The Planning Inspectorate

Appeal Decision

Site visit made on 11 December 2014

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 January 2015

Appeal Ref: APP/P0240/C/13/2210680
Land and Grain Store Building, White Gables Farm, Blunham Road, Moggerhanger, MK44 3RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Robert Anderson against an enforcement notice issued by Central Bedfordshire Council.
- The Council's reference is CB/ENC/11/0267.
- The notice was issued on 20 November 2013.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land and grain store building (shown hatched and noted on the plan attached to the notice) from agriculture/horticulture to mixed use of land and grain store building for agriculture/horticulture and the storage of materials and storage and parking of vehicles in connection with a haulage business use.
- The requirements of the notice are
  - i) Remove all materials, equipment and fixtures and fittings including trolleys and racks that are stored on the Land and in the grain store building in connection with the haulage business use.
  - ii) Remove from the Land all vehicles that are stored or parked on the Land or in the grain store building in connection with the haulage business use.
  - iii) Cease using the Land and grain store building for the storage, delivery and distribution of materials, including plants, in connection with the haulage business use.
  - iv) Cease using the Land and grain store building for parking and storage of vehicles in connection with the haulage business use
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: Subject to the variation of the compliance period, the enforcement notice is upheld and planning permission refused.

Preliminary matters

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The appeal site

2. White Gables Farm is located in open countryside on Blunham Road at the northern end of the small hamlet of Chalton. The farm is a mixed use business operating both an agricultural and a haulage business.

3. The appeal site comprises land and a grain store building located to the west of land that has planning permission for mixed use agriculture and haulage use. The appeal site is accessed through this land from an existing access off Blunham Road. At the time of my site inspection, part of the grain store building was being used for storing trolleys in connection with the haulage business and part in use for agricultural storage. There were a number of commercial vehicles/trailers parked at the front and rear loading bays. The open yard area was surrounded by a bund of about 2.4m in height with hedge planting on top.

Relevant planning history

4. A Lawful Development Certificate was granted in 1999 for use of part of the land to the east of the appeal site as a haulage operation.

5. The grain store was granted planning permission in 2007 (MB/06/01599/FULL) subject to conditions. Enforcement Notice No 3 (EN3) for failure to comply with conditions was withdrawn as the conditions were unenforceable because the grain store had been built in excess of four years on a different site to that approved.

6. Enforcement Notice No 1 (EN1) was served in respect of the construction of a canopy and loading bay extension to the grain store. The notice was complied with. Planning Permission was granted in 2014 for the erection of a canopy/loading bay to the grain store (CB/13/03928/FULL).

7. Planning permission was refused in February 2014 for the change of use of the existing grain store building to a mixed use grain store and haulage (Use Class B8) (CB/13/03929/FULL). The application site included part of the appeal site and the access road.

8. Land to the east of the appeal site has permission (CB/12/04284/FULL) for the retention of an office building and mixed haulage and agriculture use. A variation to the conditions was granted on appeal[1].

9. Land to the north of the appeal site is subject to Enforcement Notice No 2 (EN2) relating to a material change of use of the land for mixed agriculture/horticulture and storage and parking of vehicles in connection with a haulage business. An appeal against the notice was dismissed.[2]

10. Enforcement Notice No 4 (EN4) relates to the current appeal.

The appeal on ground (c)

11. The appellant argues that there has not been a breach of planning control. As EN1 attacks operational development and as the notice has been complied with, deemed permission has been granted for the haulage use by virtue of s173(11). The plan attached to the notice shows the same red line as the current appeal.

12. The appellant relies on statements in a planning officer's proof of evidence at paragraph's 6.1 to 6.9[3] in respect of an appeal against EN1 (although the appeal was withdrawn on the day of the inquiry), to contend that the Council

[1] APP/P0240/A/13/2198823
[2] APP/P0240/C/13/2198857
[3] Appendix GC8 of the appellant's statement

failed to attack the unauthorised use directly but attacked the use by requiring the removal of the operational development which they considered to be part and parcel of the unauthorised use.

13. EN1 relates to operational development and not to a material change of use. Despite what the officer's proof may have made reference to, this does not change the allegation in EN1. The fact that permission has subsequently been granted for operational development similar to that enforced against does not carry any significant weight. *Fidler v FSS*[4] held that only the works mentioned in a notice as constituting a breach of planning control were covered by s173(11) for under enforcement and that it did not grant permission for other possible breaches or for any other uses remaining on the site once the notice had been complied with. I note that the appellant considers the circumstances of this appeal to be materially different to Fiddler but I consider it to be relevant. Additionally, the Council refer to *Maldon DC v Hammond*[5] in which the Court of Appeal held that local planning authorities were not required to scour a planning unit for every possible breach in fear that s 173(11) may apply.

14. The appellant further agues that if s173(11) does not apply, then s57(4) applies in connection with permitted development rights by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013. However, as the grain store building has not been used solely for agricultural purposes since July 2012, a change of use from agriculture to haulage use would not be lawful under the prior notification scheme. The Council indicates that as there are highway and noise impacts of the haulage use, the Council would have required a full application to determine whether permission should be granted.

15. As a matter of fact I conclude that a material change of use has occurred for which planning permission is required and is not provided for through s 57(4) or s173(11). The appeal on this ground fails.

The appeal on ground (a)

Main issues

16. From my inspection of the site and its surroundings, and from the written representations made I consider that the main issues in this appeal are the effects of the development on the character and appearance of the area; on the amenity of local residents through additional noise, traffic and disturbance; and, on highway safety.

Reasons

17. A mixed agricultural and haulage use already operates from White Gables Farm and from the number of commercial vehicles and trailers I observed on the farm, the scale of the haulage business, including the extent of offices (with the site being the head office of the business); car parking; lorry and trailer parking; vehicle maintenance; and the storage of trolleys and plant racks, is very significant. There was little evidence of the facilities in and around the appeal site being used to any significant extent for agricultural or horticultural use. The appellant contends that the extension of the business on the appeal

[4] Fidler v FSS & Reigate and Banstead BC [2004] EWCA 12.10.04 J.1123
[5] Maldon DC v Hammond [2004] EWCA (Civ) 1073

site would have no more impact on the living conditions of neighbours than already exists. However, it is evident from many of the written representations of local residents that since the completion of the grain store in 2007, they have been subjected to an increase in haulage traffic activity and the resultant adverse impacts in terms of living conditions and the effects on the highway network.

18. Although the appeal site appears as part of the wider haulage site due to its current unauthorised use, it represents a separate planning unit which is outside the scope of permission CB/12/04284/FULL.

19. In the appellant's agricultural statement supporting diversification of the rural economy and the benefits of diversification of the enterprise[6], it is considered that it conforms to Core Strategy Policy CS11 and paragraph 28 of the National Planning Policy Framework (the Framework). Whilst the appellant's commercial interests may be best met through the expansion of the haulage business, the location of a haulage business in open countryside is not sustainable in its widest sense when acknowledging that sustainable development also includes social and environmental dimensions as well as economic.

20. It is accepted that permission exists for a mixed agricultural and haulage use but this is limited by the physical capacity of the site and relevant conditions attached to that permission, including the hours of use of that part of the site used for maintenance purposes. It is evident from the enforcement activity of the Council that the haulage use of the site has caused noise, dust and disturbance problems to local residents and damage to road surfaces and verges leading to highway safety and visual amenity issues. The Council has sought to use their powers in order to bring the haulage activity under control. I note that a noise assessment has been submitted[7] comparing hand loading from the grain store and loading from a fork lift externally. However sources of noise and disturbance may not solely be from within the site but can arise through noise and vibration from moving HGVs. To allow the haulage use to expand and consolidate on the appeal site would exacerbate these problems to a level that would be unacceptable in a location in the open countryside yet relatively close to nearby dwellings. It would not be in the interests of the proper planning of the area.

21. The level of haulage activity is insufficiently evidenced by the appellant, either in terms of that associated with the haulage business or with the lawful agricultural use of the site, to be confident that increased disturbance is not currently occurring or that it would not have the potential to occur in the future. The submission by the appellant of a copy of one month's log in February 2014 is insufficient to indicate that there has been no material increase in vehicular movements arising from the use of the appeal site.

22. The highway authority objected to application CB/13/03929/FULL for the change of use of the grain store building to a mixed grain store haulage use on the basis of the location being inappropriate for additional haulage activities unrelated to the agricultural needs of the area. In my own assessment of the surrounding rural highway network I concur with the highway authority's view that the network is unsuitable by virtue of width and alignment to accommodate HGVs without detriment to the fabric of the highway and to

[6] Appendix GC20 of the appellant's statement
[7] Appendix GC23 of the appellant's statement

highway safety. The appellant is critical of the highway authority taking a different view in 2013 on the application granted permission under CB/12/04284/FULL, but I see no inconsistency in this as the highway authority expressed similar concerns over impact on the highway network and road safety.

23. The appellant considers that weight should be attributed to the government's intentions to provide flexibility in the planning system as a result of changes to permitted development rights. However I have considered this in the ground (c) appeal above.

24. I conclude therefore that the mixed uses adversely impacts on the character and appearance of the area, on living conditions and on road safety. The mixed use is contrary to Policies DM12 and DM3 of the Central Bedfordshire Core Strategy which relate to horticultural and redundant agricultural sites, and to the quality of development. Although the Core Strategy pre-dates the Framework, the policies are consistent with the aims to reduce the adverse impact on residential amenity and character of the area. I therefore attach substantial weight to them.

25. The appellant has suggested that a landscape condition could be imposed to provide adequate screening. However the impact of the use on the character and appearance of the countryside extends beyond vehicles and trailers parked within the site to the overall impact that the use has in terms of the nature of the activity, the movement of trolleys and racks, disturbance to the area and the effect on highway verges. A landscaping condition would not overcome these concerns. Similarly, the appellant's suggested condition restricting the external storage on the appeal site to horticultural would not overcome the harm that the haulage use causes.

26. The appellant pleads a fallback position by claiming that there would be no breach if the trolleys and racks were to be relocated to the area used for staff parking and that the parking could be relocated elsewhere on site without requiring planning permission. As there are no conditions controlling outside storage or hours of operation, the appellant considers that the harm identified in the notice would not be addressed. Whilst the appellant would not be prevented from doing what they are lawfully entitled to do in the future, this would not overcome the harm that I have identified above.

27. For the reasons given and having had regard to all relevant considerations I conclude that the appeal on this ground should fail.

The appeal on ground (f)

28. The appellant considers that if I find that there would be no harm in terms of the character and appearance of the area then the removal of the materials would be excessive.

29. I have found harm arising from the unauthorised uses. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.

30. The appeal on this ground fails.

The appeal on ground (g)

31. The appellant considers that a period of three months is required for reorganisation. Although the Council is in agreement to an extension from one to three months, they have expressed concern that the impact of the unauthorised use should not be any more than necessary. In this case I consider that it would be reasonable for the appellant to have sufficient time to reorganise his haulage business.

32. For the reasons given above I conclude that a reasonable period for compliance would be three months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal decision

33. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of one month and the substitution of three months as the period for compliance. Subject to this variation the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt

INSPECTOR