
Appeal Decision

Site visit made on 6 September 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 22 September 2016

Appeal Ref: APP/R3325/C/16/3143756

Land at OS 6320 Bearley Lane, Tintinhull, Yeovil, Somerset BA22 8PE

- 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 David Tavener against an enforcement notice issued by South Somerset District Council.
 - The Council's reference is 15/00009/USE.
 - The notice was issued on 24 December 2015.
 - The breach of planning control as alleged in the notice is '*Without planning permission the change of use of land at OS 6320 Bearley Lane, Tintinhull, Yeovil, Somerset from Agricultural to Use Class B8 Storage (Town and Country Planning (Use Classes) Order 1987)*'.
 - The requirements of the notice are to:
 - 1. *Permanently cease the Use Class B8 Storage;*
 - 2. *Remove from the land the ten unauthorised shipping containers and skip;*
 - 3. *Remove from the land all storage of non-agricultural items including the various storage items housed both internally, in the storage containers and the modern farm buildings located on the land, and externally on the land; and*
 - 4. *Restore the land to its condition before the breach took place*'.
 - The period for compliance with the requirements is 3 months of the date the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The Enforcement Notice is varied by:

The deletion of the words '3 months' and the substitution thereof of the words '6 months' as the time for compliance with the requirements.

Subject to this variation, the appeal is dismissed in respect of ground (a) and I uphold the Enforcement Notice and refuse to grant planning permission for the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Preliminary Matters and Background

2. Planning permission was granted for the erection of an agricultural building for storage and livestock housing on the appeal site in May 2005¹. The appellant tells me that the building was constructed shortly after permission was granted

¹ Planning permission Ref 05/01127/FUL refers.

and that he used it for agricultural purposes. As I understand it, this activity ceased following the appellant's involvement in a car accident and, as a consequence, he could no longer continue with the livestock business. This building is now being used for storage in association with what the appellant describes as his business of buying and selling bric-a-brac and furniture.

3. At my site visit, I observed that there is also a second building on the site² together with 10no shipping containers. Both buildings and the shipping containers are being used for the storage of *inter alia* household items / furniture, architectural salvage, timber, lawn mowers, generators and car tyres. The external area was also littered with such items varying in condition and state of repair, giving the site an untidy and unkempt appearance.
4. The Council has confirmed that it is not certain of the date on which the unauthorised activity first began. However, it states that it was made aware of the issue in January 2015 and that there is no evidence that the breach has been in existence for a period in excess of 10 years.
5. In view of the appellant's submissions regarding the nature of the activity, the Council states that the appellant has no permission to operate a depot from the farm at which he lives in association with the business being carried out at the appeal site and that the frequency of customers to the appeal site is at a level beyond ancillary retail use. However, these are not matters before me in the determination of this appeal. Rather, it is the highway safety implications of the B8 Use as the basis on which the EN was served that is at issue.

Deemed planning application / ground (a) appeal

6. The appeal on ground (a) is that planning permission should be granted for what is alleged in the EN.

Main Issue

7. Against the background that I have described, the main issue is the effect of the development on highway safety.

Reasons

8. Bearley Lane is accessed directly from the A303. It is a narrow country lane, surfaced over most of its length but with no footways and unlit, which reaches a dead end a considerable distance from the appeal site. It serves a number of other uses including neighbouring farms, dwellings, a caravan storage facility, a cattery and a new bio-digester facility.
9. On exiting Bearley Lane, and in joining the A303 via a left hand turn, traffic is potentially travelling at national speed limit and there is no acceleration lane for slow moving traffic to join. Taking a right hand turn out onto the A303 involves crossing two lanes of the oncoming traffic, before moving into a narrow turning lane and entering or crossing the outside lane of the dual carriageway carrying traffic in the opposite direction.
10. The site itself has a long access track into the site and an area of hardstanding to the front of the buildings with a metal five-bar field gate at its entrance. The

² Whilst the Council states that it does not hold any details of a planning permission in relation to this building, it confirms that it was present during the consideration of the 2005 application and is therefore immune from enforcement action.

side elevation of one of the metal clad former agricultural buildings abuts the highway verge to one side of the access with a hedgerow running along the front boundary to the other side.

11. Given the characteristics that I have described, the Council is of the view that the site it is suitable only for low level vehicle movements and that the B8 storage use generates an increase in vehicular movements over and above that associated with the agricultural use.
12. Nevertheless, the appellant contends there are fewer traffic movements associated with the B8 Use and that the vast majority of vehicles are cars or small vans, rather than slow moving tractors and trailers associated with an agricultural use.
13. From my reading of the appellant's evidence, the farm to which the site relates is Homestead Farm, Tintinhull and when the appeal buildings were in agricultural use they functioned as a satellite site intended to support the main farm. In this scenario, the appellant states that the vehicular movements amounted to two visit per day over 7 days a week for livestock purposes, trips between the sites with harvesting and handling equipment and other trips with agricultural vehicles relating to the delivery and collection of fodder; that is, a total of 6 movements per day associated with the livestock business (2 of which involved tractors or trailers) together with a further 1-2 journeys connected with general farming activities.
14. The appellant argues that the current business operates 1 transit van which collects items from auctions and delivers or collects items from the site up to 4 times per week. A further 3 visits per week are by the appellant's cataloguer and no more than 5 customers per week by appointment with the majority of goods sold via eBay and collected by a courier from the site for delivery. He therefore confirms a maximum of approximately 24 movements per week, equating to an average of less than 4 movements per day.
15. In this context it is important to have regard to what is reasonable. I do not dispute that the current level of traffic generated by the use may be relatively low. However, in my view, there would be something inherently unreasonable in granting planning permission for two sizeable buildings and 10no shipping containers for B8 Storage Use and then trying to limit trip generation to as little as 2 vehicular movement each way per day. The volume of storage space on the site is not insignificant. The buildings are of considerable size and could be intensively used for storing a variety of goods, as was evident at my site visit.
16. My concern is that the operator may well find higher levels of trip generation than those specified, especially as it is a relatively new business which, if successful, could intensify. For example, I do not see any sensible or reasonable means by which the number of customers that visit the site by appointment to view the goods they wish to purchase could be controlled. It follows that an increase in trip generation could not reasonably be resisted given the volume of storage space permitted and the difficulty of defining the precise level at which the number of trips generated becomes unacceptable. I am not therefore satisfied that restricting the goods to be sold or the potential number of trips by condition would, in the long term, ensure that traffic generation objections would not arise. Neither am I convinced that such a condition would be enforceable.

17. For these reasons, I find that the B8 Storage Use is likely to generate an increase in traffic movements over and above that associated with the former agricultural use. Whist the nature of the vehicles used may differ insofar as the use of tractors and farm vehicles associated with an agricultural use are replaced predominantly with what the appellant contends are car and small vans, one cannot rule out the use of trailers and large courier delivery vans especially for the collection of large household furniture and architectural salvage, bulk purchase or delivery of multiple items to the site.
18. Thus, the question is whether the highway conditions at the junction with the A303 are adequate to accommodate the increase in traffic. From my observations, in order to join the A303 to the left one must give way to the oncoming traffic and quickly build up speed to that of the moving vehicles travelling in the same direction. I am not persuaded that larger vehicles associated with the storage use would be able to do so in a safe and convenient manner so as not to slow or obstruct approaching vehicles. The right hand turn requires crossing the dual carriageway onto a narrow turning lane which is likely to result in encroachment into the outside lane of the oncoming traffic in the case of longer wheel-based vehicles or trailers, thus creating a significant highway safety hazard.
19. I accept that such a situation may have occurred with tractors and farm vehicles in association with the former agricultural use. Nevertheless, the potential increase in the number and frequency of vehicles visiting the site together with a lack of control on the size and nature of vehicles used in association with the B8 Storage Use, increases the opportunities for dangerous highway manoeuvres and collision, and thus creates an unacceptable highway safety risk.
20. Consequently, I conclude that the potential impact on highway safety associated with the local highway conditions and the continued use of the appeal site and buildings for B8 storage use cannot be overcome. It therefore conflicts with Policy TA5 of the adopted South Somerset Local Plan 2015 which seeks to ensure that all new development secures inter alia safe access and safeguards existing transport infrastructure.
21. I acknowledge that planning permission has been granted for a variety of uses in the lane in the past. I do not know the particular set of circumstances associated with each use which enabled the Council to grant planning permission. Be that as it may, this does not justify what is otherwise an unacceptable form of development for the reasons I have given.
22. The appellant also argues that the development has economic benefits, including farm diversification as supported by paragraph 28 of the National Planning Policy Framework, which allows him to continue to run a business from his land. As the appellant claims that he can no longer continue with the livestock business owing to his accident, I cannot see how the development at issue is in the true spirit of farm diversification as it appears to be replacing rather than adding new business activities to traditional farming activities. In any event, the benefits of the business are primarily personal to the appellant and contribute little to the rural economy or environment.
23. The appellant has also suggested a personal permission and one which would allow for a restriction on the storage activity to that which is currently being carried out. Having regard to the advice in the National Planning Practice

Guidance³ which states that it is rarely appropriate to use a condition to limit the benefit of a permission to a particular person, I do not find exceptional circumstances before me to justify such a course of action. For the reasons I have already given, neither do I consider it appropriate to impose a condition restricting the storage activity on the site.

Other Matters

24. Although not given as a reason for issuing the EN, the Council has stated in its subsequent appeal submissions that the unfamiliar and isolated location of the site together with a lack of directional advertisements would be likely to result in customers disturbing the occupants of the nearby residential properties by seeking directions, and that this would harm their amenity. The Council also states that the outlook from the neighbouring property is onto a scrap site, thereby affecting the visual amenity of the property. As I have dismissed the deemed planning application / ground (a) appeal for reasons relating to highway safety and the reason for issuing the EN, I have taken these matters no further.

The appeal on ground (g)

25. An appeal on ground (g) is that the time given to comply with the EN is too short, and a longer period for compliance should be allowed. The appellant asks for the period to be extended to 12 months given the need to dispose of material that is stored on the site and to enable him to secure a return on his investment.
26. I am mindful that, until the breach of planning control is rectified, the detrimental effects on highway safety as a result of the unlawful development will persist. However, I consider a period of 6 months would strike an appropriate balance between the competing public and private interests so as not to place a disproportionate burden on the appellant of disposing of the vast quantity of stored goods on the site and / or finding an alternative site for his business. To this limited extent, the appeal on ground (g) succeeds.

Conclusion

27. In conclusion, the appeal is unsuccessful on ground (a) and the planning application deemed to have been made. The appeal on grounds (g) succeeds as I find the compliance period too short, and I am therefore varying the EN accordingly prior to upholding it.

Melissa Hall

Inspector

³ Paragraph 15 of the National Planning Practice Guidance.