The Planning Inspectorate

Appeal Decision

Site visit made on 30 September 2019

by JP Roberts **BSc(Hons) LLB(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal Ref: APP/D3125/C/19/3220184
Unit A, Farm Building, Farley Lane, Stonesfield OX29 HB

- 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 Peter Bullock against an enforcement notice issued by West Oxfordshire District Council.
- The enforcement notice was issued on 4 December 2018.
- The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref 07/1817/P/S73 granted on 5 December 2007.
- The development to which the permission relates is described as "non-compliance of condition 1 of planning permission 06/1683/P/FP to allow continued use. The condition in question is No 1 which states that:
  The permission hereby given shall be carried on only by Mr P Bullock and shall be for a limited period of 12 months from the date of this decision letter, or the period during which the premises are occupied by Mr P Bullock whichever is the shorter.
  The notice alleges that the condition has not been complied with in that Unit A is still being used for B2 industrial use.
- The requirements of the notice are:
  Cease the use of the building for welding purposes (including any other purpose in class B2 of the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in an (sic) statutory instrument revoking and re-enacting that Order with or without modification.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected by the deletion in the recital of the condition of the word "Bulloch" and its replacement by the word "Bullock" and the word "my" shall be replaced by the word "by". In the requirements of the notice the words "an statutory instrument" shall be replaced by the words "a statutory instrument", and the final paragraph of the notice, the words "Operational Development" shall be replaced by the words "Breach of Condition". Subject to these corrections, the appeal is dismissed and 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.

Procedural matters

2. The enforcement notice recites the condition in dispute, but contains a number of errors, referring to "Mr P Bulloch" instead of "Mr P Bullock". The word "my" is in error and should say "by". The requirements of the notice refer to "an

statutory instrument", and should say "a statutory instrument". The final paragraph of the notice says "This is the plan referred to in the Enforcement Notice – Operational development EN 2018/10….". The notice does not relate to operational development but a breach of condition. I shall correct these errors as to do so would not result in an injustice to any party.

Appeal on ground (a) – that planning permission should be granted

Main Issues

3. The main issues are:

   i) the effect of the use on the living conditions of nearby residential occupiers, with particular regard to noise and smell, and

   ii) the effect of the use on the character and appearance of the surrounding area, which lies within an Area of Outstanding Natural Beauty (AONB).

Reasons

Noise and smell

4. The welding business takes place in one of three linked buildings, originally built as agricultural barns. The appeal premises is typical of modern agricultural buildings, with blockwork walls about 2m in height, above which is profiled steel cladding, with translucent panels in the eastern elevation. The shallow pitched roof is made of what appears to be cement-fibre sheets.

5. The building is well-used, with little spare space. At the rear is a small office, whilst the rest of the floorspace is occupied by the storage of materials or welding and other metal working equipment. Some miscellaneous scrap or waste is kept to the side of the building, partially screened from view by wooden sheeting.

6. When planning permission was granted for the temporary continued use, the nearest residential property was at Bishops Meadow, some 40-50m away. Since then, new houses have been built on what is now called Limbeck Way, with the nearest house, 6 Limbeck Way, being about 10m away. In my judgement, the use of the appeal site for welding and metal work will inevitably give rise to problems of noise for the nearby residential occupiers, especially when the roller shutter doors at the front are open, and in warmer weather, when residents will be more likely to have their windows open and to sit out in their gardens. The noise of angle grinders, drilling, sawing, polishing and manhandling large items of metal is very likely to be intrusive at such a close distance. I expect that from time to time there will be some smells from welding work which add to the unneighbourly impact.

7. I also noted that new dwellings are currently under construction to the south-east of the appeal site, and there may be future pressure for residential development on the field opposite the appeal site, or elsewhere nearby on Farley Lane. However, this uncertain prospect does not add significant weight to my concerns about the harmful effect that the use has on the living conditions of existing nearby neighbours.

8. I have had regard to the fact that the use has been carried on for some considerable time, apparently without complaint, and that only some of the new residents of Limbeck Way have objected. However, the occupation of the

Limbeck Way properties has been a recent and significant change in the planning context. This is not a case where occupiers of new uses find themselves in conflict with an established lawful use; the welding use was only permitted on a temporary basis, and there can have been no legitimate expectation that it would have been allowed to be continued.

9. I therefore find that the welding use results in material harm to the living conditions of nearby residential occupiers, with particular regard to noise and smell and conflicts with Policies OS2 and EH8 of the West Oxfordshire Local Plan (LP), which, amongst other things, aims to ensure that development should be compatible with adjoining uses and not have a harmful impact on the amenity of, or cause unacceptable nuisance to, existing occupiers.

Character and appearance

10. The site lies on the edge of the open countryside, to the east of the built-up limits of the settlement. Farley Lane, which is a public right of way, has a more rural appearance leading east from the appeal site, and the appeal site and its immediate vicinity has a greater affinity with the countryside than it does with the residential part of Stonesfield.

11. Even so, the presence of buildings, even of an agricultural appearance, already detracts from the attractiveness of the open countryside, and the presence of a new housing development to the south-east also diminishes the feeling of being within the open countryside. Views into the site are very localised, as it is largely screened by hedges, providing only a narrow field of view towards the yard and, when the roller shutter door is open, of the workshop. Given the small size of the building, and seeing that it is intensively occupied by machinery, equipment and materials, I expect it likely that materials will be kept outside at times, and not just on the odd occasion as suggested by the appellant. The appearance of the open workshop, and of the fork-lift truck, and any materials kept outside would have an industrial appearance which is at odds with the natural scenery of the open countryside, and results in a small degree of harm.

12. I therefore conclude that the continued use of the workshop for welding purposes would result in a small degree of harm to the character and appearance of the countryside and to the AONB. It would also conflict with LP Policy EH1, which gives a high priority to conserving and enhancing the area's natural beauty, landscape and countryside.

Other matters

13. I recognise that upholding the notice would have a significant effect on a long-established and apparently successful business. However, there is insufficient evidence to show that a re-location would not be possible. The notice would also interfere with the appellant's right to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, and the importance of providing residents with good standards of amenity and conserving valued landscapes are matters of legitimate public interest. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the

appellant's rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

14. I therefore conclude, for the reasons explained above, that planning permission should not be granted for the continued use of the site without complying with the condition in dispute, and therefore the appeal on ground (a) fails.

Overall conclusion

15. For the reasons given above, I conclude that the appeal on ground (a) should be dismissed, and, subject to corrections, the notice should be upheld.

JP Roberts

INSPECTOR