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## Appeal Decisions

Site visit made on 2 June 2020

**by AJ Steen BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 July 2020**

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### **Appeal A Ref: APP/M1710/C/19/3220116**

#### **Land at Woolmer Farm, Woolmer Lane, Bramshott, Liphook GU30 7RD**

- 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 Graham Mellstrom of The Colesfield Farming Partnership against an enforcement notice issued by East Hampshire District Council.
- The enforcement notice was issued on 7 December 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years the material change of use of the buildings on the Land from agriculture to mixed use comprising: a) agriculture; b) specialist vehicle repair and maintenance business; c) tree surgery and forestry/agricultural machinery repair business; d) building contractor and joinery business; and e) chimney repair contractor business.
- The requirements of the notice are:
  - (i) Cease the use of the building on the Land marked "A" on the plan for car repair and maintenance business;
  - (ii) Cease the use of the building on the Land marked "B" on the plan for tree surgery and forestry/agricultural machinery repair business;
  - (iii) Cease the use of the building on the Land marked "C" on the plan for building contractor and joinery business; and
  - (iv) Cease the use of the building on the Land marked "D" on the plan for chimney repair contractor business.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision**

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### **Appeal B Ref: APP/M1710/W/19/3223071**

#### **Woolmer Farm, Woolmer Lane, Bramshott, Nr. Liphook, Hampshire GU30 7RD**

- 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 G.F.C. and Mrs B.M. Mellstrom of Colesfield Farming Partnership against the decision of East Hampshire District Council.
- The application Ref 33125/049, dated 30 May 2018, was refused by notice dated 20 August 2018.
- The development proposed is described as "change of use of agricultural buildings to Use Class B1(c) (part retrospective)".

**Summary Decision: The appeal is allowed in the terms set out below in the Formal Decision**

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**Preliminary Matters**

1. The enforcement notice under appeal A relates to the use of four buildings within the farmyard at Woolmer Farm. The plan attached to the notice identifies these buildings, along with the other buildings within the farmyard, and the enforcement notice indicates that the Council considers the yard to comprise a single planning unit that has changed to be in a mixed use.
2. Since the notice was issued and the planning permission under appeal B was determined, the Council have approved planning application reference 33125/050. This was for the "change of use of agricultural unit D at Woolmer Farm, for continued use of already established tree surgery/forestry storage (B8) and ancillary agricultural machinery repair ... and retention of roller shutter doors in front elevation ...".
3. The lettering of units relating to that application differs from that on the enforcement notice and this planning permission relates to unit B on the enforcement notice plan. The site plan for the planning application in appeal B does not label the buildings, although the floorplans and elevations letter them A1-3, B and C, but these differ from the lettering on the enforcement notice site plan and planning permission 33125/050. For clarity, I have put together the following table of plans. I will use the lettering of units on the enforcement notice (EN) in my reasoning and decisions.

| Use (from EN)                                                    | EN plan | 33125/050 | Appeal B |
|------------------------------------------------------------------|---------|-----------|----------|
| Car repair and maintenance business                              | A       |           | A1       |
| Tree surgery and forestry/agricultural machinery repair business | B       | D         | B        |
| Building contractor and joinery business                         | C       |           | A        |
| Chimney repair contractor business                               | D       |           | C        |

4. Section 180 of the Town and Country Planning Act 1990 (the Act) states that where, after service of the enforcement notice, planning permission is granted for any development carried out before the grant of planning permission, the notice shall cease to have effect so far as inconsistent with that permission. As a result, the use of unit B now has planning permission and if I were to uphold the notice it would cease to have effect insofar as it relates to the use granted planning permission within that unit.
5. I understand that the use of unit A as a car repair and maintenance business and unit D as a chimney repair contractor business has ceased and both buildings were vacant at the time of my visit. The Council suggest the notice has been complied with insofar as it is relevant to those units.
6. The enforcement notice requires the uses within the individual buildings, other than agriculture, to cease. However, the breach of planning control describes all the individual uses and the land to which the notice relates includes all the buildings in the yard at Woolmer Farm. Consequently, if I were to uphold the enforcement notice unamended, it would cover the whole yard such that occupiers of the units cannot move from one unit to another within the yard.
7. Appeal B relates to buildings A and B, the adjacent attached buildings and building D and includes alterations to the buildings as well as the change of use to use class B1(c). The site plan supplied with the application does not include building C or the other buildings at Woolmer Farm.

8. The application forms in appeal B describe the development as retrospective. However, that is not a description of development so I will remove it from the description in my formal decision.

### **The Appeal on Ground (b)**

9. An appeal on this ground is that the matters described in the notice have not occurred. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. The appellant does not suggest that the changes of use alleged in the notice have not occurred. However, they do suggest that this has not resulted in a mixed use of the site.
10. The buildings were previously in agricultural use but a number have been changed into various commercial uses. The appellant suggests that these are all separate uses. The whole of the farmyard is included within the red line area on the plan attached to the enforcement notice. This reflects the historic use of the yard as a whole for a single, agricultural, use and its single ownership with the units occupied separately by individual tenants. Consequently, I consider that the yard is in a mixed use such that the matters described in the notice have occurred.
11. For these reasons, I conclude that the appeal under ground (b) must fail.

### **The Appeal on Ground (c)**

12. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
13. There is no dispute that the change of use of buildings A, B and C as set out in the enforcement notice constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for these changes of use.
14. Building D was previously used as an engineering and mechanical workshop in association with the agricultural use of the farm. The appellant suggests that the use alleged in the notice was not materially different. However, that related to a use by a chimney repair contractor. I have limited information as to how they used the building. Nevertheless, it is clear that this was not in association with the agricultural use of the farm. Consequently, on the balance of probabilities, I conclude that it comprised a change of use that constitutes development within the meaning of Section 55 of the Act for which planning permission is required.
15. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
16. For these reasons, I conclude that the appeal under ground (c) should fail.

### **Appeal A on Ground (a) and the Deemed Planning Application Appeal B**

#### *Main issues*

17. The main issues in both appeal A and appeal B are:

- the effect of the commercial uses on the living conditions of neighbouring occupiers at Ludshott Manor with particular regard to noise and disturbance;
  - the effect of the commercial uses on the intrinsic character and beauty of the landscape; and
  - whether Woolmer Farm is in an appropriate location, with particular reference to the reliance on motor vehicles.
18. In appeal B there is an additional main issue in relation to the effect of the development on flood risk.

### *Appeal A Reasons*

#### Living conditions

19. Ludshott Manor comprises a series of dwellings within the main building, outbuildings and within the grounds. The closest dwellings to the buildings at Woolmer Farm are a terrace of dwellings with the end dwelling adjacent to the tall wall that forms the boundary between Ludshott Manor and Woolmer Farm. The rear of these dwellings obliquely face building C on the enforcement notice site plan, used by a building contractor and joiner. Building B, occupied by the tree surgery and agricultural machinery business is located a short distance to the side of the dwellings and building A that was occupied by the car repair business is located over the farm yard, but would be visible through the gap between buildings B and C when viewed from Ludshott Manor. Building D that was used by the chimney repair contractor is located to the rear of building C when viewed from that direction. There are additional dwellings on the opposite side of buildings and over the access track.
20. As the buildings are in close proximity to all these dwellings, any noise and disturbance would affect occupiers of the closest dwellings at Ludshott Manor and those over the access track. The building contractor and joinery workshop and chimney repair contractor would be likely to be noisy at times, for example during operation of joinery machinery or loading and unloading of the building contractor's materials and equipment. The car repair use would also be noisy at times, particularly when car engines are running. The tree surgery and agricultural machinery business already has planning permission, so I will not consider it further here.
21. Given the potential noise and disturbance from the building contractors, joinery workshop, chimney repair contractor and vehicle repair uses, I conclude that the uses harm the living conditions of occupiers of neighbouring dwellings. As such, the changes of use conflict with Policy CP27 of the East Hampshire District Local Plan: Joint Core Strategy (CS) and the National Planning Policy Framework (the Framework) that seek to protect the living conditions of occupiers of neighbouring properties from pollution, including noise and disturbance.

#### Character and beauty of the landscape

22. The buildings at Woolmer Farm are located within a small cluster of development comprising the former and current agricultural buildings, Ludshott Manor and other adjacent residential buildings. This cluster of development is surrounded by open countryside comprising agricultural land and woodland,

with long access routes to the surrounding road network. As such, it is located within a tranquil rural area.

23. The uses within the buildings as building contractors, joinery workshop, chimney repair contractor and vehicle repair introduce noise and disturbance through their use and access by commercial and other vehicles. This has resulted in harm to the tranquil rural character of the area.
24. Nevertheless, there have been no alterations to the appearance of the buildings. As such, other than the effect on tranquillity, the changes of use have not otherwise affected the character and beauty of the landscape.
25. For these reasons, I conclude that the commercial uses of the site harm the intrinsic character and beauty of the landscape. As such, the changes of use conflict with Policies CP20 and CP27 of the CS, Policy C14 of the East Hampshire District Local Plan: Second Review (LP) and the Framework that seek to protect and enhance the local distinctiveness and tranquillity of the landscape, and protect it from pollution including noise and disturbance.

#### Location

26. Woolmer Farm is located in a remote area, with a long access track to the nearest road and settlement. The use of the buildings as building contractors, joinery workshop, tree surgery and forestry/agricultural machinery repair business, chimney repair contractor and vehicle repair workshop result in additional traffic accessing the buildings. Given the nature of these uses, they are likely to be accessed on a regular basis throughout the day with vehicles coming and going and with limited alternative forms of transportation to this remote location.
27. For these reasons, Woolmer Farm is not in an appropriate location for these uses, with particular reference to the reliance on motor vehicles. As such, it conflicts with Policies CP2 and CP31 of the CS and the Framework that seek to locate development within accessible locations that reduce the need to travel. In addition, Policy C14 of the LP, relating to the change of use of buildings for employment uses in the countryside, seeks to ensure traffic generated is not of a type or amount inappropriate to local rural roads, or lead to unsustainable travel patterns.

#### Other matters

28. The neighbouring Ludshott Manor is listed grade II and was constructed as a country house that has since been converted to flats. It was remodelled and extended in 1827-8 and subsequently extended with a chapel and further alterations in the twentieth century. However, the separation from the buildings subject of this appeal, combined with the lack of alterations to them, means that the changes of use have not harmed the setting of the listed building. As a result, the changes of use do not conflict with Policy HE12 of the LP or the Framework that seek to protect the setting of heritage assets, including listed buildings.

#### Conclusion

29. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

## *Appeal B Reasons*

### Living conditions

30. The buildings subject of this appeal are buildings A, B and D and the attached buildings adjacent. This includes those buildings closest to the residential properties at Ludshott Manor and on the opposite side of the access track. However, the use proposed in this planning application is under use class B1(c), which is defined as any industrial process that can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
31. Limited information has been provided as to the proposed uses within these buildings; the proposal is speculative in that regard. However, these are existing buildings that were constructed for, and could return to, an agricultural use. If I were to allow the appeal, this would be subject to conditions to restrict this use such as to limit any effect of the development on the living conditions of occupiers of neighbouring properties. This would include ensuring further noise insulation is provided within the buildings and to restrict their hours of use.
32. Taking account of the above, I conclude that the proposal would not result in material harm the living conditions of occupiers of neighbouring properties with particular regard to noise and disturbance. As such, the development would comply with Policy CP27 of the CS and Framework.

### Character and beauty of the landscape

33. A use under class B1(c) would not have the same effect on tranquillity as some of the uses subject of the enforcement notice. The nature of vehicles accessing the site is unclear but is likely to involve less and smaller vehicles than the uses referred to in the enforcement notice, such that it would have a limited the effect on tranquillity. In addition, there are a number of other properties in the area that result in traffic generation, further reducing the effect of any additional traffic associated with these buildings.
34. The proposal relates to the re-use of existing substantial metal framed and clad buildings with limited changes. Consequently, there would be limited effect from the change of use on the character and beauty of the landscape.
35. For these reasons, I conclude that the use of the site under class B1(c) would not cause material harm the intrinsic character and beauty of the landscape. As such, it would not cause material conflict with Policies CP20 and CP27 of the CS, Policy C14 of the LP or the Framework.

### Location

36. The location of the building in this remote rural location means that there would be an increase in traffic from occupiers accessing these premises. Nevertheless, the nature of traffic is likely to be different for a use under class B1(c) than from the uses mentioned in the enforcement notice. Fewer and smaller vehicles are likely to visit buildings in this use class, such that the traffic generated is not likely to be of a type or amount inappropriate to the local rural roads or lead to excessive use of cars or delivery vehicles.

37. For these reasons, this is not an inappropriate location for use of the existing buildings at Woolmer Farm under B1(c), with particular reference to the reliance on motor vehicles. As such, the change of use complies with Policies CP2 and CP31 of the CS, Policy C14 of the LP and the Framework.

#### Flood risk

38. The buildings at Woolmer Farm are located in an area at lesser and intermediate risk of surface water flooding and within a ground water flooding susceptibility area. Given the size of the site including the access route, a flood risk assessment is required for new development. Nevertheless, the development comprises a change of use with limited changes to the existing buildings and no increase in the amount of hardstanding or buildings. As a result, there will be limited effect from the change of use on drainage in and around the site, such that the effect of the development on flood risk would be minimal.
39. For these reasons, I conclude that there would not be a material effect from the development on flood risk. As such, the proposal would not conflict with Policy CP25 of the CS and the Framework that seek to ensure development does not increase surface water run-off and the risk of flooding.

#### Other matters

40. The changes of use and alterations to the buildings include buildings that had not changed use in relation to appeal A. However, the alterations are modest and located some distance from the listed building at Ludshott Manor. As such, the alterations and change of use would not harm the setting of the listed building. As a result, the changes of use do not conflict with Policy HE12 of the LP or the Framework.
41. The change of use of the buildings to use class B1(c) would result in a modest number of additional vehicles accessing the buildings over the previous agricultural use. As such, the change of use would not result in an adverse effect on highway safety or on the character and appearance of surrounding rural lanes.
42. I understand that there may be ample business and commercial space in area. Nevertheless, the buildings are currently partially occupied for commercial uses and are no longer in their previous agricultural use.

#### Conclusion

43. For the above reasons and taking into account all other matters raised I conclude that the proposed change of use of the buildings at Woolmer Farm to use class B1(c) would comply with the development plan and the appeal should succeed.

#### Conditions

44. I will impose a condition specifying the relevant drawings as this provides certainty. Conditions relating to noise mitigation insulation and hours of use are necessary to protect the living conditions of occupiers of nearby residential dwellings.
45. Condition 2 is imposed is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in

planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the noise mitigation and insulation works before the development takes place.

46. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable. I have amended this condition following consultation with the appellant and Council to reflect the fact that some buildings are not yet in use.

### **The Appeal on Ground (f)**

47. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to discontinue the use of the buildings, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
48. For ground (f) to succeed it is necessary to show that the requirements are excessive to remedy the breach. In this case, the notice only seeks the previously unauthorised uses to cease.
49. In accordance with Section 180 of the Act summarised above, the change of use alleged in the notice would be able to continue insofar as it is in accordance with the permission granted under appeal B.
50. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

### **The Appeal on Ground (g)**

51. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. I note that the appellant suggests that the requirements to comply with the notice within a period of six months will be particularly onerous on the occupiers of units A and C. Units A and D are now vacant such that the notice has been complied with in regard to these uses. The use in unit B has been granted planning permission. Therefore, I only need consider the effect of the period for compliance on the occupiers of unit C.
52. I note that the building contractor and joinery business in unit C had difficulty finding appropriate premises prior to moving to this site and that there are limited appropriate premises available for this particular use. There is some fixed equipment within the building that it will be difficult to relocate.
53. Nevertheless, the six month period provided on the notice is substantial. I see no reason why the moving process could not be completed within the set period. Neither do I consider that a longer period of 12 months, suggested by the appellant, would be necessary.

54. For these reasons, I conclude that the appeal under ground (g) should fail.

### **Formal Decision**

55. Appeal A is dismissed, 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.

56. Appeal B is allowed and planning permission is granted for change of use of agricultural buildings to Use Class B1(c) at Woolmer Farm, Woolmer Lane, Bramshott, Nr. Liphook, Hampshire GU30 7RD in accordance with the terms of the application, Ref 33125/049, dated 30 May 2018, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing numbers 170108-01 Rev. A and 170108-02 Rev. A Access Arrangement, AD9144.02.03 Schedule of Buildings and Car Parking, CFP/BI/P/Ele Building A, CFP/BA/E Buildings A2/3, CFP/BA Buildings A1/2/3, CFP/BB Building B, CFP/BC/PE Building C and CFP/BA/E2 Buildings A1/2/3.
- 2) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 2 months of the date of this decision a scheme for details of noise mitigation and insulation works on buildings currently in use 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 6 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.

Prior to occupation of any building for the use approved in this decision, a scheme for details of noise mitigation and insulation works shall be implemented after first having been submitted to and approved in writing by the local planning authority.

Upon implementation of the approved scheme(s) specified in this condition, that scheme(s) shall thereafter be retained.

For the avoidance of doubt, as the application relates to several buildings, the requirement to cease the use and to vacate the site shall only apply to the use of any building where measures have not been submitted, approved or implemented and not to any building for which measures have been submitted, approved and implemented.

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.

- 3) The use hereby permitted shall only take place between the following hours:  
0730-1800 Mondays - Saturdays.

*AJ Steen*

INSPECTOR