



Appeal Decision

Site visit made on 14 July 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/A1530/W/19/3252492

Timberlands Farm, Spring Gardens Road, Chappel, Colchester CO6 2DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Derek White against the decision of Colchester Borough Council.
- The application Ref 193049, dated 10 December 2019, was approved on 30 March 2020 and planning permission was granted subject to conditions.
- The development permitted is change of use to a mixed use comprising agriculture (with associated repair and maintenance of farm equipment) including ancillary farm office and storage, and B2 in association with the applicant's electromagnet business (with associated repairs and reconditioning) also including ancillary office and storage.
- The conditions in dispute are Nos 1, 3, 6, 7 and 8 which state that:

Condition 1: The period of this permission in respect of the repair and reconditioning of electromagnets, shall expire on 31 March 2022, (unless a renewal of permission has been sought and obtained), at which date the use hereby permitted shall cease. Within 28 days from the date at which this permission expires any material, or equipment resulting from, or used in connection with, the use hereby permitted for the repair and reconditioning of electromagnets shall be removed from the site in its entirety and in accordance with a scheme that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority and the building shall revert to being for agricultural purposes only.

Condition 3: Within 3 months of the date of the permission hereby permitted, a competent person shall have ensured that the rating level of noise emitted from the site's plant, equipment and machinery shall not exceed 0dBA above the background levels determined at all boundaries near to noise-sensitive premises. The assessment shall have been made in accordance with the current version of British Standard 4142 and confirmation of the findings of the assessment shall have been submitted to, and agreed in writing by, the Local Planning Authority and shall be adhered to thereafter.

Condition 6: A log of movements of all vehicles entering and leaving the site of a maximum gross weight in excess of 3.5 tonnes, shall be maintained at the site and available for inspection on request to officers of the Local Planning Authority. Vehicles over 3.5 tonnes gross weight shall be limited to a maximum of 1 per month and no vehicles shall exceed 7.5 tonnes gross weight. No articulated lorries shall enter or leave the site in connection with the use hereby approved.

Condition 7: In relation to the approval of the use for the maintenance and reconditioning of electromagnets, no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:

Mondays - Fridays: 7.00 to 18.00

Saturdays, Sundays and Public Holidays: Not at all.

Condition 8: No materials or associated plant or machinery shall be stored outside the building.

- The reasons given for the conditions are:
Reason for Condition 1: For the avoidance of doubt as to the scope of this permission and because a longer permission would have to be carefully considered by the Local Planning Authority at the time at which any such proposal came forward, as well as to ensure that the site is returned to its previous state so that it does not suffer from any unacceptable longer term impact.
Reason for Condition 3: To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance, as there is insufficient information within the submitted application.
Reason for Condition 6: In the interests of amenity and highway safety having regard to the rural nature of the surrounding area and the roads serving the site.
Reason for Condition 7: For the avoidance of doubt as to the scope of the permission and in order to ensure a reasonable level of protection to the amenities of neighbours and the surrounding area in general.
Reason for Condition 8: The application site is located in open countryside where open storage would detract from the natural beauty of the area contrary to adopted policies ENV1, DP9 and para.170 (d) of the NPP.
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Decision

1. The appeal is allowed, in part, and planning permission Ref 193049 for change of use to a mixed use comprising agriculture (with associated repair and maintenance of farm equipment) and for the repair and reconditioning of electromagnets, including ancillary offices and storage (as amended) at Timberlands Farm, Spring Gardens Road, Chappel, Colchester CO6 2DW granted on 30 March 2020 by Colchester Borough Council is varied by: -

- the deletion of conditions 2 and 8;
- the variation of condition 1; as follows:

Condition 1 - The use hereby permitted shall be for a limited period being the period of 18 months from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before 30 April 2022 in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

- the variation of condition 6; as follows:

Condition 6 - A log of movements of all vehicles entering and leaving the site of a maximum gross weight in excess of 3.5 tonnes, shall be maintained at the site and available for inspection on request to officers of the Local Planning Authority. In respect of the repair and reconditioning of electromagnets, vehicles over 3.5 tonnes gross weight shall be limited to a maximum of 1 per month and no vehicles shall exceed 7.5 tonnes gross weight. No articulated lorries shall enter or leave the site in connection with the use hereby approved.

- and, the amendment of condition 7, as follows:

Condition 7 - In relation to the use for the maintenance and reconditioning of electromagnets, no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times: 0700 hours to 1800 hours on Mondays to Fridays, and not at all on Saturdays, Sundays or on Bank or Public Holidays.

Application for costs

2. An application for costs was made by Mr Derek White against Colchester Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. An appeal was made directly following a conditional grant of planning permission. In such circumstances under section 79(1) of the 1990 Act, in my determination I can deal with the planning application as if it had been made to me in the first instance and reverse or vary any part of the decision.
4. The description of development in the application form and subsequently set out in the decision notice refers to a B2 use. However, a mixed use does not fall within any specific use class and should be described in terms of its constituent elements. Consequently, I asked the appellant if the following amended description was acceptable to him and he confirmed that it is:

'Change of use to a mixed use comprising agriculture (with associated repair and maintenance of farm equipment) and for the repair and reconditioning of electromagnets, including ancillary offices and storage'

I have determined the appeal on the basis of the revised description of the development. Because the amended description does not change the nature of the development, neither the Council nor the appellant are prejudiced by my doing so.

5. I am also dealing with another appeal (Appeal Ref. APP/A1530/C/19/3239514) (the Enforcement Appeal) for the same building. This is the subject of a separate Decision Letter

Main Issues

6. The appellant has requested that conditions 1 and 3 be removed and that conditions 6, 7 and 8 be varied and/or removed as follows:
 - Condition 6 – variation to relate to B2 use only
 - Condition 7 – variation to relate to B2 use only and to include permitted hours of operation on Saturdays from 0700hrs to 1200hrs.
 - Condition 8 – variation to allow storage of materials, plant and machinery within outside storage compound or removal of condition.
7. All of the conditions on the permission must meet the six tests of conditions and only imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (the six tests).
8. The main issues in this case are:

Whether condition 1 is necessary to provide for a trial run to assess the effect of the development on the area.

The effect which the removal of condition 3 and the variation of conditions 6 and 7 would have on the living conditions of local residents.

The effect which the removal or variation of condition 8 would have on the surrounding countryside.

Reasons

Condition 1

9. The appellant considers that condition 1 is unnecessary and should be removed. He argues that as the electromagnet business has been running in parallel with the agricultural use since April 2017, the Council has had sufficient time to assess the current use of the site.
10. Notwithstanding the length of time which the mixed use may have been operating from the site, the Council has not had the opportunity to assess the impact of it. The Transport Statement (TS) goes some way towards assessing the impact of the mixed use and the Council has relied upon the contents of the TS to seek to control the size of vehicles accessing the site through condition 6.
11. However, it is evident from the appellant's objections to condition 6 as framed that the agricultural use requires large scale vehicles to access the site and it is unclear as to whether this has been accounted for in the TS. In this regard the Council suggests that the TS was not carried out on the basis of actual traffic movements at the site.
12. Spring Gardens Road is a narrow road where drivers have to slow down to allow vehicles to pass each other safely. There are multiple driveways serving the sporadic groups of dwellings, limited lengths of footpaths and no street lighting. It follows a meandering route and in parts the lush vegetation on the road edges serves to limit views along it affecting visibility.
13. Spring Gardens Road joins Colchester Road at a complex junction with two lanes of traffic either side of a triangular green space and close to the junction with Vernon's Road. At the time of my visit car parking around the green space had reduced the carriageway width. Colchester Road is a two way road which has more extensive lengths of footpaths and good visibility along its length as it passes through this part of Chappel.
14. An unsurfaced track provides access from Spring Gardens Road to the building and the surrounding land, part of which is used as a fishing lake.
15. The highway authority did not raise any objections to the planning application. However, local people raised concerns and conditions 1 and 6 were imposed to control the development in this respect. Given the site context and the uncertainty regarding the change in character of traffic movements associated with the mixed use I consider it necessary and reasonable to enable a further assessment of the impacts of the mixed use to be carried out before a decision is made that permanent planning permission should be granted.
16. The appellant says that the electromagnet business was significantly downsized when it moved to the site. However, Timberlands Farm is a new location for the

business and as such the impacts of the business, albeit on a reduced scale, in combination with the agricultural use need to be considered afresh.

17. Condition 1 allows the mixed use to take place until 31 March 2022 and after that time, unless permission has been sought and obtained, the building shall revert back to agricultural use only. For the reasons set out above I consider it necessary for an assessment of the impact of the development to be carried out before a decision is taken as to whether the mixed use is permitted on a permanent basis.
18. The appellant is concerned that a temporary consent does not provide the same level of certainty as permanent permission to operate a mixed use from the site and that there are costs associated with making another planning application. However, these concerns do not outweigh the need for the impacts of the development to be properly addressed given the site context.
19. For the reasons set out above I conclude that a condition is necessary to provide for a trial run to assess the effect of the development on the area. However, condition 1 as worded could be more precise and there are elements of it which are unnecessary. I find that the reference to an extra 28 days for the removal of materials and equipment to be imprecise so I shall incorporate this into the period of consent and also vary the condition to relate to the date of this decision letter. Furthermore, it is unnecessary and unreasonable for the building to be required to revert to an agricultural use as this would prevent the appellant from using it in any other lawful way.
20. Drawing all of these points together I shall vary condition 1 to read as follows:

The use hereby permitted shall be for a limited period being the period of 18 months from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before 30 April 2022 in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
21. I also find that condition 1, as varied, accords with Policies ENV1 and ENV2 of the Colchester Borough Council Core Strategy (2008) (the Core Strategy) and Policies DP5 and DP9 of the Development Policies (2010) which require that development in rural locations is appropriate in terms of its scale and that small-scale rural business schemes minimise negative environmental impacts.

Condition 6

22. The appellant does not object to the maintenance of a log of all vehicles of a maximum gross weight in excess of 3.5 tonnes entering and leaving the site, which is required by condition 6. His concerns relate to the limitation on the number and size of heavy vehicles accessing the site. This is because he says that it would prevent the agricultural element of the mixed use as most agricultural vehicles exceed 7.5 tonnes. He considers that the condition should be varied to relate specifically to the business of the repair and reconditioning of electromagnets, as now described.
23. Whilst there is no substantive evidence to support the appellants argument that most agricultural vehicles exceed 7.5 tonnes, the Council has not provided evidence to the contrary. There is no dispute between the parties that the previous use of the barn was for agricultural purposes and there is no evidence before me to suggest that the weight of vehicles accessing the barn was limited

by planning condition. Consequently, a restriction on the size of vehicles associated with the agricultural element of the mixed use is unreasonable given the previous use of the site and the impact it would have had on the living conditions of local residents.

24. The Council has not specifically objected to the amendment of condition 6 to relate to the repair and reconditioning of electromagnets only. However, it highlights the need for maintenance of the vehicle log and controls over the type of vehicles making deliveries to the site. An amendment to restrict the size and number of heavy vehicles accessing the site in relation to the business use only would not affect these other elements of condition 6.
25. Drawing all these points together I do not find condition 6 to be reasonable in relation to the limitation over the weight of vehicles accessing the site in connection with the agricultural activities or necessary with regard to the impact on living conditions. Consequently, I conclude that condition 6 should be varied as follows:

A log of movements of all vehicles entering and leaving the site of a maximum gross weight in excess of 3.5 tonnes, shall be maintained at the site and available for inspection on request to officers of the Local Planning Authority. In respect of the repair and reconditioning of electromagnets, vehicles over 3.5 tonnes gross weight shall be limited to a maximum of 1 per month and no vehicles shall exceed 7.5 tonnes gross weight. No articulated lorries shall enter or leave the site in connection with the use hereby approved.

26. This variation would accord with Policies ENV1 and ENV2 of the Core Strategy and Policies DP5 and DP9 of the Development Policies which require that development in rural locations is appropriate in terms of its scale and that small-scale rural business schemes minimise negative environmental impacts.

Conditions 3 and 7

27. Condition 3 relates to noise emitted from plant, equipment and machinery. The appellant argues that condition 3 is unreasonable because there have been no complaints regarding noise and a previous planning application was not refused on the basis of noise. He also considers the term 'noise receptors' as vague and makes reference to British Standard 4142 (BS 4142).
28. The Council states in its report that given the separation distances between the site and the properties in the locality impacts are unlikely to be significant, but it has nevertheless imposed condition 3. In its statement the Council contends that condition 3 is necessary to protect residential amenity and this reflects the concerns of local residents. There have also been objections from local residents as a result of the appeal which are based on noise impacts.
29. The appellant refers to his planning application for change of use from agricultural barn to B1, B2 and B8; Office, Storage and General Industrial (Council Ref: 191812) (the July 2019 application). This application was refused on the basis of concerns regarding the impact on highway safety only. However, the 2019 application was not for the same mix of uses as the permission which is the subject of this appeal. Thus, the two applications were not comparable, and the Council has not acted inconsistently in raising concerns regarding noise impacts at this stage.

30. Access to the site is via a long track which places the barn at a substantial distance from residential properties. There is a cluster of houses close to the junction of the track with Spring Gardens Road and this narrow road is fronted by several houses. These houses are regarded as noise sensitive premises as referenced in condition 3 and queried by the appellant, as are other dwellings in the wider area. I consider that the reference to 'noise-sensitive premises' is sufficiently precise.
31. Given the location of the site in the countryside with limited commercial uses evident in the surrounding area, it is reasonable to expect a high standard of residential amenity in terms of noise. To this end it is necessary and reasonable to control the level of noise arising from the mixed use, notwithstanding the lack of any evidence of complaints to the Council's Environmental Health team.
32. The appellant has not fully articulated his concerns regarding the reference in condition 3 to BS 4142. However, this is the appropriate standard for rating levels for sources of an industrial nature for the purpose of assessing sound from new sources of sound in relation to the new mixed use.
33. Taking all of these points together I find that condition 3 is reasonable and necessary to protect the living conditions of local residents.
34. Turning to condition 7, this condition controls the hours during which the electromagnet business element of the mixed use can operate. The appellant has no objection to condition 7 subject to a variation to amend the hours of operation to include Saturday 7.00 hours to 12 Noon.
35. The Council says that the hours of operation reflect those requested on the application form. However, this is not the case as the application form stated 7.30 to 16.30 on weekdays and condition 7 states 7.00 to 18.00 on weekdays.
36. The appellant states that the electromagnet business has been operating on Saturdays between 0700 and 12 Noon without any complaint. There is no substantive evidence from the Council to suggest that the noise generated from the electromagnet business would be harmful to residential amenity specifically on a Saturday morning.
37. However, this was not the basis upon which the application was made, thus local residents were not made aware at the time that Saturday morning operation of the electromagnet business was to continue. There was no application to the Council to seek the variation of condition 7 which would have been likely to be the subject of neighbourhood consultation, therefore the only opportunity which local residents have been provided with to make comments has been via the appeal process. In the light of this and the quiet rural nature of the site context, I am not persuaded by the information before me that Saturday working is acceptable in terms of its impact on the amenity of local residents. Consequently, I shall not vary condition 7 as requested by the appellant.
38. Condition 7 would benefit from being worded slightly differently so that it more clearly specifies working hours and fully meets the test of being precise. Consequently, I shall amend condition 7 as follows:

In relation to the use for the maintenance and reconditioning of electromagnets, no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the

following times: 0700 hours to 1800 hours on Mondays to Fridays, and not at all on Saturdays, Sundays or on Bank or Public Holidays.

39. Taking conditions 3 and 7 together I find that, based on the evidence before me, condition 3 is necessary and reasonable and that the prohibition on the operation of the electromagnet business on Saturday mornings through condition 7 is necessary.
40. The retention of condition 3, as stated in the decision notice, and condition 7, as amended, would ensure that the impact of the development on the living conditions of local residents is controlled. Furthermore, the retention of condition 3 and condition 7, as amended, would be in accordance with Policies ENV1 and ENV2 of the Core Strategy and Policies DP5 and DP9 of the Development Policies which require that development in rural locations is appropriate in terms of its scale and that small-scale rural business schemes minimise negative environmental impacts
41. I note that the appellant says that the two uses share machinery and equipment and that it would be very difficult to segregate the noise generated by the pre-existing agricultural use from the noise generated by the electromagnet business. This is ostensibly a matter for the Council, however given the temporary nature of the permission it would be advantageous to the appellant to assist the Council in this regard.
42. I conclude that condition 3 should not be removed and that condition 7 should not be varied as requested by the appellant but should be amended to ensure that it is precise.

Condition 8

43. The application site includes both the barn and some of the land surrounding it and the planning permission for change of use applies to the barn and the outside space. Condition 8 precludes the storage of materials, plant and machinery outside the building.
44. The reason for the condition is so that the use does not detract from the natural beauty of the area. The Council acknowledges that the site is in a relatively remote location when viewed from public vantage points but says that the expansion of the use beyond the confines of the building detracts from the rural character of the location.
45. The appellant argues that the outside areas have been used in conjunction with the electromagnet business since 2017. However, this element of the new mixed use was only granted planning permission by virtue of the consent which is the subject of this appeal granted in March 2020. Prior to that time the use of the outside area was uncontrolled. Therefore, the previous use of the outside space for the storage of steel, electromagnets and the like carries limited weight.
46. The area around the barn, within the application site, is not extensive and at close quarters is screened to some extent by the barn itself. There are also mature trees on the field edges off-site. The barn and the open area are not visible from Spring Gardens Road as a consequence of the length of the access track and the lie of the land. There is a fishing lake adjacent to the appeal site which means that its users would view the outside area associated with the barn when accessing that facility. There is otherwise no passing traffic.

47. There is reference to public footpaths in the area, but I have not been provided with details of these. Even if these run past the site the outside space would only be present in glimpsed views and would not significantly reduce the enjoyment of walkers.
48. Given the limited size of the outside space and its context, as I have described, I do not find that the storage of materials or associated plant or machinery outside the building is significantly harmful to the natural beauty of the area. Thus condition 8 is neither reasonable nor necessary.
49. There were structures on the outside space at the time of my site visit, which the appellant indicated are associated with the mixed use. However, there is no information before me regarding the planning status of these structures and their retention is a matter for the Council.
50. I conclude that condition 8 should be removed, because the use does not conflict with Policies ENV1 and ENV2 of the Core Strategy and Policies DP5 and DP9 of the Development Policies which require that development in rural locations is appropriate in terms of its setting and in harmony with the surrounding natural environment.

Other Matters

51. Condition 2 is unnecessary because planning permission has been granted for a mixed use comprising agriculture (with associated repair and maintenance of farm equipment) and for the repair and reconditioning of electromagnets, including ancillary offices and storage. Planning permission would be required for any other material change of use therefore, it is unnecessary to remove permitted development rights.
52. I shall use my power to reverse or vary any part of the decision in this case to remove condition 2.

Conclusion

53. For the reasons set out above I conclude that conditions 2 and 8 should be removed, that conditions 1 and 6 should be varied and that condition 7 should be amended and that condition 3 should not be removed.

Sarah Dyer

Inspector