
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 it 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