

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL
PLANNING APPLICATIONS COMMITTEE**

14th September 2023

Application No:	SMD/2023/0232 - COLE	
Location	Sylvester Farm, Land off Rownall Road, Wetley Rocks	
Application	A claim that the existing use of an agricultural grain shed to store marquees and temporary buildings is lawful and the Planning Authority could not take enforcement action against the use – the application seeks a certificate of lawfulness in those respects.	
Applicant	John Pointon and Sons	
Agent	Wharfe Rural Planning	
Parish/ward	Cheddleton	
If you have a question about this report please contact: Benjamin Hurst 07738506367 benjamin.hurst@staffs Moorlands.gov.uk		

REFERRAL

The application has been brought before Planning Applications Committee because the applicant is related to Cllr Oliver Pointon.

1. SUMMARY OF RECOMMENDATION

REFUSE

Procedural matters

- 1.1 The application is submitted under s.191 of the Town and Country Planning Act 1990 (as amended) for a certificate of lawfulness for the existing use of the building. If any person wishes to ascertain whether an existing use of land or a building is lawful then they may make an application for the purpose, specifying the land and describing the use in question. An existing use would be lawful if no enforcement action could be taken in respect of it (whether because it did not involve development, the Planning Authority is out of time to take enforcement action, or for any other reason).
- 1.2 As required by the Development Management Procedure Order 2015 the application was accompanied by a plan identifying the land to which the application relates; evidence verifying the information included in the application; and a statement setting out that the applicant is the owner of the land and building. In these regards the submission met the criteria to be registered as a valid application.

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 2.1 Sylvesters Farm is located in the Green Belt approximately 2 km north of Werrington. The site has a 160m access track that joins with Rownall Road to the east and it is surrounded by farm land. A belt of mature trees along the eastern boundary of the site screen it from Rownall Road. Central to the site is a large agricultural grain store, that is currently used without planning permission to store temporary buildings and marquee, a storage use (B8 of the use classes order). Without planning permission, a large portal frame storage shed and a lean to office building have been added to the sides of the agricultural grain store (those additions are the subject of pending application SMD/2023/0231). An area of hardstanding to the western side of the agricultural building that has been extended in preparation for the construction of a 2,125 sq m cattle shed (approved under SMD/2020/0664) is currently used for additional storage outside of the building.

3. THE APPLICATION

- 3.1 An application has been received under s191 of the Town and Country Planning Act 1990 (the Act). The application seeks confirmation that the existing use of the agricultural shed to store marquees and temporary buildings is lawful in planning terms. For the purposes of the Act an existing use is lawful if no enforcement action could be taken in respect of it (whether because it would not involve development, the planning authority would be out of time to take enforcement action, or for any other reason). In respect of the time limits for taking planning enforcement action, as set out at s.171B of the Act, an authority is out of time to take action against a material change of use or a breach of a planning condition, after the breach has been continuous for a period of 10 years.
- 3.2 If on application a local planning authority are satisfied that the use is lawful, they shall issue a certificate to that effect; and in any other case they shall refuse the application. Such an application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application. An application needs to describe precisely what is being applied for and the land to which the application relates.
- 3.3 The large agricultural shed on the site is currently being used to store marquee and temporary buildings. The use began in February 2023 and would be a use that falls within Class B8 of the Use Classes Order – ‘Storage and distribution’.
- 3.4 The application makes the case and claim that the applicant has breached a planning condition attached to permission (08/01225/FUL) for more than 10 years and that the authority is now out of time to take action against that breach. The planning permission was granted in 2008 for the change of use of the agricultural building so that it could be used for the non-agricultural storage of dry meal products for a temporary 24 month period. The condition required that use and activity to cease on the 28th November 2010 (24 months

from the decision). The applicant claims to have breached that condition and continued to use the building for dry meal storage for over 10 years. They say that this allowed them to transition lawfully to the storage of temporary buildings and marquees, in February 2023, because both uses are in the same B8 use class of the Use Classes Order.

3.5 The application is accompanied by written statutory declarations from the applicant – Carl Pointon, 9 current employees (including Cllr Oliver Pointon), and 3 former employees (including Cllr Mike Worthington). All statements are similar in that they are from persons who have either loaded and unloaded dry meal, over seen the loading, unloading and storage, or witnessed it in some other capacity. All say that they can confirm that the building has been used continuously for this purposes for 10 years after the condition required the use to cease.

3.6 Details of the application and submission can be viewed here:

<http://publicaccess.staffs Moorlands.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=170305>

4. RELEVANT PLANNING HISTORY

4.1 08/01225/FUL Change of use of agricultural shed for the storage of bone meal. APPROVED (time limited permission subject to a condition that required the use to cease within 24 months from the date of the permission).

DET/2016/0040 Erection of agricultural building (Application as to whether prior approval was required).

SMD/2020/0664 Erection of agricultural building -Cattle shed. APPROVED (development not yet carried out)

SMD/2023/0231 Change of use of agricultural building to the storage of marquess and temporary buildings. PENDING.

5. PUBLICITY

5.1 Notification letters were sent to Neighbours. A site notice was posted on the 25th July 2023, all periods of consultation expired on the 15th August 2023.

5.2 One objection has been received. The following points are made:

- This massive shed should be used only for agriculture in the Green Belt
- The use/operation is causing considerable neighbourhood nuisance, noise, litter, light pollution, and traffic chaos
- The applicant carries out unauthorised development and then applies retrospectively
- The use has involved the storage of up to 20 Eddie Stobart HGV trailers on this site which were replaced in June by other unbranded trailers

- Shipping containers are used on the site

6. OFFICER COMMENT

- 6.1 Planning permission 08/01225/FUL granted a change of use (agricultural to storage of dry meal products) for a temporary period which by condition was required to cease on the 28th Nov 2010 (24 months from decision). Any breach of that condition therefore would have begun on the 28th Nov 2010 and, if that breach had been continuous without break or intervening use, the authority would have been out of time to take action for that breach by 28th Nov 2020.
- 6.2 In total the application includes 13 statutory declarations which all say that the building has been used to store dry meal products, in breach of the planning condition, for over 10 years before it became used to store marquees and temporary buildings in February 2023. If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application. In this case however, the authority does have other evidence that makes the applicant's claim less than probable.
- 6.3 A review of the planning history reveals that on previous occasions, within the requisite 10 year period, applications have presented contradictory evidence. Earlier submissions have been keen to demonstrate that the building was used for an agricultural purpose as part of an agricultural enterprise as a means of justifying further agricultural development on the site. The authority has previously given such evidence considerable weight in the balance of considerations before granting a prior approval for a building in 2016 (DET/2016/0040) and a planning permission for a 2125 sqm cattle shed in 2020 (SMD/2020/0664). The significance of the evidence is that it demonstrates that within the requisite 10 year period the use of the building to store dry meal had ceased and it had returned to that of agriculture, bringing the breach to an end.
- 6.4 Specifically, there is an email on the file DET/2016/0040 from wayne@sammons (agent at the time) to the planning officer stating the following "*I have just spoken to the client and he has confirmed that the current building [the subject of this application and the only shed on site at the time] is used to store farm machinery and implements, as well as fodder / feed. The client has offered to make arrangements for you to view inside the building should you wish? Just let me know and we can make arrangements, time, date etc.*" The authority went on to grant a prior approval for an agricultural addition to be made to the side of the building.
- 6.5 It was confirmed again in evidence submitted with SMD/2020/0664 (agricultural statement from agricultural consultant David Hughes) to justify a

permission for a large agricultural building to house cattle, that the building was used as a large store for grain cropped from the unit and used to feed cattle, an agricultural use. David Hughes was appointed as a professional consultant BSc (Hons) FBIAC, his statement confirms that he visited the site on the 1st July 2020. The authority placed considerable weight on this consultant's professional evidence. The evidence from David Hughes that concerns Sylvester Farm should be read in full and in context. That evidence/report was presented by an independent professional consultant to persuade the authority that more development was required for agricultural purpose by explaining and describing the scope of the agricultural enterprise at the time and providing an inventory of "farm buildings" in the various locations. The consultant prepared his report following his own site visit on 1st July 2020, information was also provided to him by Carl Pointon. Mr. Hughes explains in his statement that Sylvesters Farm is "equipped" with a large modern grain store... "the 11 bay enclosed building is the grain store" "current cropping will produce approximately 400 tonnes of straw and 1000 tonnes of grain annually and this level of output can be accommodated within the two buildings". "The proposed increase in cattle numbers cannot be accommodated in the existing buildings at Rownall Farm. All of the other farm buildings at the various sites as listed above are fully utilised"

- 6.6 It is clear what the evidence was trying to convey and what the authority was supposed to have taken from this. It is improbable that Mr. Hughes, a professional and reputable independent consultant, instructed specifically to provide a comprehensive assessment of an existing agricultural enterprise and its requirements, either did not properly investigate the actual use of the grain building or decided to deliberately conceal, or not reveal, an unauthorised non-agricultural use of the building as part of his assessment. It is of note that with this application for a certificate of lawfulness there is no evidence or statement from David Hughes to explain or clarify.
- 6.7 Moreover, it is of course the case that the existing use of the building, to store marquees and temporary buildings, only began in February 2023, there is no dispute with regard to that. Even if the building had of been used to store dry meal products up to that date, a further question arises – could the use have lawfully and seamlessly changed from the storage of dry meal products to that of marquees and temporary buildings?
- 6.8 The permission 08/01225/FUL that was originally granted for the material change of use which allowed for the temporary use of the building to store dry meal products, was also subject to other conditions as follows:
2. There shall be at no time any parking of vehicles outside of the warehouse;
 4. There shall be no more than 2 lorry trips to the site in any one day;
- AND,
8. The building shall only be used for the storage of dry protein meal, and shall not be used for any other purpose

6.9 The change to the current use of the building to store temporary buildings and marquees would have been a breach of condition 8 that began in Feb 2023. Importantly, there should be no change from the use described, and that would include any change within the same use class. The authority would be in time to enforce condition 8 in those regards, also subject to the same time limits for enforcement set out at s.171B of the Act. Conditions 2 and 4 would also appear to place restriction on the use, there is no evidence to suggest that the authority would be out of time to take action in respect of those conditions. In the applicant's version of events the use/development was brought to an end in February 2023, when dry meal storage ceased, to finally comply with the first part of condition 1. However, two new breaches would have begun when the second part of condition 1 was not complied i.e. the building was not returned to agricultural use, and it became used to store marquees and temporary buildings, a breach of condition 8.

Conclusion

6.10 The existing use of the building to store marquees and temporary buildings that began in February 2023 is not lawful. On the evidence available in the planning history, that makes the applicant's version of events less than probable, it has involved a material change of use from agriculture. That would be a breach of planning control that the Local Planning Authority would be in time to take enforcement action against. Moreover, in addition to the condition on the 2008 planning permission that limited the use to a temporary period of 24 months, there were other conditions that restricted the use and prevented it from changing, specifically the terms of condition 8. A change from dry meal storage to marquee and temporary building storage in February 2023, would have been a new breach of condition 8 that the authority could take enforcement action against. In these respects the existing use cannot be considered lawful and the application should be refused.

RECOMMENDATION

That a 'Certificate of Lawfulness' is REFUSED for the existing use for the following reason:

The existing use of the building to store marquees and temporary buildings that began in February 2023 is not lawful. On the evidence available in the planning history, that makes the applicant's version of events less than probable, it has involved a material change of use from agriculture. That would be a breach of planning control that the Local Planning Authority would be in time to take enforcement action against. Moreover, in addition to the condition on the 2008 planning permission that limited the use to a temporary period of 24 months, there were other conditions that restricted the use and prevented it from changing, specifically the terms of condition 8. A change from dry meal storage to marquee and temporary building storage in February 2023, would have been a new breach of condition 8 that the authority could take enforcement action against. In these respects the existing use cannot be considered lawful.

B. In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Planning Applications Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

