



Appeal Decision

Inquiry Held on 5 November 2019

Site visit made on 5 November 2019

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 11 November 2019

Appeal Ref: APP/N2739/C/18/3216070

Grange Farm, Hall Lane, Newthorpe, South Milford, Leeds, LS25 6JN

- 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 Jonathan Hickman against an enforcement notice issued by Selby District Council.
- The enforcement notice was issued on 17 October 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the Land and buildings on it from agriculture to a mixed use for agriculture, vehicle repairs, storage of vehicles and associated parts and attachments, storage of commercial storage containers related to commercial use, and commercial storage of crops and hay not grown on the land or the agricultural unit of which it forms a part.
- The requirements of the notice are i. stop using any part of the land for commercial storage of crops and hay and agricultural vehicles for commercial repair other than those used solely for the purpose of agriculture on the land; ii. Stop using any part of the land for commercial vehicle repairs and the storage of commercial storage containers, vehicles for repair and vehicle parts and attachments; iii. Remove from the land all vehicles, vehicle parts and attachments, and storage containers brought onto the land for the purpose of the unauthorised use. You may keep on the land any parts and attachments which you use solely for the maintenance of agricultural vehicles for the purposes of agriculture on the land.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the notice is upheld, with a variation.

Preliminary matters

1. At the opening of the inquiry, I pointed out that the appellant's case appeared to contend that the matters alleged in the notice had not occurred and that this is a matter which would normally form the subject of an appeal on ground (b) of S.174(2) of the Act. The opportunity was given to add this ground of appeal to the appellant's case but, as it was not taken up, I shall determine the appeal on the basis that what has been alleged in the notice has occurred, as a matter of fact.
2. All the evidence at the inquiry was taken on oath.

The appeal on ground (c)

3. The appeal site is a broadly triangular shaped area of land containing two large agricultural buildings. Building A is a portal framed building with a lean-to extension and building B is a partly brick built, barrel-roofed building. The site was originally part of the farmstead to Newthorpe Grange Farm. Abutting the appeal site to the north are two grassed fields, extending to some 5.6ha, also owned by the appellant. To the east of the site is the original farmhouse, now in separate ownership.
4. In an appeal on ground (c), the onus is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control, the relevant test being the balance of probabilities. In this case, the issue is whether there has been a material change of use from the lawful agricultural use. A change of use is material by "bringing about a definable change in the character of the use made of the land"¹. In determining this, it is relevant to consider whether the non-agricultural uses taking place on site are more than *de minimis* and, if so, whether they are ancillary to the lawful agricultural use of the land. For a use to be ancillary, there must be a functional link between the uses.
5. The Council contends that the planning unit is the land owned by the appellant, i.e. the appeal site and the adjoining 2 fields. It is not in dispute that the appellant farms hay and silage from further extensive areas of land in the wider locality which he rents from various land owners. However, some of these appear to be more than 3 miles from the appeal site and I was told by Ms Worthington that these are based on *ad hoc* rental agreements, not agricultural tenancies. Other than "the Chapman land", it is not clear how long these agreements have been in place; it is also not clear how permanent they are. Therefore, whilst they might from time to time form part of the appellant's agricultural operation, their wide degree of separation and lack of permanence lead me to conclude that they are not part of the relevant planning unit.
6. I now turn to the first part of the allegation - vehicle repairs, storage of vehicles and associated parts and attachments. The Council accepts that the appellant does not run his haulage business from the appeal site. Indeed, the business has now been wound up and the appellant's vehicles are leased to a third party, who operates from a different site. The Council also accepts that the appellant does not lease out HGVs or equipment/machinery to other farms locally. As is clear from step 3 of the notice, it has always been the case that the Council accepts that the maintenance of agricultural vehicles for the purposes of agriculture on the land would be incidental to the agricultural use of the site.
7. The appellant did not appear at the inquiry but set out his case by way of a statutory declaration, which includes a description of his farming operations. These comprise taking hay and silage from the land presently owned and rented by him. In addition, he undertakes some agricultural contracting, solely baling hay, silage and straw. Whilst he says this occurs between June and early September, no information is given as to the scale or value of this contracting use such that a judgement could be made as to whether this was incidental to his own agricultural use. He sets out the large scale equipment used for his agricultural business but both my site visit and the extensive

¹ Hertfordshire CC v SSCLG [2012] EWHC 277

photographic record indicate a significant number of other vehicles, vehicle parts and attachments, in varying states of repair, both inside and outside the 2 buildings, which appear unrelated to the reasonable agricultural need of the agricultural operation, as described, and simply appear to be stored.

8. On each of the Council officers' visits to the site, save for one pre-arranged with the appellant, there have been HGVs parked on site. This is consistent with the extensive observations over a long period of time of Mr Knowles, a close neighbour. Along with the photograph of a HGV cab and of cab parts parked inside the building, and given the seasonal nature of the agricultural and agricultural contracting operations, this is more indicative of storage or repair than of HGVs simply delivering to the site.
9. In building B, and in one of the steel storage containers on site, there is a very comprehensive array of professional tools and equipment which would enable repairs and maintenance of agricultural and other vehicles. Ms Robinson stated that, on a site visit in July 2017, she had seen an individual repairing a HGV. Ms Worthington accepted the photographs showed some repair of HGVs. This does not indicate that the appellant primarily maintained his fleet of vehicles here, and indeed he provided evidence of regular service and repair of HGVs elsewhere. However, it indicates to me that vehicle repairs other than those ancillary to agricultural use, were capable of being carried out, and indeed were carried out, here. Whilst the content of the appellant's statutory declaration is not disputed by the Council, it does not appear to adequately address this point, such that I would feel able to conclude in the appellant's favour.
10. I now turn to the alleged storage of commercial storage containers related to commercial use. There are two broad types of commercial container on site, the large steel box containers and the wooden potato crates. There are six of the former on site, including the one referred to in para.9 above. Of the others, one appears to be capable of use as an office, if refurbished, and the rest are either little used or were unable to be opened during my visit. For the most part, they appear to be stored there, rather than being in an agricultural use. Although they are commercial type containers, I see little indication that they are used for commercial purposes.
11. The potato crates are large, timber boxes stacked in very large quantities in at least 3 areas of the site. The only farming operation I was made aware of is the production of hay and silage and therefore these boxes appear to have little function; they are simply stored. The fact that the land might be suitable for potato production does not alter my view on this matter. As with the steel containers, I see little indication of commercial use and I shall vary the allegation accordingly.
12. Finally, I turn to the alleged commercial storage of crops and hay not grown on the land or the agricultural unit of which it forms a part. The appellant accepts that potato storage took place in building A in the winter of 2017/18, albeit as a favour to another farmer. There were stacks of straw present at my site visit, the origin of which is unknown. As I noted above, there is no appeal on ground (b). Storage of produce from outside the agricultural unit is not an agricultural operation and would indicate a material change of use requiring planning permission.
13. Whilst the content of the appellant's statutory declaration must be given due weight – and the Council had no reason to disagree with its content – it lacks

detail in a number of areas. A number of questions about the detailed operation of the appeal site which were put by the Council's advocate to Ms.Worthington were unable to be answered. I, too had a number of questions that only the appellant could have answered definitively, had he been present. Based on the evidence I have before me and from my observations on site, I conclude that the appellant has failed to discharge his burden of proof that there has not been a breach of planning control. The uses carried out on the planning unit, to which I refer above, are more than *de minimis* and have brought about a definable change in the character of the use made of the land from agricultural to a mixed use, as set out in the allegation. This has had a noticeable, adverse impact on the local environment. Accordingly, the appeal on ground (c) fails.

Formal Decision

14. It is directed that the enforcement notice be varied by deleting "related to commercial use" from the allegation. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

B.S.Rogers

Inspector

Appearances

For the appellant:

Mr D.Hardy LLB(Hons), BCL(Hons) - Partner Squire Patton Boggs (UK) LLP

He called:

Ms S.Worthington MPhil, MRTPI - Director, Airedon Planning and Design

For the Council:

Mr P.Robson of Counsel

He called:

Ms R.Robinson BSc(Hons), MA - Principal Enforcement Officer, Selby DC

Interested persons:

Mr C.Knowles - Local resident

Mr C.Stephenson-Quayle - Local resident and Chair, Newthorpe P.C.

Documents

1. Attendance list
2. Photograph taken at site visit on 9/7/19