DELEGATED DECISION REPORT

SMD/2019/0503 **Valid 16/08/2019**	**EDGEFIELDS FARM** **EDGEFIELDS LANE** **BROWN EDGE**	**APPLICATION FOR LAWFULNESS OF THE EXISTING DEVELOPMENT COMPRISING ALTERATIONS TO FARM BUILDING INCLUDING PARTIAL REBUILDING OF SOME WALLS, ELEVATION CHANGES AND ALTERATIONS TO ROOF OF NORTHERN SECTION FROM MONO PITCHED TO GABLED** **(CERTIFICATE OF LAWFULNESS - EXISTING)**

MAIN ISSUES

On the date of the application, could the authority have taken planning enforcement action against the operations that had been carried out?

DESCRIPTION OF SITE

The operations have been carried out in respect of an old 19th Century stone barn with a gabled roof. The stone barn was located within the historic farmstead of Edgefields Farm. It appears as though one of the stone gables and a short section of the barn's rear elevation have been retained, while the remainder has been taken down and re built as a modern construction, the character and function of which could lend itself to uses other than agriculture (a matter discussed in officer comments with full consideration of the evidence).

THE APPLICATION

The applicant seeks a certificate of lawfulness for development already carried out. He makes his claim on two counts:

- he considers the operations that he has carried out to be of a type that s55(2)(a) clarifies shall not be taken for the purposes of the Act to involve development of the land because they are improvement and alteration works which do not materially affect the external appearance of the building; and

- the operations were 'substantially completed' more than 4 years ago and the Council is out of time to take action.

The applicant has not provided his own sworn evidence or affidavit. Instead his planning consultant has submitted her own statement that attempts to summarise and present a particular position and case.

The statement includes:

- photographs of the original 19th Century stone barn that occupied the location of the operations
- An explanation of the applicant's intent in respect of the works carried out
- Photographs that show where sections of the original barn remain in place
- Google Street View photographs showing the work at particular stages
- Survey drawings of the existing structure

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

Within the footprint of the development carried out, there originally stood a stone built barn with a tiled, gabled roof. The farmhouse is dated 1895, however that original barn appeared to have pre-dated this. Off the northern facing gable there was an open ramshackle outrigger with a mono pitch roof.

Some time before 2012, the evidence does not say when, the applicant removed the ramshackle outrigger and built off the gable wall of the stone barn a new stone faced building with a full pitched roof. The statement says that the work was completed in 2010-11, a Google Street View photograph shows the completed roof of the building by June 2011.

On the same site but some distance from the stone barn (the statement references these decisions to indicate the applicant's farming need):

05/00348/FUL - 464sq m modern portal frame building for livestock and implements. Approved and built out in 2005.

08/01558/FUL - extend the modern farm building adding a further 464sq m. Approved and built out in 2008.

12/00389/FUL – further 395sq m. extension granted, commenced but not progressed in any significant way. It was said that with the extension the herd would be increased by another 20-30, at 14 sq. m per cow. Received April 2012, Approved 9th Aug 2012.

June 2011 a Google Street View photograph shows that work had already started to remove the roof tiles from the original stone barn.

August 2012 Google Street View photograph shows that the whole of the roof and its structure had been removed.

Before August 2015 the statement says that work had ceased with the new roof structure and elevations in place.

DET/2019/0011 Part Q prior notification application to carry out further work to the new development necessary to complete and use it as a dwellinghouse. Refused 29th July 2019.

CONSULTATIONS

Publicity
Site Notice posted, no comments or evidence received.

OFFICER COMMENTS

Has development occurred for the purposes of the Act?

The applicant has not provided a sworn statement or affidavit. His agent provides a statement who confirms that some of the works undertaken include "rebuilding of some of the external walls of the farm building".

Section 55 (2) (a) of the Act clarifies that the meaning of development does not include "the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building ". No such exception is made specifically for "*rebuilding*".

The statement provides photographs to show that the original 'two storey' end gable to the north and a section of the original return rear elevation to the east has been retained and therefore not rebuilt. The evidence in these regards is quite clear and precise, a level of precision that does not extend to the rest of the building and the other work that has been carried out and, despite very general comments to the effect that there have been some 'changes to the elevations and a mono pitch roof', there is no other comment relating to the remainder of the building. However, on site observations where fresh or new external stone and brick work, concrete block interiors, damp proof lining and new roof and ceiling timbers were all noted; and Google street view shots that actually show how the building's original roof structure was removed, all lead to a conclusion that the applicant's lack of evidence in these respects, indicates that all other elevations, both out riggers, the roof and the remainder of the east elevation, have all been rebuilt.

'Rebuilding' is not an operation included in the exception at s.55(2)(a) of the Act it is development that requires planning permission. The statement however, points to the judgment in Burroughs Day v Bristol City Council [1996] 1 PLR 78. While this judgement is not relevant in a case where 'rebuilding' has been carried out, it is in any event, clear from the evidence in submitted photographs of the original building, that the work carried out, has resulted in a building that has a materially different appearance to that of the original, both in parts and taken as a whole. While a photograph of the original building's end gable has not been supplied, as a 19th Century farm building it would not have been brick with long narrow vertical first floor window openings. A comparison between the existing front elevation with

that of the original reveals very apparent differences that include changes to window and door arrangements, the loss of a gable peak that stood proud of eaves, different stone coursing and lintel details, and an entirely different shape and design of outrigger to the north. In the absence of any other evidence to the contrary, there can be no doubt, development has occurred for the purposes of the Act.

Time limits, is the LPA out of time to take action?

The statement claims that the work ceased more than 4 years ago when he had finished altering and improving it for agricultural purposes. The building has stood in its current condition since that time. This is important because s.171B of the Act clarifies that an authority is out of time to take enforcement action after a period of four years. That four year period, however, only begins once the development is 'substantially complete'. It must therefore be determined whether the development is 'substantially complete' and, if so, at what point did that occur.

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, as here, 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.

Turning to the evidence in the agent's statement, it is said that the work was carried out for agriculture to meet his farming need instead of extending the modern farm building and completing the development that was permitted in 2012. While this assertion does not sit neatly within timescales, which saw work begin on the stone barn well before the date of the 2012 planning application, it is said that the development is to provide housing for some of the existing 80 strong cattle herd. Presumably 'some' means 20 that would have been otherwise housed in the permitted shed extension and increased the herd from the 60 that were stocked at the time of the application. Specifically, it is said that the upper level of the development and the pitching holes are to store hay and straw in a traditional manner.

Taking that evidence on its face, although there are a number of reasons why it is less than probable and lacks clarity, the development was inspected and photographed in June 2019. At that time all of the ground floor openings appeared as gaps within the stone and blockwork without any kind of door, gate or other means of enclosure that would contain the cattle and prevent them from simply wandering free into the open yard with no protection from wildlife; the interior of the development was not set out or arranged with any kind of enclosure or identifiable stall arrangement; and there was no upper floor to store the hay and straw, the gaps between floor joists were open to the rest of the structure. Applying the holistic approach set out by Lord Hobhouse in the Sage judgement, it can only be

concluded that if the development is an agricultural building to function in the way described in the applicant's evidence, the development is not 'substantially complete'. Indeed, it is rather telling that at the time of inspection the development was not being used for agriculture, nor was there any evidence to show that it has ever been used for those purposes. Instead it was being used for very general storage that included the garaging of a speed boat, salvaged church pews and building materials.

It is not for the LPA to substitute its own view as to what a building is intended to be for that which was intended by the developer. But in this case, rather than have the appearance of a building for modern agriculture, the building, in terms of its physical features and its design, looks very much like a dwelling house with attached garages/utility builidngs that is in the course of construction. The building has been constructed with domestic not agricultural features that lend themselves, in character and function, to a dwellinghouse use and not in any specific or obvious way as a building to be used for agricultural purposes (albeit openings without windows or doors would coincidentally provide ventilation for cattle kept in what would otherwise be a rather unsuitable limited and enclosed space). It has been constructed with cavity walls using damp proof barriers; the arrangement, sizing and proportion of door and window openings are typical of a dwelling designed and constructed for human habitation not agricultural use; and particularly, the long vertical upper floor windows in the brick gable appear as stylised statement features and they support the same conclusion. The building has been constructed to have an upper floor with floor joists installed to support a first floor with a large square gap obviously ready and intended at some point to take a stairway. With these observations and conclusions the test of physical layout and appearance are applied that are derived from *Belmont Farm Ltd v MHLG* (1962) 13 P&CR 417 and *Mckay and Walker v Secretary of State for the Environment* [1989] JPL 590.

This conclusion is supported because a Class Q prior notification application was submitted by the applicant in 2019 to use the building as a dwellinghouse, perhaps not coincidentally, some four years after he says work ceased – such an application would appear to tie in and reveal the applicant's genuine intention and is evidence of that. It is also of note, in respect of the applicant's genuine intentions, that the work which saw the majority of the original stone barn dismantled before rebuilding, actually commenced sometime before the date of the planning permission for the cattle shed extension. Moreover, there was no evidence on the date of inspection, that the building was actually being used for agriculture or specifically to house cattle, or that it ever has been. As a matter of fact and degree, and beyond the balance of probability, it is considered that, having regard to its layout and appearance and all other facts of the case, the development is not an agricultural building and it was not designed or intended as such, it would be best described as a dwelling house that is in course of construction.

As an unfinished dwelling house the development is unfit for habitation. The floor at ground level is exposed concrete screed, there are no service fittings and there is no staircase or upper floor. The interior walls are unfinished, without lining or plaster. None of the doors are

fitted and window openings, including those on the upper floor, are without frames or glazing. There is clearly an intention to provide a first floor to complete the building, the joist and window arrangement is evidence of that and whether the purpose of that is to provide living accommodation or, as the statement claims, hay storage it would be a significant operation necessary to complete the building. Applying the holistic approach set out by Lord Hobhouse in the Sage judgement it can only be concluded that as an unfinished dwellinghouse the development is not 'substantially complete'.

If the development was not substantially complete on the date of inspection, June 2019, the LPA are still within time to take enforcement action and a lawful development certificate can not be granted.

The applicant attempts to draw support from the speech by Lord Scott who suggested a problem with the overall approach that was not resolved. While he was in agreement with the findings of Lord Hobhouse, in respect of Mr Sage's case, he was troubled by a scenario that might see a farmer change his mind, and decide to use an uncompleted dwelling for agricultural purposes and actually commence and continue that use with permanency and genuine intention, without it being necessary to carry out any further work to the building. With regard to those deliberations and comments, it is clear that this in not what has happened in the case of the applicant and, accordingly, the facts of his case appear much more consistent with those of Mr. Sage.

CONCLUSION

The operations are development for the purposes of the Act and the LPA could have taken enforcement action against the development on the date of the application. It was not therefore lawful within the meaning of s.191(2) of the Act.

OFFICER RECOMMENDATION : REFUSE

Case Officer: Ben Hurst
Recommendation Date: 11th October 2019

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council