

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL
PLANNING APPLICATIONS COMMITTEE**

25th April 2024

Application No:	SMD/2024/0094 - COLE	
Location	Sylvester Farm, Land off Rownall Road, Wetley Rocks	
Application	A claim that the part of the building that had pre-existed before walls and shutter doors were installed, is lawful and the Planning Authority could not take enforcement action against that part of the building (consisting of its roof and steel stanchion supports) – the application seeks a certificate of lawfulness in those respects.	
Applicant	John Pointon and Sons	
Agent	Wharfe Rural Planning	
Parish/ward	Cheddleton	Date registered: 22nd February 2024
If you have a question about this report please contact: Ben Haywood 01538 395400 EXT 4924 ben.haywood@staffsmoorlands.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

1. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 1.1 The application concerns a building that currently stands as a fully enclosed portal frame shed, built without planning permission or approval. The shed has metal profile sheet side and rear walls and roller shutter doors. The shed roof has a total of 20 roof lights. The shed is 25m by 31m, providing 775 sq m of floor space, and adjoins a larger building to the south. Both buildings are currently used, without planning permission, for non-agricultural storage. An area of hard surface to the front of the buildings has been extended recently and is used for outdoor storage and the standing for a number of haulage trailers.
- 1.2 The application building occupies a site that is described by the applicant as Sylvesters Farm and is also known as Rownall Farm. The site 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.

2. THE APPLICATION

- 2.1 The application is submitted under s.191 of the Town and Country Planning Act 1990 (as amended) for a certificate of lawfulness. If any person wishes to ascertain whether any operations which have been carried out are lawful then they may make an application for the purpose. For the purposes of the Act operations are lawful at any time if no enforcement action could be taken in respect of them (whether because the Planning Authority is 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 building operations after the end of a period of four years beginning with the date on which the operations were *substantially completed*.
- 2.2 The application relates to the part of the building that consists of its roof and steel stanchion supports - operations which had been carried out prior to the installation of rear and side walls and the roller shutter doors to the front. The application claims that the Council would be out of time to take action against those operations and that they should therefore be considered lawful.
- 2.3 Importantly, the claim does not relate to the whole of the building as it currently stands, the applicant accepts that operations to install the walls and roller shutter doors, significant works that materially affected the external appearance of the structure, were carried out in March 2022, within the past 4 years. Instead, it is the applicant's case and claim that in 2017 they had decided, without planning permission, to erect an open sided roof only hay barn and that, by July of that year, it had been completed as such. They say that it was used to store machinery, straw, and hay and that after a period of 4 years the open sided roof only haybarn had become lawful and the Council was out of time to take action. Although doors and walls were installed later, within the previous 4 years, they say that these were separate operations to alter a lawful building that had no effect on the lawfulness of the pre-existing structure.
- 2.4 If the claim were accepted as a correct position in law, the argument would follow that enforcement action could only require the building to be returned to the pre-existing condition of an open sided hay barn and/or it is only the installation of the walls and doors that now require planning permission.
- 2.5 The applicant's planning agent provides a statement that includes a time line and explains the applicant's position, the statement also submits a set of photographs showing examples of open sided roof only haybarns on farms. The application is accompanied by written statutory declarations from the applicant and 4 current employees (including Cllr Oliver Pointon); dated invoices for the delivery and erection of steel work; a dated vermin treatment

report; and photographs and videos showing the roof only structure with a quantity of straw and on, two separate occasions, a different farm machine kept under the roof.

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

<http://publicaccess.staffs Moorlands.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=177727>

3. THE LEGAL FRAMEWORK AND MAIN ISSUE FOR CONSIDERATION

- 3.1 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 building operations after the end of a period of four years beginning with the date on which the operations were *substantially completed*. The period of four years for the purposes of immunity from enforcement action only begins on the date on which the operations were substantially completed. The leading authority as to the meaning of “substantially completed” is *Sage v Secretary of State for the Environment, Transport and the Regions [2003] 1 W.L.R 983*, in which Lord Hobhouse in particular explains that the correct approach is a holistic approach. What this means, in short, is that regard should be had to the totality of the operations which the person originally contemplated and intended to carry out.
- That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, planning permission was not applied for at all. In such a case evidence as to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design.
- 3.3 In the case of Mr. Sage, it was held, with consideration of the planning history that preceded and the physical characteristics of the operations that had been carried out, that he had built a partially completed dwellinghouse that was under construction. The operations therefore, were not substantially complete, despite Mr. Sage's claim that the building originally stood, and was used, as an agricultural building and the authority was out of time to take action.
- 3.4 Importantly therefore, for the purposes of the current application, this means that if a developer had the original intention of building an enclosed storage shed with walls and roller shutter doors, then the operations would not be substantially complete until all of those operations were carried out, regardless of whether, for an interim period, it stood and had been used as an open sided roof only structure. If the applicant had stopped short of what he contemplated and intended when he began the development, the building as it stood would properly be treated as having been an uncompleted building against which the four year period had not yet begun to run.

- 3.5 Establishing and examining the applicant's original intentions therefore, is the task at hand. The Council will need to determine whether, as the applicant claims, he had only the intention of providing an open sided roof only hay barn, but for a later unanticipated change in circumstances; or whether the provision of an enclosed storage shed was what he had contemplated from the start, having regard, in particular, to an examination of his stated intentions and the character and design features of the building.
- 3.6 It will be necessary to consider whether, in respect of his intentions, the applicant's evidence is sufficiently unambiguous and precise and offers a quality of evidence in those regards. In respect of other available evidence, the planning history, as in the case of Mr. Sage, might say something about the intentions of the applicant at particular points of time. Observations relative to the way in which the structure was actually used between the start of works and the installation of walls may give indication as to whether, what the applicant says he intended, was apparent in the way it was actually used. Or, instead, was the structure rather underused and essentially, during that period, an enclosed shed in waiting. Also, the building may have design features present from the start that are synonymous with that of an enclosed shed.
- 3.7 In all respects, it is established in the courts, that the relevant test of the evidence required is '*the balance of probability*'. The applicant's evidence does not require independent proof to be accepted. However, if the local planning authority is aware of other evidence, to contradict or otherwise make the applicant's version of events less than probable, there may be good reason to refuse the application.

4 RELEVANT PLANNING HISTORY

- 4.1 DET/2016/0040 Erection of agricultural building (Application as to whether prior approval was required) – NOT IMPLEMENTED RELATING TO A DIFFERENT STRUCTURE

SMD/2019/0568 Screening opinion for proposed development of a ground mounted solar farm.

SMD/2023/0231 Change of use of agricultural building to the storage of marquees and temporary buildings (retrospective). WITHDRAWN. RELATES TO THE SUBJECT BUILDING OF THE CURRENT APPLICATION.

SMD/2023/0523 Installation of a solar farm. PENDING.

5 PUBLICITY

- 5.1 Notification letters were sent to Neighbours. A site notice was posted on the 28th March 2024, all periods of consultation expired on the 18th April 2024.
- 5.2 17 objectors have submitted comment. All of the comments raise strong concern over the unauthorised use of the land for non-agricultural storage or

distribution (use class B8), noise and disturbance from onsite activity, and the nuisance and danger that large lorries are causing on the country lanes. Whilst these objectors provide evidence relative to the harms imposed by the use of the site, they do not provide evidence that assists the determination of this particular application which must be considered in the terms set out above.

- 5.3 One of the objectors provides photographic evidence and comment relative to the applicant's presented time line. This evidence largely accords with the key dates referenced by the applicant, albeit there does appear to be some dispute over the date that a concrete floor was installed, the objector stating that his photograph shows that it was laid on the 3rd September 2021. However, additionally the objector does make two observations that perhaps say something about the applicant's original intention for the operations:
- In September 2019, just two years after the roof only structure was installed, the applicant submitted an application for a screening opinion relative to a solar farm proposal that would surround the site, by December 2019 'Rownall Solar Farm Ltd' had been incorporated;
 - The applicant's harvester shown in one of their submitted photographs had just been washed and detailed for sale, it was last used in 2019.

The inference here is that soon after the roof only structure had been installed (roughly 2 years), the applicant revealed his original intent – to abandon farming on the site and surrounding land in favour of other projects.

6 OFFICER COMMENT

- 6.1 There is no particular dispute over the applicant's stated time line and sequence of events. Dated photographs taken by planning officers, submitted by the applicant, and provided by third parties confirm that work had commenced in May 2017 and that side and rear walls and roller shutter doors were installed to make a fully enclosed storage shed sometime after August 2021.
- 6.2 The question that arises however, relates to the point at which building operations became substantially complete and the requisite four year period began. Clearly the building as it stands today was completed *within* the last 4 years with the installation of walls and doors and it is now used for non-agricultural B8 storage. On its face that would mean that the Council was in time to take action against the whole of the building and all of the operations. However, has the applicant successfully demonstrated, on the balance of probabilities, that, prior to that work being carried out, the pre-existing structure had been substantially completed as originally contemplated and intended for four years prior to those operations being carried out? Or, is it more probable that with the installation of the walls and doors the operations had eventually been carried out as originally intended?
- 6.3 Obviously it would be to the advantage of a developer if, with the intention of building a large enclosed storage shed without planning permission, they could claim lawfulness after installing the rudimentary elements of the

structure and using it for agriculture until the perceived risk from enforcement action had passed.

- 6.4 If the Council considers the applicant's evidence to be less than unambiguous and precise and determines that, on the balance of probability, the available evidence makes the claim less than probable, the Council must refuse the application. The Sage judgement tells us that to determine the matter it is necessary to consider evidence relative to both 'intentions of the developer and an examination of the building's physical and design features'.

An examination of the applicant's/developer's intentions relative to the operations carried out

- 6.5 The applicant provides a sworn statement that provides a brief comment relative to his initial intent. It is of note that, shortly before the application works commenced, the applicant had submitted an application for prior approval (DET/2016/040) in August 2016. Through that application he had expressed an intention, at that time, to construct a much smaller open fronted agricultural shed to be enclosed to the rear and sides for the purposes of storing arable produce (straw, grain etc). The building would have had 3 bays and been just 18m in length, with six roof lights.
- 6.6 However, come the spring time, April 2017, it is the applicant's evidence in his submitted statement that "*upon review of the changing needs of the agricultural business, a decision was made to construct a larger 5 bay building with a roof only, to provide a larger functional building to store hay/straw and occasional machinery*". The statement does not expand upon or explain the detail of those "changing needs" that, he says, was the motivation to disregard the terms of the 2016 planning approval and to build the much larger, 31m long 'roof only' structure. In these regards the statement is brief and lacks precision and unambiguity. The applicant has been provided with opportunity to expand on his evidence and give further explanation, but he has not made any further submission.
- 6.7 It is notable that on the application form for the 2016 application it states that the purpose of the proposed building was to store "arable produce (straw, grain etc)" and that in the applicant's statement he states that the purpose of the larger structure, that was actually built, was to store "hay/straw and occasional machinery". These two purposes appear to be essentially the same yet, when the prior approval proposal was submitted, it was considered necessary to build a smaller building and enclose it to shelter the storage with cladding to the rear and side. The submitted evidence does not explain and detail why, just a few months later, it was decided to build a much larger structure that was open without walls and why it became no longer necessary or desirable, in respect of what is said to have been similar storage needs, to enclose and shelter the same type of storage with rear and side walls.

- 6.8 There are photographs and video submitted as evidence with the application to show that when they were taken, at times during the period between the start of works and the installation of walls and doors, there was a small quantity of baled straw and, at one time, a large red agricultural machine kept under the roof of the structure. From passing casual observation, when the matter was not for consideration, the structure might in those regards have passed as an open sided haybarn. However, this evidence does not explain, with regard to the applicant's stated intentions, why a much larger open sided structure was required for the agricultural storage. None of the photographs show the 'roof only' structure anywhere near to full, or close to full, capacity. In all of the photographs and video, the structure is shown to have been very much under used, and nowhere near capacity. Certainly, the amount of storage that is seen in the photographs could have been kept in the smaller building that was approved in 2016. It's not clear then, why it is said that a larger open sided structure was required for what is demonstrably, a type of small scale, occasional, agricultural storage.
- 6.9 The open sided roof only structure backed onto the site boundary and cross struts were installed across the gable end, this would have prevented vehicles accessing or loading from the rear or side of the structure. Access could only have been achieved from the front of the structure, it is not in any way obvious, therefore, how leaving the side and rear of the structure open, and without walls, would have assisted agricultural storage or the functionality of the building in those regards. The invoice evidence, submitted with the application, reveals that the supplier 'Pete Robinson & Son Ltd' had originally quoted for the structure to be provided with concrete panels and side cladding.
- 6.10 The submission of the screening opinion in 2019 and the incorporation of Rownall Farm Solar Ltd, does indeed appear to reveal the intention of the applicant to bring the agricultural use of the site to an end in favour of other projects. Ultimately after an apparently minimal period of agricultural storage the building was completed as a large enclosed storage shed and soon after became used for B8 non-agricultural storage purposes.

Examination of the structure's physical and design features

- 6.11 In a case such as that of Mr. Sage where the operations carried out were that of an incomplete dwellinghouse, there are likely to be quite obvious details and aspects of the structures appearance and design that mark it out as having the character of a dwellinghouse under construction rather than that of an agricultural building. The differences, in the application case, between what is claimed to have been an open sided hay barn and an incomplete enclosed storage shed might be less obvious. Nevertheless, there are identifiable and significant aspects of the structure's design, set out when the work began, that give strong indication that there had always been an intention, at a later date, to complete the structure as an enclosed shed with the installation of walls and roller shutter doors.

- 6.12 Most significantly, the roof of the structure had from the beginning been installed with a total of 20 evenly spaced sky lights. These skylights are apparent and can be counted on the dated aerial photographs. The evidence does not explain the purpose of the sky lights relative to an open sided roof only structure. They can only reasonably serve purpose to allow daylight to enter the large enclosed building space where there are no windows. The application provides examples of where open sided roof only hay barns have been constructed on farms, none of those examples show that their roofs included sky lights.
- 6.13 Photographs of the open sided structure, before walls and doors were installed, show that to the end/north elevation of the roof only structure there are crossing pieces that don't obviously provide structural support and instead appear to provide struts in preparation for the attachment of side cladding. The applicant has not provided any other explanation for their purpose.

Conclusion

- 6.14 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 totality of the available evidence, discussed above, does make the applicant's claim less than probable for all of those reasons stated above. The applicant's statement is brief and does not provide sufficiently precise and unambiguous evidence to answer or explain the points and observations raised. For these reasons the application should be refused.

RECOMMENDATION

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

The operations that have been carried out are not considered to be lawful because the Council would be in time to take enforcement action against the whole of the building and all of the operations carried out. This is because, with consideration of all of the available evidence and on the balance of probabilities, the operations originally intended and contemplated were only substantially complete within 4 years from the date of the application (when walls and roller shutter doors were installed). The applicant's submitted evidence does not demonstrate precisely and unambiguously that he had only originally intended and contemplated erecting an open sided 'roof only' structure.

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.

