The Planning Inspectorate

Appeal Decisions

Site visit made on 5 September 2016

by D E Morden MRTPI

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

Decision date: 13 October 2016

Appeal A: APP/J1915/C/16/3143627
Eastwick Hall Farm, Eastwick, Harlow, CM20 2RA

- 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 P May against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice, Ref E/14/0179/A, is dated 28 January 2016.
- The breach of planning control as alleged in the notice is the change of use of Turkey Barn (Barn 2) into commercial storage (B8 Storage and Distribution).
- The requirements of the notice are to cease the unauthorised use of the Turkey barn (Barn 2).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed out subject to conditions as set out in the Formal Decision at paragraph 18 below.

Appeal B: APP/J1915/W/16/3142954
Eastwick Hall Farm, Eastwick, Harlow, CM20 2RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr P May against the decision of East Hertfordshire District Council.
- The application Ref 3/15/1380/FUL, dated 30 June 2015, was refused by notice dated 13 November 2015.
- The development proposed is the change of use of an agricultural building to commercial storage (B8).

Summary of Decision: The appeal is allowed subject to conditions as set out in the Formal Decision at paragraph 19 below.

Procedural Matters

1. At the site visit the Council accepted that whilst it had stated in its representations that the ground (a) appeal on Appeal A had lapsed, that was incorrect as the appeal had been registered on the basis that it was fee exempt. Whilst the details of what is to be determined on ground (a) of the s174 appeal are not identical to that to be determined on the s78 appeal (the access proposed in the latter scheme is different to that which exists), it was similar enough to be exempt from needing to pay a fee. The Council also confirmed that within its representations, the officers' report for taking action included its reasons for issuing the enforcement notice and it did not, therefore, need to add anything further regarding the ground (a) appeal and deemed application for planning permission that are to be determined.

Background

2. An appeal was dismissed in February 2015 for the change of use of this appeal barn (Barn 2) to Class B8 use (it was retrospective and concerned the same occupier as now) and also another barn (Barn 14) to a commercial (Class B8) use. That appeal was dismissed on highway grounds and the effect on the living conditions of occupiers of 71 to 73 (odd) Eastwick Hall Lane just to the east of the site entrance. The current enforcement notice and the s78 appeal are only concerned with the Class B8 use of Barn 2 by the same scaffolding contractor's business.

3. The parties agreed in this instance about the principle of re-use of the agricultural building for a non-agricultural purpose and the fact that it met the requirements of national and local policy advice. The Council considered, however, that there were detailed material considerations that were sufficient to outweigh that principle and justified refusing planning permission for the development.

The appeal on ground (e) – Appeal A

4. The appellant stated that the notice had not been properly served on the tenant of the building; it had been served on 'the occupier'. The Council were fully aware of who the tenant was so could reasonably have served the notice on the tenant. He, it was argued, is the 'relevant occupier' and the party most affected by the notice and should therefore have been notified.

5. The tenant and the occupier in this instance are one and the same company. The notice was hand delivered to the premises and neither of these two points are disputed. In these circumstances there clearly has been no injustice to the appellant company; it was fully aware that it had been served with a notice and has appealed in the appropriate time allowed. The fact that the Council has chosen to refer to 'occupier' rather than 'tenant' is totally irrelevant in this instance and the appeal on this ground accordingly fails.

The appeal on ground (a) – Appeal A and the s78 appeal – Appeal B

Main issues

6. The main issues in this case, having regard to the prevailing adopted policies, are whether the development materially harms (i) highway safety in the area, (ii) the rural character of the area and (iii) the living conditions of nearby residential occupiers by reason of noise and general disturbance.

Reasoning

7. Dealing firstly with the highway safety issue the appellant proposed in the planning application that access to the site should be via a long, single width, meandering track of about 1.7 kilometres. It exits the appellant's land on to Acorn Street, a minor road running north/south (parallel to the B180) between Hunsdon to the north and a small hamlet to the south and then eventually on to the primary road network (the A414) via the B180.

8. The track has a partly concreted surface as there are one or two sections of concreted road that were part of the old airfield that existed on the land. The great majority of it, however, is made from crushed hard-core and the like forming a relatively poor track. It gives access to the land by suitable vehicles

and whilst it is not really a good enough surface for a standard saloon car, it is passable in such a vehicle if driven slowly at particular points. The access on to Acorn Street has good sight lines in both directions, is on flat land with no hedges interrupting views and is wide enough to accommodate a lorry going into the site at the same time as another one is coming out of the site.

9. The track has two fairly tight right angled corners and a 'hairpin' U-turn. It is however almost completely flat for its entire length and there is good visibility throughout whilst travelling along it; it consists mainly of three long virtually straight sections with few trees or shrubs aligning it. It is currently used by agricultural traffic giving access to the fields its passes through and occasionally by other vehicles at the appellant's premises. There is one short stretch close to the barn (about 370 metres long) where the track is also a Right of Way for walkers and riders but it is perfectly straight with good visibility and ample room, in my view, to avoid conflict with other users.

10. In dismissing the last appeal (February 2015) where only access along Eastwick Hall Lane was under consideration, the inspector concluded that road, whilst surfaced, had poor alignment and forward visibility; the verge had been eroded in many places and it was generally in a poor condition. I do not disagree with that having driven along it to get to the site. It also has a number of footpaths that either cross it or run along it. The appellant argued that it was acceptable but even though the notice and current application concern only one barn (the previous s78 appeal concerned two), I agree that any increase in traffic on the lane would harm the safety of existing users.

11. Whilst the application as submitted was simply for a B8 use the appellant indicated that he would accept a personal condition for this occupier who only generates a maximum of about 8 traffic movements per day (an agreed figure). Also the vehicles used by this occupier are not particularly large and are, in fact, small enough to be kept inside the barn when not in use (two were there at the time of my visit).

12. In my view, taking all the above factors into account, I consider that access on to Acorn Lane would be acceptable for the number of vehicles involved. The size of the building used would limit any increase in the level of the business but I consider that even a very small increase in numbers using this access by this occupier would be acceptable.

13. The other concern regarding highways was the Council's view that it would not be appropriate to impose a condition to prohibit the use of Eastwick Hall Lane. As stated in paragraph 10 above, I agree with the previous inspector that any increase in traffic on that access route should not be allowed. All conditions that restrict a use have to be policed in some way, or rely on complaints that they are not being complied with. That does not make them unenforceable and thereby unreasonable to impose; indeed the Council acknowledged that it would not be impossible to enforce. The company's vehicles are marked and no one else at the site transports scaffolding back and forth. It would not be difficult to work out if the condition was being breached.

14. Turning to the second main issue, the use would involve the lorries travelling across open countryside along the access track to Acorn Street. I acknowledge that the route can be seen from a couple of Rights of Way but bearing in mind the very small number of trips involved, I do not consider that the use would materially harm the open rural qualities of the area.

15. Dealing with the third main issue, vehicles going back and forth from the barn would not pass the residential properties to the east that front Eastwick Hall Lane very close to the site entrance. The previous inspector determined that the use would unacceptably affect the living conditions of those occupants. The current scheme only includes the use by the scaffolding company and there would be no vehicles accessing the site by passing these properties. They would be far enough away from traffic using the alternative access not to cause a nuisance to any occupiers in Eastwick Hall Lane.

16. To the west of the barn is the farmhouse and unlike 71, 72 and 73 Eastwick Hall Lane that are only about 3m back from the access, it is set back some 12 or 13m from the track that it is proposed to use. There is also a high (about 8m) thick Leylandii hedge that acts as a visual screen and helps to reduce any noise from vehicles moving along the track. There would be some increase in noise disturbance for the occupants, who do not object in any event, but about eight vehicle movements a day is minimal and in my view not enough to justify dismissing the appeals.

Conclusions

17. For the reasons given above and taking account of all other matters raised, I conclude that, subject to conditions limiting the use to the existing occupant, limiting access and prohibiting outside storage the use is acceptable and the appeals should succeed. The parties also agreed that if approved there should be a condition requiring signage for drivers about access to the site. Accordingly I shall allow the appeals and quash the enforcement notice. In these circumstances the appeals on grounds (f) and (g) on Appeal A do not fall to be determined.

Formal Decisions

Appeal A: APP/J1915/C/16/3143627

18. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at Eastwick Hall Farm, Eastwick, Harlow, CM20 2RA, as shown on the plan attached to the notice, for the change of use of Turkey Barn (Barn 2) into commercial storage (B8 Storage and Distribution) subject to the following conditions:

    1) The use hereby permitted shall be carried on only by Direct Scaffolding Contractors Limited. When the company cease to occupy the premises, the use hereby permitted shall cease and all materials and equipment brought on to the premises in connection with the use shall be removed from the land.

    2) No vehicles associated with the scaffolding use (both the company's own vehicles and other vehicles delivering materials and/or equipment to the company) shall be permitted to use Eastwick Hall Lane; access and egress to the site shall only be via Acorn Street.

    3) All scaffolding equipment shall only be stored within the barn and no outside storage of equipment or materials shall take place.

    4) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of the use shall be removed within

30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within 1 month of the date of this decision a scheme for signage to explain vehicular access to the building shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within 8 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved signage required by this condition, that signage shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B: APP/J1915/W/16/3142954

19. The appeal is allowed and planning permission is granted for the change of use of an agricultural building to commercial storage (B8) at Eastwick Hall Farm, Eastwick, Harlow, CM20 2RA in accordance with the terms of the application, Ref 3/15/1380/FUL, dated 30 June 2015, and the plans submitted with it, subject to the identical conditions 1 – 4 as set out in the preceding paragraph.

D E Morden

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 1 September 2016

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 20th October 2016

Appeal Ref: APP/J1915/W/16/3152109
Youngs Little Acre, The Mount, Medcalf Hill, Widford, Hertfordshire SG12 8TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Melvyn James against the decision of East Hertfordshire District Council.
- The application Ref: 3/15/2104/FUL, dated 15 October 2015, was refused by notice dated 10 December 2015.
- The development proposed is the siting of two refrigerated units 3.5 metres long, 2 metres wide and 2 metres high, sited next to each other, abutting the rear boundary fence.

Decision

1. The appeal is dismissed.

Procedural matters

2. The development has already been carried out and I was able to see the refrigerated storage units in situ when I undertook my site visit. I have removed the location of the appeal site from the description of the development given on the planning application form as it is not necessary to include this.

Main Issues

3. The main issues in this appeal are:

    - Whether the proposed development is an appropriate form of development in a rural area; and
    - The effect of the proposed development on the character and appearance of the area.

Reasons

Background

4. The appeal site is an area of largely open land, approximately 0.3 hectares in area, located to the east of the B1004 road, north of the village of Widford. It is accessed by a narrow, unmade track from the main road which also provides access to Coombe Villas. In addition to the refrigerated storage units, there were three timber sheds and a touring caravan on the site at the time of my site visit, together with a flatbed van, a car and miscellaneous items of

furniture and building materials. The site is largely grassland with an established hedgerow to the east boundary containing some large trees.

5. Saved Policies GBC2 and GBC3 of the East Hertfordshire Local Plan Second Review 2007 (EHLP), taken together, seek to generally protect countryside areas from development and new building other than that which is required for the purposes of, amongst others, agriculture or forestry, essential small scale facilities for outdoor sport and other essential small scale facilities that meet a local need. EHLP Policy ENV1 seeks a high standard of design in new development which is compatible with its context. Although the EHLP predates the publication of the National Planning Policy Framework (the Framework), I am satisfied that these policies are consistent with the requirements of the Framework when taken as a whole and, as such significant weight can be given to them.

Whether the development is an appropriate form of development in a rural area

6. It is not in dispute between the parties that the appeal site is in a rural area and that Saved Policies GBC2 and GBC3 apply. Policy GBC3 defines development that will be appropriate within a rural area and allows for the construction of new buildings and changes of use that are for the purposes of agriculture. It also for other essential small scale facilities, services or uses of land which meet a local need, are appropriate to a rural area, and which assist rural diversification.

7. The definition of agriculture in the Town and Country Planning Act 1990 (as amended) includes the keeping of livestock for the production of food. The appellant states that their business involves the keeping of turkeys for the Christmas trade and also the keeping of pigs for a hog roast business. However, no substantive evidence has been submitted that would indicate that this business is established and operating, or that the land is being used for agricultural purposes. At the time of my site visit, there were no birds or animals on the site. Although one of the timber sheds has a small enclosed run attached to it, this building did not appear to be in use and only occupied a very small part of the site. Overall, there is no compelling indication that the site is being used for agricultural purposes.

8. Whilst I am mindful that land can be used for the purposes of agriculture without the need for planning permission, from the evidence before me and from what I saw during my site visit, I am not persuaded that there is currently any significant form of agricultural operation or business use of the site. The refrigerated units have been present on the site since January 2015, however, the appellant states that they have not been connected to a power supply during that time which is inconsistent with the suggestion that they are a vital component of any business use of the site.

9. Similarly, there is no compelling evidence that the refrigeration units are for a purpose which assist in rural diversification. The development therefore fails to meet the tests set out in Policy GBC3 in order to amount to appropriate development in a rural area.

10. I therefore conclude that the development is not an appropriate form of development in a rural area and is contrary to the relevant requirements of EHLP Policies GBC2 and GBC3 which seek to protect countryside areas from

development that is not appropriate to, or is required to be sited in a rural area.

Character and appearance

11. The countryside around the appeal site consists of small to medium scale agricultural fields with hedgerow boundaries, and is interspersed with scattered blocks of woodland. The land immediately around the appeal site rises gently to the east, away from the road, and is made up of a number of small parcels of land that are enclosed by strong hedgerows and treelines and includes a small group of residential properties to the west.

12. The white coloured industrial style refrigeration units are in stark contrast to the other buildings on the site and the nearby residential properties. However, they are located adjacent to other structures and against a strong hedge line containing a number of mature trees. The appeal site and the adjoining land parcels are not widely visible as a result of the surrounding trees and hedgerows. Consequently, the visual impact of the units is limited to the immediate surroundings.

13. Due to the small size of the units and their proximity to other buildings, their effect on the openness of the area is not significant despite the more enclosed and secluded nature of the surroundings. I also note that the appellant has stated that the units could be clad in timber to match their appearance more closely to the other buildings on the site. Whilst this is not part of the proposal before me, nevertheless, it would improve the appearance of the development and could be required by way of a planning condition.

14. I therefore find that the development does not cause harm to the character and appearance of the area and complies with the relevant requirements of EHLP Policy ENV1 which seeks to ensure a high standard of design in new development and that new development does not harm the character and appearance of the locality.

Other matters

15. Whilst there has been concern expressed regarding the effect of the development on the living conditions of the occupiers of neighbouring properties, I note that the Council's Environmental Health Officer has no objection to the development on noise grounds and that this did not form part of the reasons for refusal . On the basis of the evidence before me and from my site visit, I have no reason to come to a different conclusion. Similarly, I would agree with the Council's conclusion that traffic generated by the development is likely to be limited. However, neither of these factors, either, of itself, or cumulatively leads me to a different conclusion on the main issues.

Conclusion

16. I have found that the development does not cause harm to the character and appearance of the area. However, I have found that the development is not appropriate development in a rural area as there is insufficient evidence that it is necessary in connection with an agricultural use of the site to meet the tests in Policy GBC3 of the EHLP. Consequently planning permission should be refused.

17. For the above reasons, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR

The Planning Inspectorate

Appeal Decision

Hearing held on 28 September 2016
Site visit made on 28 September 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 12 October 2016

Appeal Ref: APP/J1915/W/16/3144930
Crouchfield Farm, Wadesmill Road, Chapmore End, Ware, Herts SG12 0RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr David Peters, Crouchfield Farm against the decision of East Hertfordshire District Council.
- The application Ref 3/15/2474/ARPN, dated 10 December 2015, was refused by notice dated 2 February 2016.
- The development proposed is described as the change of use of agricultural building to a dwellinghouse (1 x 2 bedroom dwelling).

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr David Peters against East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary matters

3. In the interests of clarity I have adopted the description of the application in the Council's decision notice.

4. In July 2016 the Council sought permission to challenge a recent appeal decision[1] to allow the conversion of an agricultural barn to one dwelling in the district under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015. The Court's decision is believed to be imminent, and if the matter proceeds to a full hearing, a decision to allow this appeal could be joined to that case, causing unnecessary delay and expense to the appellant. I was therefore asked by the Council to delay my decision until the final outcome of the challenge is known. However, the appellant is entitled to a decision without delay, and given the decision in this case, the matter does not arise.

5. In late 2015 the appellant sought prior approval under Class Q for the change of use of an adjacent building (known as building 29) to a dwelling. The Council sought to refuse approval but accept that the appellant did not receive the notification within the required 56 days. As such, the Council accept that

[1] Appeal Ref APP/J1915/W/16/3142497 dated 20 June 2016.

prior approval for the conversion of building 29 has been granted by default. During the site visit it was established that the combined floorspace of buildings 29 and 30 would not exceed the 450 m² cumulative limit which can change use within an established agricultural unit under Class Q.

6. The application is for prior approval for permitted development under Class Q(b) as well as Class Q(a), namely building operations to convert the building as well as the change of use of the building.

Main Issues

7. There is no dispute that the proposal would meet all the requirements listed in paragraphs Q.1(b) to Q.1(m) of the 2015 Order for permitted development under Class Q. In addition, there is no dispute that prior approval is not required for matters (a) to (d) and (f) in paragraph Q.2 (1) of the Order.

8. Consequently, the main issues in this case are:

   - whether the building was used solely for an agricultural use as part of an agricultural holding on 20 March 2013 or when last in use; and if so
   - whether the location or siting of the building makes it impractical or undesirable for the building to change to use as a dwelling;

   in order to establish whether the requirements in paragraphs Q.1(a) and Q.2(1)(e) of the Order would also be met so that the proposal would be permitted development under Class Q.

Reasons

Agricultural use

9. The building which is the subject of this appeal, known as building 30, forms one of three buildings and an associated yard at the centre of Crouchfield Farm, an established agricultural holding comprising about 15 acres which has been in the ownership of the appellant for some 30 years. Over this time a cattle enterprise has been built up, with a corral on the site for 200-300 cattle together with a log cabin for the stockman. The corral is used over the winter, with the cattle grazed in the summer on about 260 acres of nearby farmland.

10. The appellant submitted three statutory declarations claiming that building 30 has been in continuous agricultural use for 30 years. Mr Peters' declaration states that it has housed cattle which have required to be separated from the main herd, calving pens and storage of hay, straw, feeds and equipment. That of Mr Sams, a longstanding employee, states that it has been in use as calving pens, later as a feed store and recently for the storage of farm equipment.

11. However, the planning history of the site is complex. As the appellant states in his statement in support of the current application, there is also a lawful non-agricultural commercial yard. The appellant's case at the hearing was that this commercial yard comprised only the third building, known as building 25, sited on the far side of building 29, together with the yard between buildings 29 and 25. It was argued that the remainder of the site, including buildings 29 and 30, have remained solely in agricultural use throughout.

12. In late 1991, during the appellant's ownership, planning permission was sought for the use of buildings 29 and 30 for storage (B8) purposes together with the

use of adjacent land for the storage of contractor's plant and an alteration to the site access. This was refused and enforcement notices were also served alleging, inter alia, that building 30[2] was being used for non-agricultural storage without permission. Dealing in early 1993 with an appeal against the relevant notice on the grounds that the alleged use had not occurred, the Inspector found that the building 'is being used for storage purposes' and that 'as a matter of fact, the allegation contained in the notice... has taken place.'[3]

13. In the case of the related Section 78 appeal, the Inspector concluded that the two buildings were 'genuinely redundant as farm buildings' and that 'low-key storage activities' would be 'a suitable after use for these otherwise underemployed solid structures'. Planning permission was granted for storage use of the two buildings (but not the adjacent open yard) subject to conditions, one of which required unspecified changes to the site access prior to the change of use of building 29. The appellant claims that this permission was not implemented at the time and was allowed to lapse, but this conflicts with the conclusion of the Inspector that the storage use of building 30 had already commenced. The appellant claims that because the site access was not changed and the conditions were not 'signed off' by the Council, the permission did not come into effect and has therefore lapsed. However, the access condition related to building 29 not 30, and consequently there was nothing to stop the continued lawful use of building 30 for storage even though the access was not improved.

14. Subsequently, in early 2001, a planning inquiry was held into a further enforcement notice on the site and a refusal of planning permission for four houses on the site of the three buildings and adjacent yard[4]. The notice alleged that the three buildings, adjacent yard and parts of nearby fields were being used for the storage of building materials, contractors plant, machinery and vehicles without planning permission. The appellant's case in response was, inter alia, that the use of buildings 29 and 30 for storage purposes was not in breach of planning control as planning permission had been granted for the use in 1993 on appeal. It was not claimed that the buildings were not in storage use, rather that the storage use was lawful. The enforcement notice was amended accordingly. Significantly, the appellant, who gave evidence personally and was professionally represented, did not claim that the building was in agricultural use at the time.

15. The appellant was also successful in arguing that the use of building 25 and the yard between buildings 25 and 29 for storage had been ongoing for at least 10 years and was therefore immune from enforcement action. The enforcement notice was amended to take account of this finding too. This area consequently has a lawful use for non-agricultural storage and at the hearing the appellant maintained that this was the only area used for such purposes. It was claimed that the remaining area, including buildings 29 and 30, has been used solely for agricultural purposes for 30 years, and that the 1993 permission was not implemented. It was not suggested or explained that there had been a return to agricultural use at any stage following a storage use of the buildings.

[2] The notice stated building 29 but this was corrected.
[3] Appeal decisions T/APP/C/92/J1915/622178-80 and T/APP/J1915/A/92/208868/P6 dated 17 February 1993.
[4] Appeal decisions APP/J1915/C/00/1049096 and APP/J1915/A/01/1057049 dated 8 May 2001.

16. The statutory declarations claiming that building 30 has consistently been in agricultural use throughout this period conflict with the planning history set out above. Mr Peters' claim that he was unaware until recently of the 1993 planning permission for storage use of building 30 is also surprising given his close involvement in the 2001 inquiry. In the circumstances I agree with the Council that the statutory declarations are not completely reliable as evidence.

17. It was clear from my site inspection that the three buildings and the yards in between are used for the storage of a wide variety of machinery, vehicles and materials. These include several tractors, earth moving machinery, old cars and a JCB. Buildings 29 and 30 both contain vehicle workshop facilities. Local residents suggested at the hearing that the amount of machinery and equipment on the site was excessive in relation to the size of the agricultural unit, and they noticed numerous vehicle movements to and from the site. One suggested that a plant hire business was being operated, and this was not denied. Residents also observed that in recent years the number of cattle kept within the corral had reduced markedly, and on my site visit I noticed it was rather overgrown. I was advised that there were no cattle on the holding at present, but that cattle would be purchased shortly.

18. There is at present no clear distinction between the types of storage within the three buildings or the yards outside, nor the uses to which these areas are put. Unlike the others, building 30 is subdivided into five bays, the first of which comprises an office. These subdivisions limit the size of the individual items that can be stored, but contrary to the appellant's claim, do not necessarily restrict the use of the building to agricultural storage. There are the remains of two or three hay feeders and an old water trough within building 30, but this is consistent with agricultural use pre-1993.

19. The use of building 30 on 20 March 2013 is a question of fact to be determined on the evidence available. The building must have been solely, not partly, in agricultural use for the permitted development rights under Class Q to be available. The appellant does not dispute that there is a commercial business operating within the agricultural unit, but maintains this has only taken place within building 25 and the yard outside, not in building 30. On the evidence available I conclude that this is unlikely. There is clear evidence of non-agricultural B8 storage use within building 30 in 1993 and 2001, no evidence that the building has since been returned to a solely agricultural use, and on the basis of my site inspection, no evidence that the agricultural and commercial uses within the site are in practice kept distinct and separate.

20. The appellant argues that business rates have not been paid on building 30 over the years and that this demonstrates an agricultural use. However, this may have been an oversight and is not conclusive. Secondly, the Council did not dispute an agricultural use in the case of building 29, but the full planning history of the site only came to light subsequently and the Council could not therefore take it into account in that decision.

21. For these reasons I conclude on the evidence that building 30 was not used solely for an agricultural use as part of an agricultural holding on 20 March 2013 or when last in use. The permitted development rights under Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 therefore do not apply.

Impractical or undesirable location

22. In view of the conclusion in paragraph 21 this issue does not need to be addressed in this appeal decision.

Conclusion

23. Having regard to the above the appeal should be dismissed.

David Reed

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

William Ashley	Agent
David Peters	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Annabel Graham-Paul	Barrister, Francis Taylor Building
Michael Chalk	Planning Officer, East Herts DC

INTERESTED PERSONS:

Joan Walkom	Local resident
Shirley Shurety	Local resident
Ann Cheyne	Local resident

The Planning Inspectorate

Costs Decision

Hearing held on 28 September 2016
Site visit made on 28 September 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 12 October 2016

Costs application in relation to Appeal Ref: APP/J1915/W/16/3144930
Crouchfield Farm, Wadesmill Road, Chapmore End, Ware, Herts SG12 0RX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr David Peters for a full award of costs against East Hertfordshire District Council.
- The hearing was in connection with an appeal against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of agricultural building to a dwellinghouse (1 x 2 bedroom dwelling).

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr David Peters

2. The costs application was submitted in writing. At the hearing the appellant reiterated that the Council had been unreasonable to refuse prior approval for the change of use. Building 30 had always been in agricultural use. The 1993 permission had never been implemented, it was subject to conditions which had never been fulfilled and had therefore lapsed. The building does not lend itself to non-agricultural use.

3. With regard to the second reason for refusal, the Council had ignored the clear guidance in paragraphs 108 and 109 of Planning Practice Guidance (PPG) and had unreasonably pursued these arguments despite several adverse appeal decisions and awards of costs in similar cases elsewhere in the district.

The response by East Hertfordshire District Council

4. The Council's response was also made in writing and supplemented orally at the hearing. In relation to the use of the building, there were serious doubts as to the credibility of the statutory declarations as they were directly contrary to the evidence of the 1993 and 2001 appeal decisions. Therefore it was reasonable not to take them at face value. The non-payment of business rates is not determinative of the actual use, and no other evidence was submitted.

5. In relation to the second reason for refusal, the siting of the building adjacent to what is now partly a commercial yard would result in a poor outlook and noise and disturbance for the occupiers. This is essentially a matter of judgement and it was reasonable to raise these concerns at appeal particularly as the site is not wholly agricultural in nature.

6. With respect to the isolated location argument, the Council recognise that costs have been awarded against them elsewhere in the district when pursuing the same point. However, the Council now have a live legal challenge underway against a comparable Class Q appeal decision in the district[1] which seeks to establish that the sustainability of the location is a relevant consideration in accordance with the policies in the National Planning Policy Framework (NPPF). The fact that this challenge is underway is a new factor which makes the Council's continued pursuit of the point during this appeal reasonable.

Reasons

7. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

8. In this case the Council refused prior approval for the change of use of the building for two reasons, the latter having two separate elements.

9. The first reason was that insufficient evidence had been submitted to demonstrate that the building concerned was used solely for agricultural purposes on 20 March 2013 or when last in use. The appellant claimed that the building had always been in agricultural use, as confirmed by three statutory declarations, that the nearby buildings had always been described as agricultural by the Council and the matter was not raised when prior approval was sought for the change of use of the adjacent building 29.

10. However, when researching the planning history of the site after the decision on building 29, the Council uncovered further information, in particular two Inspectors decisions dating from 1993 and 2001. These indicated that building 30 had been used for non-agricultural storage on those dates, which was inconsistent with the three statutory declarations. It is regrettable that this information was not available earlier, but on its discovery it was reasonable for the Council to take it into account and consequently not to take the statutory declarations at face value. Decisions should be made on the basis of all the information available at the time. Since the actual use of the building is critical as to whether there are permitted development rights under Class Q, and the planning history suggested the use may not have been agricultural in 2013, it was reasonable for the Council to pursue this argument at appeal.

11. In relation to the second reason for refusal, the Council argued that it was undesirable for the building to be used as a dwelling, firstly due to its siting adjacent to a farmyard/commercial storage yard, and secondly due to its isolated location in the countryside away from key services and facilities such as public transport, schools and shops.

12. Dealing with siting, the building currently forms part of a group of buildings and associated yard which forms the centre of an agricultural unit but also includes a commercial business operation. The Council are concerned that the occupiers of the building would have a poor outlook to the east, facing the access to the other buildings and yard with little or no screening in between. There would also be noise and disturbance to the occupiers of the building due to vehicle

[1] Appeal Ref APP/J1915/W/16/3142497 dated 20 June 2016.

movements in close proximity, some of which would be heavy farm and contractors vehicles moving to and from the cattle corral and commercial yard.

13. These concerns are not of the same magnitude as those put forward in paragraph 109 of the PPG as examples when the change of use of a building may be undesirable. They would not be as serious as proximity to an intensive poultry farm building, silage storage or buildings with dangerous machines or chemicals. However, there may be lesser concerns which would still result in undesirable living conditions for the occupiers. Furthermore, in this case the adjacent yard and buildings are not wholly in agricultural use, a situation which may not have been envisaged in PPG. In these circumstances, whether or not the concerns were actually fully justified, it was not unreasonable for the Council to pursue them at appeal.

14. In relation to the Council's argument that the proposal is also undesirable due to its isolated location in the countryside, this is in clear conflict with paragraph 108 of the PPG. This states that 'the permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport'. Despite this conflict the Council have fruitlessly advanced the same argument in several recent appeals, losing on each occasion including costs in some cases.

15. The Council argue that to the extent that paragraphs 108 and 109 of the PPG seek to exclude relevant policies of the NPPF, they are wrong. The Council obtained legal advice in January 2016 that the provisions of Class Q and paragraph W(10)(b) of the 2015 Order entitle it to take into account the policies of the NPPF so far as relevant to the subject matter of the prior approval[2], and this includes all aspects of sustainability. This argument is now being tested by means of a legal challenge to a recent appeal decision allowing a similar Class Q proposal in the district. The challenge commenced in July and a decision whether or not it should proceed to a full hearing is imminent.

16. However, the fact that the Council believes it has an arguable legal case to challenge a recent appeal decision, and by implication the validity of the guidance in paragraphs 108 and 109 of the PPG, does not make the Council's position in relation to this appeal reasonable. The Council's decision to refuse the application on this ground and the commencement of the appeal process by the appellant were both in February 2016, whilst the legal challenge relating to an entirely separate case (albeit touching on the same legal issue) did not commence until July 2016 when this appeal was well underway.

17. In addition, unless and until the challenge is successful and paragraphs 108 and 109 of the PPG are withdrawn, they remain an important material consideration in the determination of this appeal. The precedent set by the earlier appeal decisions and awards of costs in the district are also material considerations, and the Council had no suggestions at the hearing as to how the current case could be distinguished from these earlier cases in relation to the sustainable location point.

18. The action of the Council in pursuing this part of their case to appeal, albeit not their other arguments, has therefore been unreasonable. This has meant that

[2] In this case whether the location or siting of the building makes it impractical or undesirable for the building to change from agricultural use to a dwellinghouse.

the appellant has been put to the unnecessary expense of seeking to counter this aspect of the appeal. Consequently I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated in relation to the isolated location issue and that a partial award of costs in that respect is justified.

Costs Order

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Hertfordshire District Council shall pay to Mr David Peters the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to whether the location of the building makes it undesirable for the building to change to use as a dwelling due to its isolated location.

20. The applicant is now invited to submit to East Hertfordshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

David Reed

INSPECTOR