Appeal Decision

Hearing held on 17 September 2024

Site visit made on 17 September 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 11 October 2024

Appeal Ref: APP/C3240/X/24/3342900
Land East of Mill Farm, High Ercall, Telford, Shropshire 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 Phil Broome (Roden Farming Ltd) against the decision of Telford and Wrekin Council.
- The application ref TWC/2024/0052, dated 18 December 2023, was refused by notice dated 8 March 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which an LDC is sought is described in the application as: Build a replacement barn of steel frame and steel sheeted construction with tile roof.

Decision

1. The appeal is dismissed.

Preliminary matters

2. The subject of this appeal is an application for an 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, 18 December 2023 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 and the onus is on the appellant to demonstrate that the proposed development would be lawful.

Background

3. The land was purchased by the appellant in 2009 and while originally used for horses, since 2015 it is said to have been in continuous agricultural use. The operating company is identified as Nilsoft Ltd and the land is registered with the Rural Payments Agency (RPA) for the basic payment scheme and has a County Parish Holding Number 35/225/0245 as an additional place of business to Edge Farm, which has since been sold. The Council issued an enforcement notice on 14 August 2019 in respect of the unauthorised erection of a building and an appeal[1] was dismissed on 6 March 2020. The notice requires the demolition and removal of the building described as being for the purposes of livestock sheltering and feed storage, by 6 August 2021. The notice has not been complied with to date and the building remains in situ.

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

4. Following the dismissal of the enforcement notice appeal, an 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]. At the time of the application for the LDC in March 2020, the appellant advised that since 2015 sheep had been grazed and that baling was due to start in 2017 but had been put on hold due to enforcement activity. The appeal decision concluded that the appellant failed to demonstrate that, on the balance of probabilities, 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 Schedule 2, 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.

5. A second LDC application[4] in May 2021 for a replacement steel, portal frame building to support the harvesting, storage and sale of hay taken from the land annually and stored for up to three years was dismissed on appeal dated 31 January 2022[5]. It was concluded that the proposed building was not considered to be reasonably necessary for the purposes of agriculture on the unit and thus would not be permitted development under Article 3 and Schedule 2, Part 6 of the GPDO.

6. A third LDC application[6] in August 2022 for a replacement barn of steel frame and steel sheeted construction with tile roof was dismissed on appeal dated 11 August 2023[7]. The proposed building was to store agricultural machinery and up to two hay crops taken annually for up to 3 years along with the storage of additional crops that the appellant proposed to grow, these being: garlic, flowers, ginseng, herbs, landscaping trees and shrubs, mushrooms and ornamental grasses. The decision concluded that it had not been demonstrated that the land was in an agricultural use for a trade or business at the time of the LDC application. Furthermore, it was considered that the building was neither designed or reasonably necessary for the purposes of agriculture within the unit. The proposal did not meet the requirements set out in the GPDO and therefore would not be permitted development.

7. The current appeal relates to a proposed building for agricultural storage purposes. The building would be a new structure that would replace the existing brick and timber clad building 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.

8. If the appellant complies with the requirements of the notice by demolishing the existing building, which is the subject of the enforcement notice, in its entirety, removing the resultant materials restoring the land, 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

[2] TWC/2020/0262
[3] APP/C3220/X/20/3255466
[4] Application ref TWC/2021/0540
[5] APP/C3240/X/21/3279668
[6] Application ref TWC/2022/0742
[7] APP/C3240/X/22/3311004

long as the appellant complies with the enforcement notice before commencing development under the GPDO, the fact that the proposed development is similarly sited, albeit on a lesser footprint to the development being enforced against, is not relevant.

Main issue

9. The main issue for this case is whether the Council's decision to refuse to issue the LDC 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

10. The appeal site extends to approximately 6.05 hectares[8] 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 proposed agricultural storage building would have a floor area of approximately 96sqm with a maximum ridge height of 7.88m and an eaves height of 4.2m. The rectangular shaped building would be constructed around a steel frame with green box profile cladding under a roof covered with grey tiles and would be open on one of the narrow sides.

11. 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 and the land must be in use for agriculture for the purposes of a trade or business and not a hobby.

12. 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 garden[9].

13. The appellant's submissions provide that the building is 'reasonable for agricultural use to support the business of cutting and storing bales of hay for a couple of years to sell when demand is greatest to maximise profits'. It states that there are also other arable options at Roden Farm that will demand storage capacity in the next couple of years. No further information or evidence is provided. The submissions also refer to the need to store machinery and ancillary farm cutting and bailing equipment.

14. The land is currently grazed by sheep which stay on the land over winter. At the hearing, Mr Broome explained that no hay was taken from the appeal site this year, but one cut of hay had been taken from the land during the previous summer. This was done by a contractor and delivered 80 large bales that were wrapped and stored outside prior to being sold to a local farm at wholesale price. Although reported to have generated an income of around £1000, there is no particular evidence of the harvest or the sale. I noted at my visit that within the building there were a few small hay bales confined to one corner. As

[8] Rural payments parcel details
[9] D1 – Interpretation of Classes A to C, Part 6 of the GPDO

no cut had been taken this year and only large bales produced the year before, the bales would likely be at least two years old if they had been produced on the land.

15. Mr Broome provided that due to the enforcement notice requiring the demolition of the existing barn, the land was only used for winter grazing and for the outside storage of larger wrapped bales. It was suggested that if there was a building to store small, unwrapped bales the income generated could be three times greater than selling large, wrapped bales wholesale. Thus, rather than an income of £6000, it could be £15000 to £20000. Notwithstanding this, the building as proposed is considered by the appellant to be insufficient for his needs and "what he would like to grow". Such products were described as "not too higher value" and "things that could be collected". No further information of what these might be was forthcoming. It was also noted that the building would not be sufficient to store the required agricultural machinery, most of which is currently stored at the appellant's home address.

16. At the hearing Mr Broome provided a page from a Profit and Loss Statement for Nilsoft Limited dated 17 September 2024 for the period 1 December 2023 to 30 November 2024. There was just one reference to agriculture and that was under 'turnover' where a total of £2,455.61 was registered against 'farming produce'. There was nothing to suggest what this referred to or where or how this figure was generated. Furthermore, this was a page of figures not attached to a tax return or certified by an accountant. A copy of a letter dated 4 December 2023 from the Rural Payments Agency was also provided. This was addressed to Nilsoft Ltd with remittance advice dated 1 August 2023 showing a BPS interim payment. The letter was addressed to Nilsoft Ltd and made no reference to Roden Farm.

17. In addition to this, the appellant provided a copy of an email dated 10 March 2024 relating to an eBay sale of 50 small equestrian hay bales with written instructions for the customer to 'collect them from the barn at Roden Farm'. Payment is recorded as £200. A copy of an email dated 17 October 2023 relates to an eBay sale of 50 small equestrian hay bales for £200. There is no reference to Roden Farm. Two further copies of eBay correspondence relate to enquiries only. A screenshot shows purchases of 5 small hay bales on 15 February, 19 May and 21 May. The year is not shown. Further examples of sales are included within the appendices of the appellant's Supplementary Agricultural Appraisal dated 30 April 2021 (SAA): An invoice relating to a sale shows that 50 wrapped bales were sold in February 2021 for £1,200; 12 small bales were sold on eBay in March (year not shown); 50 small bales were sold on eBay in May (year not shown). Although these indicate that sales of hay have been made, the quantity is limited and sporadic. Furthermore, with limited reference to Roden Farm, and the appellant owning similar land at Valley View at Ackleton, I cannot be sure that all had been produced on the appeal site.

18. The SAA predicted a profit in year one to be small at £2423 and that by year three (2022/23) a profit in excess of £15000 would be expected. Clearly that has not happened, and the appellant admits to 'very little income at the moment'. While it is not a requirement for an agricultural business to be making a profit to benefit from permitted development, there must be evidence of a business or trade.

19. Details from Gov.UK list Nilsoft Ltd as a private limited company with the nature of business classed as 'mixed farming' and 'other business support service activities not elsewhere classified'. At the hearing the Council referred to Roden Farm Ltd which had been set up this year and that companies House listed the nature of the business as machinery wholesale. Mr Broome explained that this was the closest description as mixed farming was not provided as an option. I note that the appellant's SAA refers to the establishment of a new farming company Roden Farming Ltd that was set up in 2020 to separate the farming business from the property letting business and I note that the nature of the business was classed as 'mixed farming'.

20. Drawing these matters together, I find that the evidence is ambiguous and imprecise. The application is not supported by any farm accounts, invoices or tax returns. Furthermore, considering Mr Broome's expectations for Roden Farm, a business plan would have aided to clarify the operation of the unit as a commercial enterprise. The appellant has said that they are VAT registered and submit annual accounts relating to the farming business at Roden Farm, but none have been provided in relation to any agricultural activities.

21. There is no dispute that the land is being used for agricultural purposes. The land is used for grazing over the winter months, generally from October, and sheep were present at the time of my visit. However, the sheep belong to a local farmer in Newport and there is no indication of the nature of the terms or extent of the use of the land by other farmers. It is also apparent that some haylage crops have been cut, as evidenced by the photographs of wrapped bales stacked by the existing building on the land.

22. However, to benefit from permitted development rights in Part 6 of the GPDO, the agricultural land must be so used for the purposes of a trade or business. In these circumstances I find that, on the balance of probabilities, the presented evidence is not sufficiently robust to demonstrate that there is an agricultural business or trade operating from the land or that the proposed building would be reasonably necessary for an agricultural use on this parcel of land. In these circumstances I do not find it necessary to reach a conclusion as to whether the development would involve the provision of a building designed for the purposes proposed.

23. 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

24. For the reasons given above and having regard to all other matters raised, I conclude that the Council's 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

APPEARANCES

Mr Phil Broome	Appellant

FOR THE LOCAL PLANNING AUTHORITY

Ms Chloe Edgington	Planning Officer
Mr Andrew Gittins	Area Planning Manager
Ms Vanessa Walton	Validation and Appeals Officer
Ms Emma Scott	Validation Officer and Trainee Appeals Officer

INTERESTED PARTIES

Cllr Kevin Connor	Chair, Ercall Magna Parish Council
Cllr Raymond Wickson	Vice Chair, Ercall Magna Parish Council

Documents submitted at the Hearing:

Appeal decision letter APP/C3240/X/22/3311004

Nilsoft Ltd Profit and Loss Statement dated 17 September for the period 1 Dec 2023 to 30 Nov 2024

Letter dated 4 December 2023 from the Rural Payments Agency addressed to Nilsoft Ltd with remittance advice dated 1 August 2023 showing a BPS interim payment

Nilsoft Ltd SIC Code

Screenshot showing sale of 5 small hay bales