The Planning Inspectorate

Appeal Decisions

Site visit made on 19 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17th January 2020

Appeal Ref: APP/X1545/C/18/3212699 & 3212700
Lot 11, Land to the west of Middle Wood, Maypole Road, Great Totham

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are by Nikki-Ann Arquette-Wright (3212699) and Gordon Wright (3212700) against an enforcement notice issued by Maldon District Council.
- The enforcement notice, ref. ENF/13/00253/01, was issued on 26 September 2018.
- The breach of planning control alleged in the notice is the material change of use of the land to a mixed use comprising agriculture and use of the land for parking and storage of a livestock carrier.
- The requirements of the notice are to:
  a. Cease the unauthorised use of the land for parking and storage of a livestock carrier.
  b. Remove from the land all vehicles associated with the unauthorised use.
- The period for compliance with the requirements is twenty-eight (28) days
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (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 do not fall to be considered.

Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Background matters

2. The appeal site is an agricultural plot of roughly 1.3 hectares lying some 250 metres to the east of Maypole Road and about one-and-a-half kilometres to the south of Great Totham, in an area of generally flat open countryside. It is one of a number of such smallholdings. Access is from a track leading from Maypole Road and via Furzelands Farm to the south. The track runs along the side of the site with Middle Wood immediately to its east.

3. The livestock carrier identified in the enforcement notice has been parked on a wedge of land near the north-eastern corner of the plot on the eastern side of the access track. The vehicle in question was not on the site at the time of my visit, but I have seen from photographs that it is essentially a large horse-box. Indeed, the word 'horses' is displayed on the front and the back of the vehicle.

4. The Council have made two Directions under Article 4 of The Town and Country Planning (General Permitted Development) Order 1995 covering the appeal site and nearby land[1]. These restrict various forms of development usually

[1] Article 4 direction Ref. Art4/2010/1, dated 26 August 2010.

permitted under the Order. The restrictions that might conceivably apply in this case are under Classes A and B of Part 4 to Schedule 2. These would normally allow for such things as the provision of moveable structures, works, plant or machinery required for temporary operations on the land, and the use of any land for any purpose for not more than 28 days in total in any calendar year. Otherwise the Article 4 Directions have no particular bearing on this case. In any case it appears that the land identified in the Directions does not include the wedge of land to the east of the track, where the livestock carrier has been sited.

The appeals on ground (b)

5. This ground is that the matters alleged in the notice have not occurred as a matter of fact. This is one of the grounds known as a 'legal' ground, where the burden of proof is on the appellants to show on the balance of probabilities those matters have not occurred. It is then for the Council to show why they consider this not to be the case.

6. The appellants say that the livestock carrier is stored in conjunction with their agricultural use of the land and that it is not therefore development. However, this is not an argument that the alleged development has not occurred, but rather that there has been no breach of planning control. This is a matter properly considered under ground (c), to which I turn below.

7. It is apparent that the vehicle has been parked or stored on the land and this is acknowledged by the appellants. On the balance of probabilities the alleged breach has therefore occurred as a matter of fact, and the ground (b) appeals must fail.

The appeals on ground (c)

8. This ground is that there has been no breach of planning control. This is a further 'legal' ground where the burden of proof is on the appellants to show there has been no breach of planning control on the balance of probabilities. This might be the case where, for instance development is permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), or where planning permission has already been granted for the development.

9. I saw that the appeal site is an open field with a post and wire fence along the track. There are a few fruit trees and ornamental trees, but otherwise the site was largely covered with long dried grass. There were no animals on the site at the time of my visit, and I saw no indication of planting of any crops. It is acknowledged by the parties that the use of the site as a whole is agricultural.

10. As noted above the appellants argue that the livestock carrier is used as an incidental element to their agricultural operations on the appeal site, used for transporting a variety of animals. It is put to this use by the appellants and by fellow landowners and is also used to store items associated with animal husbandry and any agricultural activities.

11. It appears to me that the livestock carrier has been used for wider purposes than solely in connection with the appellants' agricultural activities – notably use by other landowners. While I appreciate there may be a need to transport livestock to and from the site at various times of year, and that the vehicle may quite reasonably used by others, that does not justify, or render lawful

what appears to be relatively long-term parking/storage of the vehicle. This is not an activity that comes within the allowances of Class B, Part 6 of Schedule 2 to the GPDO, which permits certain forms of development on agricultural holdings of less than 5 hectares subject to preclusions and conditions. Nor has planning permission been obtained. On the balance of probabilities I consider there has been a breach of planning control in terms of the material change of use of the land to a mixed use comprising agriculture and use of the land for parking and storage of a livestock carrier. The appeals on ground (c) therefore fail.

Conclusions

12. For the reasons given above and having regard to all other matters raised, I consider the appeals should not succeed

Stephen Brown

INSPECTOR