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
6. The land to which the appeal relates is physically separate from a larger land holding under the ownership of the appellant. Collectively, these land areas are said by the appellant to be used for the purposes of growing forage in the form of hay and haylage. When not being used for such crop growing purposes, it is said that the appeal site is used for animals to graze on and indeed there were sheep present on the land at the time of my site visit.
7. The appellant has provided with the appeal a Statutory Declaration stating that the appeal site was acquired by them in July 1996 and has been put to use for grazing and growing a crop of hay since that time. A copy of a farm tenancy agreement relating to the land dated 1 September 1997 has also been provided with the appeal, alongside a letter from Savage Farms which states that they have had an arrangement to temporarily graze the land since 2009.
8. This evidence demonstrates that, on the balance of probability, the development would have been carried out on agricultural land. The Council has not provided any substantive evidence to counter this and they do not make any suggestion as to what the alternative use of this undeveloped and open land might have been, if it was not in agricultural use. Whilst the Council also specifically question whether the land has ever been used to grow forage on, the GDPO sets out no requirement as to what was grown or grazed on it, requiring only that the land be agricultural land.
9. The appellant has provided an Agricultural Justification Statement (AJS) which sets out why they consider the building to be reasonably necessary. It states that the building is needed to accommodate various items of agricultural machinery and the storage of the forage crop. The size of the building is based on there being two crop cuts achieved per year, from the whole of the land under the appellant's ownership, which amounts to approximately 40 acres. Depending on yield, a single cut would provide 3,600 to 7,200 small bales or 300 to 600 large round bales. Whilst the AJS states that forage has been grown on the land for the last 25 years, it provides no confirmation as to what the yield has been during those years, and it is wholly uncertain that a second cut has ever been taken. The AJS also outlines the machinery that would be required to be stored within the building.

10. Correspondence has been provided from several customers which sets out that they have each bought hay and/or haylage from the appellant in recent years. However, it is not evident from those representations that the volume of bales purchased would sustain more than a single cut, never mind a full second cut which is the primary justification put forward for the size of the new agricultural building in question. Furthermore, there is nothing before me to demonstrate that there may have been a demand for the volume of crop generated by a second cut nor any indication as to whether the second cut would mean that the business would have needed to expand and, if it would have needed to, a plan as to how it would achieve that. This therefore places considerable doubt on whether a building of the size proposed would have been reasonably necessary for the purposes of agriculture within the agricultural unit.
11. The majority of the crop would be grown on the appellant's other land holding. It would then have to be brought to the appeal site for storage. Both parties refer to there already being an agricultural building on that other land holding, with the appellant stating that this would have instead been used for storage and as a repair workshop. However, their submission is silent on the extent to which that building has provided storage for hay and haylage, the size of that building, how much storage it was intended it would provide going forward and what would be stored, and why it would be necessary or justified to put it to use as a repair workshop. It is also unclear as to whether the existing building provides space for the machinery to be stored and if so, why that arrangement could not be retained. Without this information, there too is considerable doubt that a building of the size proposed would have been reasonably necessary for the purposes of agriculture within the agricultural unit.
12. As a whole, I find there to be an absence of precise evidence to demonstrate that a building of this size would have been reasonably necessary for the purposes of agriculture within the agricultural unit. What has been provided is incomplete and ambiguous in that regard. Accordingly, it has not been shown that, on the balance of probability, the development would have been reasonably necessary for the purposes of agriculture within the agricultural unit. Therefore, I find that the Council's refusal to grant a lawful development certificate for that specific reason was well-founded.

Conclusion

13. 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 erection of an agricultural building was well-founded where it related to the matter of whether the development would have been reasonably necessary for the purposes of agriculture within the agricultural unit. Accordingly, the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Graham Wraight

INSPECTOR