



Appeal Decision

Site visit made on 12 June 2012

by **Brian Cook BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 June 2012

Appeal Ref: APP/W1850/X/11/2164822

Smallbrook Farm, Clehonger, Hereford HR2 9TP

- 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 (LDC).
 - The appeal is made by Stuart Sayce against the decision of Herefordshire Council.
 - The application Ref DMS/110750/V, dated 22 March 2011, was refused by notice dated 4 July 2011.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is proposed stationing of storage containers.
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Decision

1. The appeal is dismissed.

Procedural matters and main issue

2. Notwithstanding the manner in which section E of the appeal form has been completed, all the evidence is that the application has been made under s192 of the Act, not s191. However, in section 8 of the application form (Description of Proposal), the appellant has stated that the proposal consists of neither the carrying out of building or other operations nor a change of use of land or buildings and therefore fails to identify the development for which the LDC is sought.
3. In dealing with the application the Council described the development as 'proposed additional commercial storage containers'. On the appeal form however, the appellant describes it as 'proposed stationing of storage containers'. There is no power to impose conditions on a LDC. Where a submission is made under s191 of the Act it is possible to specify, say, a level of use or scale within the description of the development declared lawful so that a benchmark is set against which any future material changes may be judged. However, there is no such power under s192 to vary or modify the description of the development proposed in the application. The onus is therefore on the applicant to describe in precise terms the development that is proposed. In this case details relating to the size of the units to be placed, the period during which they are to remain and whether they are to be removed at the end of that period have varied during the appeal process. I can therefore only deal with the application on the basis described by the appellant on the appeal form.

4. The main issue therefore is whether at the date that the application was made the proposed stationing of storage containers would have amounted to development for which planning permission would have been required.

Reasons

The case for the appellant

5. On 21 March 2000 the Council granted planning permission at the appeal site (ref: SW1999/2115/F) for the 'change of use of redundant farm buildings into light industrial workshops and storage facilities' (the 2000 permission). Nine conditions were imposed. Numbers 2 and 3 require respectively the development and the new access arrangements to be carried out in accordance with numbered plans while numbers 6 and 7 control the uses to which particular buildings may be put.
6. A further planning permission (ref: SW2001/1584/F) was granted on 19 September 2001. The development is described on the decision notice as 'variation of conditions 2 & 3 in relation to planning permission SW1999/2115/F – change of use of redundant farm buildings into light industrial workshops and storage facilities' (the 2001 permission). This is subject to two conditions only, the standard commencement condition and what is effectively a replacement of condition 2 of the 2000 permission substituting a later revision for one of the approved plans.
7. The appellant states that both planning permissions have been implemented. The most recent clarification by the appellant of the details of the proposal is given in the 'final comments' stage letter to the Planning Inspectorate dated 16 January 2012. This states that the proposal is to site a maximum of 20 shipping containers with dimensions of 10 ft by 8 ft in three areas of the appeal site all of which are within the area subject to the 2000 and 2001 permissions. The containers would be transported by vehicle and off loaded using a single hoist which is an integral part of the delivery vehicle. They would not be affixed to the land and are fully portable. They would be in place for a maximum of three years after which they would be removed. They would be used for commercial self-storage and the purpose of the limited period siting is to test market interest in what represents a business diversification project.
8. The essence of the appellant's case is that the appeal site is a single planning unit in the use permitted by the two planning permissions. The development proposed would be wholly within that planning unit and would not affect its extent or nature in any way. The stationing of the storage containers would amount to a use of land. However, it would be for a use that is already permitted at the site and, although it would represent an intensification of the use, its character would remain the same. The development would not therefore represent a material change of use and consequently would not amount to development within the meaning of s55 of the Act. A number of judgements are cited in support of this position.

The case for the Council

9. The Council accepts that if the development proposed is considered to be a use of land then, in the planning circumstances of the appeal site, it would not constitute a material change in the use of the land. However, its view is that the development amounts to operational development and that planning permission is therefore required.

10. It takes this view on the basis of the information supplied with the LDC application. In this, the units are described as being either 20 ft by 8 ft or 40 ft by 8 ft in size. Although some indication is given as to when the units might be placed, it is possible that all 20 could be on site at the same time. The application submission does not indicate that they would be removed either when not in use or at the end of a three year period. Having regard to the weight of the units, the difficulty of moving them within what is a constrained site and the length of time that they would be in-situ, the Council concludes that the number of units and the degree of permanence means that the particular proposal represents a form of operational development.
11. While the Council notes the clarifications given on certain aspects by the appellant through the appeal process neither this nor its review of various judgements and appeal decisions leads it to take a different view.

Appraisal

12. While I do not have a complete picture in the evidence, it seems to me from the description that the 2001 permission is likely to have resulted from an application under s73 of the Act. A permission granted pursuant to this section does not replace the previous permission; it creates a new one subject to the conditions imposed which stands along side the earlier permission(s). It seems to me therefore that the appellant's assertion that both have been implemented is unlikely to be correct. The permission that has been implemented will, in my view on the evidence before me, be determined by whichever of the plans approved is reflected in the development on the ground. Importantly, neither permission includes a condition limiting or prohibiting the use of land surrounding the buildings. However, 'use' in relation to land does not include the use of land for the carrying out of any building or other operations on it (s336(1) of the Act).
13. My determination of the main issue therefore turns on whether the development proposed is, as the appellant asserts, a use of land or, as the Council contends, operational development. Although both parties cite various authorities for their respective positions, no copies of the judgements or appeal decisions have been provided. In any event, it is clear from the evidence that these matters are fact sensitive and I have therefore determined this appeal on those before me.
14. The meaning of development given in s55 of the Act includes the carrying out of building operations. The approach of the Court when being asked to construe the various definitions has been to ask whether what has been done has resulted in a building. If it has, then the Court has said that it would require a great deal of persuading that the erection of it had not amounted to building or other operations. The term 'building' is defined in s336(1) of the Act and includes any structure or erection. The Court has identified three primary factors as being relevant to the question of what is a building. These factors are size, physical attachment to the ground and permanence and I deal with each in turn.
15. Although it need not be large, a building would usually be constructed where it is to stand rather than brought to site already made. In this case the storage containers would be delivered to the site already fabricated. The ground on which they would be placed is already hard surfaced and mostly level. Some open storage of materials and equipment already takes place within fenced-off

pens in certain areas. It seemed to me however that little groundwork would be required before the containers were lowered into position.

16. Although the site did not appear to present any particular constraints for the movement of the delivery vehicle, placement of each container will nevertheless require the specialist lifting equipment referred to in the application and some skill in manoeuvring each into the precise positions shown on the application drawing. A degree of precise levelling of the ground or the container may also be required to achieve the three lines of containers illustrated. Furthermore, while individually the units may not be large, when placed side-by-side in groups, they would have the appearance of a substantial structure. In summary, I consider that some, albeit relatively modest, building or other operations would be involved in the placing of what would result in structures of some size on the land.
17. Physical attachment to the ground is not regarded in itself to be conclusive either way but it is a factor to be weighed in the balance. In this case although the structures will merely stand directly on the ground, their own weight will provide the necessary stability.
18. Turning finally to permanence, it is my understanding that the same specialist lifting gear would be required to move the containers. As a whole, the three groups of containers would have ample dimensions and would be anchored to the ground by their own weight. The evidence suggests an intention that at least some of the containers are to be in place for a period of some three years. Moreover, nothing in the proposal that could be the subject of the certificate would ensure their removal. As a matter of fact and degree I regard these factors as denoting an intention that the containers are to be placed with the prospect of some permanence and therefore conclude that, on this element, there will be a physical change of some permanence to the land.
19. Having regard to all these factors I consider that the absence of any works to secure the physical attachment of the structures to the ground does not assist either way and, in any event, is outweighed in any balancing exercise by both the nature of the operations required to place them on the land and their permanence which I regard as the decisive factor of the three in this case. Therefore, as a matter of fact and degree judgement, I consider that the containers proposed are buildings and that their erection is operational development for which express planning permission is required.

Conclusions

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of proposed stationing of storage containers 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.

Brian Cook

Inspector