

Mr B Hurst
Staffordshire Moorlands District Council
Moorlands House
Stockwell Street
Leek
ST13 6HQ

12 April 2024

Dear Ben,

SMD/2024/0094 - SYLVESTERS FARM

This cover letter has been prepared on behalf of John Pointon & Sons Ltd to provide a response to the queries raised in your email dated March 26 2024.

We appreciate the opportunity to provide additional details to support the applicant's claim that the building in question was substantially completed more than four years before the submission of the certificate application.

As per the legal standard governing our application, the assessment should be based on "*the balance of probabilities*". In line with this principle, we have been committed to presenting comprehensive evidence to support the applicant's case. As highlighted in the NPPG, a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. (NPPG Paragraph: 009 Reference ID: 17c-009-20140306 Revision date: 06 03 2014).

EVIDENCE

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted, and this states at paragraph (2)(b):

An application to which paragraph (1) applies must be accompanied by—

(b) such evidence verifying the information included in the application as the applicant can provide;

(NPPG Paragraph: 005 Reference ID: 17c-005-20140306 Revision date: 06 03 2014).

In order to ascertain if the application building was substantially completed in excess of four years ago, the following evidence was presented to confirm that this is the case.

- Statutory declarations
- Construction invoices
- Site photographs and video
- Pest control report
- Aerial imagery

Wharfe Rural Planning Ltd

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www.wharferuralplanning.co.uk

The above information confirms that the building was '*substantially completed*' in excess of four years ago.

BALANCE OF PROBABILITIES

The Courts have held that the relevant test of the evidence on such matters is "*the balance of probability*" and an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "*beyond reasonable doubt*". Moreover, the Court has held (see *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "*independent*" evidence in order to be accepted.

If the LPA have no evidence of their 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, provided the applicant's evidence alone is sufficiently precise. This we firmly believe to be the case given the fact the development has clearly been implemented and used for its intended end purposes several years ago.

While we are fully committed to cooperating with the council and providing any necessary information, we would like to express some reservations regarding the relevance of certain questions posed in your email dated March 26. Given the legal standard of the "*balance of probabilities*", we believe the focus should be on assessing the overall weight of the evidence rather than the minutiae of specific details, which are not founded upon fact but instead are considered to be based upon assumptions.

This principle was affirmed by Lord Hoffmann in *Re B (Children)* [2009] 1 AC 11 at [2]:

"If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not."

In relation to this point, we will clarify the queries that you raised in this email regarding the roof lights, structural support along the north elevation, and the photographs submitted in the statement.

You have queried the use of roof lights in the construction of the building, and the framework within the building on the northern elevation. These elements are simply how the building was ordered, delivered and erected at the site. The building was then used for agriculture without any hindrance or requirement for any further construction features. Per above, this is simply a matter of fact, and if the building was not substantially complete then it would not have been capable of use. We see no reason why the minutiae of the building detailing require interrogation beyond this. This is exactly why the lawful test on the matter is '*substantially complete*'.

You also raised the point regarding a '*curious series of photographs*' and what was their purpose for being taken. These are 'Figure 8' in the submitted planning statement. These photographs show the use of the building for agricultural purposes in August 2018 and also that it was substantially completed by this date. The photographs are ones that the applicants had in their possession from preceding years. These images further support the evidence suggesting that the building was used for agricultural purposes.

'Figure 9' of the submitted planning statement shows screenshots from a video taken in August 2018. It is noted that the purpose of the video being taken was to show a dog playing inside the building and not to capture the stage of the construction of the building. However, one can deduce from this video that it is not contrived footage; it accidentally provides a sound record of the building being substantially completed and used for its intended end use of agriculture in August 2018.

In order to provide a thorough response, we kindly request access to all evidence held by the council relevant to our application. Having a complete understanding of the information available will enable us to address any concerns or perceived discrepancies effectively. This point is confirmed within the NPPG, which outlines, if a local planning authority obtains evidence, **this needs to be shared with the applicant** who needs to have the opportunity to comment on it and possibly produce counter-evidence. (NPPG Paragraph: 006 Reference ID: 17c-006-20140306 Revision date: 06 03 2014). However, on the basis that such evidence has not been provided to date and on the basis of the submissions by the applicant, we believe that the balance of probabilities test has been achieved.

NEIGHBOUR OBJECTION

A neighbour, Mr Ian Podmore, has submitted objections to the application, and our response to the objection dated 19.03.24 is provided below in addition to an updated timeline presenting Mr Podmore's evidence, provided in Appendix 1 below.

The first, and most fundamental area to draw attention to is the dates Mr Podmore begins to draw doubt on the use/operations of the building. As can be seen in the timeline, these fall after the four year date has passed. The evidence submitted consists of poor-quality photos lacking sufficient detail, especially as they refer to specific details of a building with which the individual has no knowledge or involvement. Some images appear to have been taken from a considerable distance, rendering them incapable of providing reasonable or credible evidence for consideration, particularly when contrasted with the sworn statements of individuals who have regularly worked within the building for years.

Mr Podmore has misnumbered some of his photographs and has named some in his timeline that we still haven't received. Specifically, D1 or D2 – his numbering makes which one is missing unclear. It's imperative to note that as such evidence has not been submitted, absent evidence cannot be considered a point of deliberation.

Mr Podmore's commentary on the photographs refers to building works that have never happened. For example, *'polishing of the concrete floor on the 30th of August 2021'*, and yet the photograph he claims to show this does not. The floor of the application building is not polished and has never been.

The inclusion of such statements undermines the credibility of the individual's comments on his photographic evidence. Such inconsistencies cast doubt upon the reliability and veracity of the entire testimony provided. Consequently, it calls into question the overall credibility and admissibility of the individual's assertions and evidence within the legal context.

We find Mr Podmore's statement is ambiguous and, at times, false; however his submitted photographs do uphold the original timeline that Wharfe Rural Planning submitted, as shown in the updated timeline (Appendix 1). This timeline also provides further commentary on this matter and only serves to reinforce the case made by the applicant.

It is noted that Mr Podmore's objection to the proposal implies that the construction invoices submitted as evidence are fabricated in that their dates have been changed. This is an unsubstantiated claim and libellous. Below is an image showing the email sent from the construction firm to Mr Garry Robinson of John Pointon & Sons, dated July 24th 2017. This date is consistent with the date on Invoice 0581 which was for the completion of the building.

From: PETE ROBINSON <petewrobinson@btinternet.com>
Sent: Monday, July 24, 2017 9:33 PM
To: Garry Robinson <G.Robinson@pointon.co.uk>
Subject: Invoice

Hi Garry,

Please find attached invoice for Sylvester's

Regards

Pete

Pete Robinson & Son Ltd
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07836370549

To conclude, the evidence tendered by the objector is of such poor quality that it lacks credibility and cannot be afforded serious consideration or any weight within the parameters of legal scrutiny. On this basis, it cannot be considered a material consideration in the determination of the application.

SUBSTANTIALLY COMPLETED

The term '*substantially completed*' is used in The Town and Country Planning Act 1990, Section 171B. However, there is no statutory definition of '*substantially completed*'. Former Circular 10/97 (replaced by the Planning Practice Guidance) stated that the meaning of '*substantially completed*' was "***... in the case of a single operation, such as the building of a house, the four-year period does not begin until the whole operation is substantially complete. What is substantially complete must always be decided as a matter of fact and degree ... All the relevant circumstances must be considered in every case.***"

The matter of substantial completion has been debated previously, with the key judgement widely considered to have been made under [Sage v Secretary of State for the Environment Transport and the Regions, \[2003\] UKHL 22, \[2003\]](#). In this case, The House of Lords held that, in determining whether works are substantially completed, **regard should be had to the developer's original intentions as to the totality of the operations**. In this case, the applicant's original intention was to construct and utilise an agricultural building; this was carried out.

We trust that our points raised will be taken into consideration as you review the application. Our primary goal is to ensure an assessment can be undertaken based on evidence available, in accordance with both the legal standard and principles of procedural fairness.

Thank you for your attention to this matter. We look forward to your response and remain available to provide any further clarification or assistance required.

Yours sincerely

A handwritten signature in black ink, appearing to read "Adam Mustafa".

Adam Mustafa BSc(Hons) MRTPI

CHARTERED TOWN PLANNER | SENIOR PLANNING CONSULTANT

Appendix 1

24th July

Invoice for completion of work received for the Application Building. The building is considered entirely completed at this date (see Invoice 0581)

Period in which Application Building becomes lawful in it's own right

24th July

4 years have passed since the Application Building was entirely completed and is therefore lawful by this date.

March

Proposed change in the design of the Application Building in preparation for the upcoming change in business operations

31st March

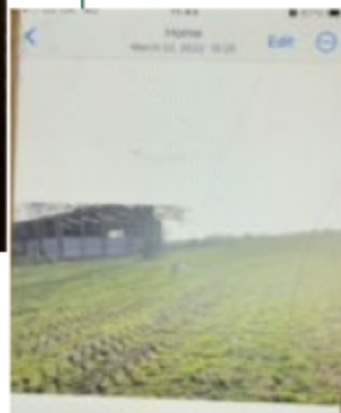
Invoice for completion of external alterations to the Application Building (see Invoice 1021)

SMD/2020/0664 - Approved 7th Jan 2021.

2022

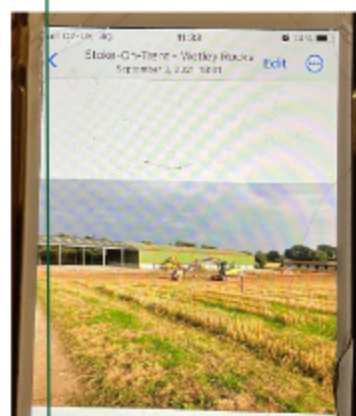
September 2022 - Ian Podmore Photo E2

Mr Podmore submits that a commercial vehicle entrance door has been fitted to the now fully enclosed building.



March 2022 - Ian Podmore Photo E1

Mr Podmore submits photo and states the enclosing of the open Application Building began in March 2022.



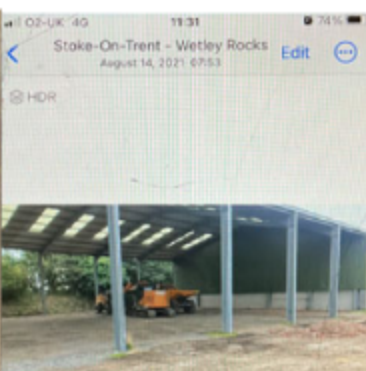
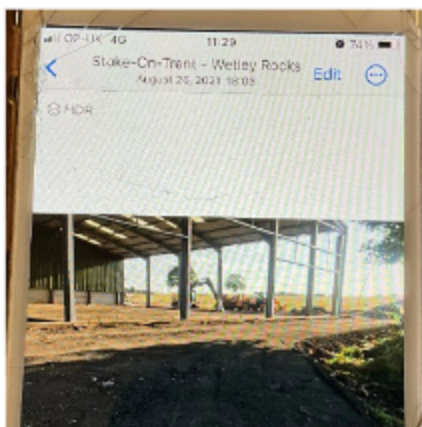
September 2021 - Ian Podmore Photo D2

Picture submitted by Ian Podmore shows completed Application Building. Photo also shows excavators carrying out preparatory works in connection with SMD/2020/0664.

August 2021 - Ian Podmore Photo B1/C2 and C1

Ian Podmore states B1 (below left) shows an open shelter store floor being levelled and compacted ready for concreting. Ian Podmore also references the same picture (below left) as C2 and states it shows the Application Building ready for the polished concreting which, he states, was laid and polished on 30th of August. The picture does not show either of these.

Photo C1 (below right) shows the storage of excavation machinery, consistent with the preparatory works for the permission of the new shed SMD/2020/0664.



2018

July 2017 - Ian Podmore Photo A1

Picture submitted by Ian Podmore shows work has commenced on Application Building. Mr Podmore notes wheat in the surrounding fields suggesting agricultural use.



2020

2019

2021

2017