

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL
PLANNING APPLICATIONS COMMITTEE**

15th August 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 a shutter 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. The application was deferred before planning committee last April when, the day before planning committee, additional evidence was received from the applicant. Presentation of the application and the updated report and recommendation has been delayed awaiting legal advice from the Council's solicitor. The following report and recommendation is reflective of that advice.

1. SUMMARY OF RECOMMENDATION

APPROVE

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, rear and front walls with a single roller shutter door set centrally to the front. 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 have recently been used, without planning permission, for non-agricultural storage.
- 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* (The Act has recently been amended to provide a 10 year time limit for an authority to take action against building operations. However, under transitional arrangements it is still the 4 year time limit that applies to building development that was substantially complete before 25th April 2024) .
- 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 walls and the roller shutter door 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 door, 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 provided, with the original application, 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 was 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 The applicant has had the benefit of reading a draft planning officer's report and recommendation that was deferred from the agenda before the Planning Committee meeting last April. The applicant has responded to questions put to their agent by the planning officer with the submission of additional information and evidence. With a new covering letter from the applicant's agent, the submission includes: an additional declaration from the applicant; a copy of a letter from the manager of the temporary building company that went onto occupy the building once it had been walled with the cladding; a declaration from the contractor that designed and built the building; and legal advice that the applicant has sought and received from Kings Chambers.

2.7 Details of the application and all submissions 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.

3.2 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.

- 3.3 The ratio of *Sage* was summarised in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30 as follows:
“62. The ratio of the decision is that, for the purpose of section 171B(1) of the 1990 Act, building operations carried out without planning permission are not substantially completed until construction of the whole building contemplated by the landowner is substantially completed. It was the requirement to have regard for this purpose to the whole of the development contemplated by the landowner which was characterised as a “holistic approach”.”
- 3.4 Importantly therefore, for the purposes of the current application, this means that if a developer had the 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 as an open sided roof only structure. If the applicant had stopped short of what he had contemplated and intended, 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. Conversely, it is however possible that the applicant could build an open sided hay barn, changing his mind about the need for walls as it was constructed, and used it as a completed open sided hay barn for over 4 years, before deciding at a later date, when that structure was lawful, to convert it to an enclosed building unit for secure storage.
- 3.5 Examining the applicant’s original and changing intentions and the physical and design features of the structure therefore, is the task at hand. The Council will need to determine whether, as the applicant claims, his intention was of providing an open sided roof only hay barn, but for a later unanticipated change in circumstances once the structure had become lawful; 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.
- 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. – RELATING TO LAND SURROUNDING THE APPLICATION SITE

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. RELATING TO LAND SURROUNDING THE APPLICATION SITE

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 different objectors submitted comment within the initial round of consultation. Since the application was deferred from Planning Committee last April, a further 46 different objectors have made submissions. Some of those objectors have made multiple comments or submissions. Many of the comments raise strong concern over the planning merits of the development and 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 objections 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 Some of the objectors raise concern and question over the delays in having the application presented to planning committee. Many of the objectors register their objection but don't make any comment, while a significant number of those new objectors are clearly objecting to solar farm proposals for the surrounding land, a matter that is not under consideration with this application.
- 5.4 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 makes two observations relative to land surrounding the application site:

- 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.

5.5 Since the application was deferred, this objector has responded to the submission of additional evidence with the following points that he wishes to be considered as counter evidence:

- *The steel frame extension erected on the 13th July 2017 from the outset, was constructed almost 70% larger than the plans approved by the LPA*
- *The roof lights on the applicants plans in the extension totalled 6 whereas 20 roof lights were installed which aligns precisely to the configuration, spacing layout and size of the existing roof lights in the former existing enclosed building. This might suggest that applicants intention was to fully enclose this extension to form one enlarged building*
- *The concrete wall panelling installation shown in the independent witness photo of 22 March 2022 not only enclosed the one side and the northern end but also the western facing side in one complete operation, save for a gap to facilitate a vehicle access entrance which later became the commercial vehicle roller shutter door entrance*
- *The screening application for the Rownall Solar Farm application SMD/2019/0568 dated 13/09/2019 when both Pointon brothers were co Directors in joint holdings, included this mega sized agricultural shed within the proposed Solar farm curtilage suggesting perhaps, the future intended use of this building prior to September 2019?*
- *The protracted building time should perhaps be viewed as nothing unusual as the owners have many concurrent property developments underway at any time and indeed this extension was not started for almost exactly one year after consent was granted. In this case the delays included two and half years of COVID restrictions and afterwards probably lengthy talks and negotiations involving the Pointon brothers sale of the family business and the separation of some of their previously joint held assets.*
- *Of the current 13 listed registered companies in which Carl Pointon is a Director, his brother Martin Pointon resigned from at least 3 of them on the 1st of March 2021 including JCM Holdings (UK) Ltd in which he acted as an Executive Director in July 2016 when the business applied*

for the portal agricultural extension DET/2016/0040 and more importantly in July 2017 when the enlarged unlawful steel frame work extension was erected etc, etc. As Martin went on to pursue the Rownall Solar Farm development and presumably acquire the land outright, the 'original intention' now in consideration, must relate to the joint brothers original intention, which I suggest is now in no doubt?

- *The lawful certification application SMD/2024/0094 relates specifically to this unlawful shed extension whereas there are also two other SMDC confirmed continuing planning breaches on this same site running for the last years where enforcement action has still not been exercised. The first is the unlawful B8 industrial use including outside storage which has caused continual substantial community reported nuisance since 2022. This site has never been granted B8 industrial consent or granted 'change of use' for B8 industrial use and the associated heavy HGV traffic. This severely contravenes the present agricultural consent and such violating usage in this highly rural Green Belt is completely inappropriate.*
- *Whilst the ownership of this shed and the surrounding Rownall Farm land appears now in severed ownership, the two neighbouring pending applications are indeed 'related' by history and its probable in the future as well, if conditions dictate combined actions become in both brothers significant mutual interests?*
- *There remains also the large unlawful welfare extension block which was built on this site along the length of the sheds eastern side in 2023 without planning consent. Such a purpose again suggests a wholly different intended future use other than agricultural storage and should surely be removed without further accommodation?*

5.6 One of the objectors suggests that deliberate concealment has occurred and that under legislation the Council could apply for an order that would allow them to take action within an extended period of time, beyond a 4 year period. Officer advice to Members is that the tests of deliberate concealment have not been met, particularly because in 2020 an application was submitted for a cattle building and officers were invited to inspect the site as part of the planning application process.

6 SUMMARY OF THE EVIDENCE AND OFFICER COMMENT

Introduction

- 6.1 There is no particular dispute over the applicant's stated time line and sequence of events. Dated photographs taken by a planning officer, submitted by the applicant, and provided by third parties confirm that work had commenced in May 2017 and that by July of that year an open sided, roof only structure was in place. No further work was carried out to the structure until sometime after August 2021 when walls and a roller shutter door were installed to make a fully enclosed storage shed.
- 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 a door and it became used for non-agricultural B8 storage. There is no dispute that the Council is in time to take action against those more recent works. However, it is the applicant's claim that the action could not go further than that and could not be directed at the whole of the building. The applicant submits that the open sided, roof only structure, that pre-existed, is lawful and immune from action. The applicant must demonstrate, on the balance of probabilities, that, prior to that work being carried out, the pre-existing structure had been substantially completed as contemplated and intended for four years prior to those further operations being carried out.

- 6.3 If the Council considers the applicant's evidence to be unambiguous and precise and determines that, on the balance of probability, the available evidence makes the claim probable, then the Council must approve the application and grant the certificate if there is no countervailing evidence available. 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

The evidence

- 6.4 The applicant now provides two sworn statements that provide comments 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.
- 6.5 In his evidence the applicant explains that "*permission was originally sought in 2016 for a 3-bay building.....I was planning to increase the ability of the farm to store grain. The storage of grain requires an enclosed building because it is a loose arable crop.* 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 applicant's additional statement expands upon and explains some of the detail relating to those "changing needs", he says, "*In late 2016 and early 2017, I began entering discussions for the sale of the family business which would require the division of land, buildings and assets between me and other family members....it was apparent I would be left requiring more space to store hay from grass crop and machinery. As the council had already approved an agricultural building in principle, I proceeded with the construction of a new, redesigned building. I did not think this was unreasonable, considering I had*

around 300 acres of arable farmland in hand. I requested the building contractors, not to enclose the building but instead to keep it open-sided to provide airflow for hay and make it larger to maximise storage capacity”.

- 6.6 These declarations are accompanied by photographs and video submitted as 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 quantity of baled straw and, at one time, a large red agricultural machine kept under the roof of the structure.
- 6.7 The additional submissions from the applicant, also includes a copy of a letter from the manager of the temporary building company that began to use the building, as enclosed with walls and a roller shutter door, as a storage unit. The letter is dated 17th January 2022 and makes enquiry with the applicant as to the possibility of expanding into the unit and it being altered to provide enclosing walls and a roller shutter door, ready for occupation in early 2023. The letter provides evidence that the question of altering the structure to provide an enclosed storage building only arose after it had been used as a completed open sided, roof only haybarn for a period of more than 4 years.
- 6.8 It is noted that planning applications for solar farms have been submitted on land surrounding the application site. In further submissions the applicant seeks to clarify that the solar farm applications are entirely unrelated to the applicant in this case, and that the land upon which these applications have been submitted is not under the applicant's ownership. Applications SMD/2019/0568 and SMD/2023/0523 both relate to solar farm proposals, the first application was submitted by, Grüne Energien Solar GmbH, a renewable energy company based in Germany, and the latter application submitted by, Rownall Farm Solar Limited.

Officer Comment

- 6.9 It is known that the applicant was engaged in agriculture, and needed a new shed (we know that because he made an application for determination for a shed in 2016) and then he built one albeit to a new design in 2017. We know (without having any evidence to contradict it) that the open sided roof only building stood and was used as a hay barn for agricultural purposes, the photographs and video show the building being used to store hay and straw, for a period of more than 4 years. It is possible that the applicant could build an open sided barn, changing his mind about the need for walls as it was constructed, and use it as a completed barn for over 4 years. A latter decision, not originally contemplated, to convert it to a secure storage unit, would not in those circumstances affect the lawfulness claim relative to the pre existing operations. In these respects the applicant has evidenced and explained his changing business needs, the applicant explains it in his sworn statement and the Council has nothing that suggests otherwise.
- 6.10 Similarly, in light of the presented evidence, any alternative assertion suggesting that the developer might have always had the intention of creating a secure storage unit, but waited for 5 years until immunity from enforcement

before making his next move, does not make obvious commercial sense and there is no evidence that this is what he intended to do.

Examination of the structure's physical and design features

The evidence

- 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, the planning officer identifies aspects of the structure's design, set out when the work began, that might give an indication that at that point there had always been an intention, at a later date, to complete the structure as an enclosed shed with the installation of walls and a roller shutter door.
- 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, normally skylights in a roof would provide natural light into an enclosed building. The applicant addresses this in his statement, he says very simply that he wanted the roof lights for additional light. This could makes sense if one considers such a barn filled up with hay that would effectively form the side walls.
- 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 cross struts that appear to be cladding rails in preparation for the installation of side walls. However, the additional submission addresses this with a statement from the contractor that designed and constructed the building who says that "*the building was designed and constructed with added bracing supports in the open apex for added structural support. This type of layout is not uncommon with open ended buildings being used to store straw or hay. With the added support in the open apex, this reduces the flexibility of the structural integrity of the building in high winds*". There is no evidence to dispute this submission from the relative expert in this matter.

Officer Comment

- 6.14 The relevant expert, the person that designed and constructed the building, attests in a signed declaration that the cross struts provide structural support, there is no evidence to contradict that. So, other than the roof lights, that might provide additional light within an open sided barn when it is full with hay, there is little in the building's physical and design features that might be said to point definitively to an intention to have the building walled on three sides. In fact, the evidence in the applicant's sworn statement is that he decided he didn't want it with walls at the time of construction. It seems that the evidence points more towards the intention of the building to provide an open sided roof

only hay barn, which was completed and so used for over 4 years until a later unanticipated change in circumstances.

Conclusion

- 6.15 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. The applicant bears the burden of proving the lawfulness of the development on the balance of probability i.e. that it is more likely than not that the development is lawful. There is no or little tangible evidence that casts the applicant's account and evidence into doubt. The applicant has provided additional information and evidence to answer the Council's concerns over the original application submission, sufficient to conclude that the operations carried out before the walls and shutter door were installed, had become lawful because they were substantially complete for a period of more than 4 years.

RECOMMENDATION

That a 'Certificate of Lawfulness' be GRANTED for operations carried out (the part of the building that had pre-existed before walls and a shutter door were installed, consisting of its roof and steel stanchion supports) for the following reason:

The operations that have been carried out are considered to be lawful because the Council is out of time to take enforcement action against those operations. This is because, with consideration of all of the available evidence and on the balance of probabilities, the operations as intended and contemplated were substantially complete for more than 4 years before the walls and a roller shutter door were installed.

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.

