



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/C/19/3239514

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

- 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 Derek White against an enforcement notice issued by Colchester Borough Council.
 - The enforcement notice was issued on 19 September 2019.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the change of use from agricultural barn to B1, B2 and B8; Office, Storage and General Industrial.
 - The requirements of the notice are to cease the unauthorised use of 'The Land'.
 - The period for compliance with the requirements is 4 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a], an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, and the enforcement notice is quashed.

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 Matter

3. I am also dealing with another appeal (Appeal Ref. APP/A1530/W/19/3252492) for the same building. This is the subject of a separate Decision Letter.

The Notice

4. The notice sets out in part 2 that the land to which it relates is that edged with a heavy black line on the plan which accompanies the notice. However, the breach refers to the change of use of the barn which occupies only part of the area identified as 'the Land'. This is an inconsistency between the boundaries of the land to which the notice relates and the description of the alleged breach of planning control. However, as the parties have addressed their submissions to the use of the barn only, I have approached the appeal in the same way without further consideration of the relevant planning unit.

Ground (b)

5. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
6. 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). He indicates that the purpose of that application was to seek retrospective permission for the uses operating from the site, however he says that the submissions made were factually incorrect and did not represent the true nature of the uses operating from the site. On that basis he says that the site is in a mixed-use comprising agriculture and B2 use and that neither a B1 use nor an 'intense' B8 use operates from the site.
7. The appellant then submitted a planning application for 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 his electromagnet business (with associated repairs and reconditioning) also including ancillary office and storage (Council Ref:193049) (the December 2019 application).
8. A Statutory Declaration (SD) by the appellant which accompanies the December 2019 application says that the agricultural use will continue at the site and that the appellants electromagnet business was transferred to the site in April 2017. The SD is contemporaneous with the application, complete and has been witnessed by a solicitor, therefore it attracts substantial weight.
9. The Council refers to the SD in its report for the December 2019 application. It does not challenge the validity of the SD either in that document or elsewhere in its submissions. The Council's report also refers to the possibility that the building is still in use for agricultural purposes.
10. The Council asserts that the appellant confirmed in an email dated 18 January 2019 that he was running a plant hire business from the site. However, in a copy of an email of that date the appellant indicates that he was not running a plant hire company at the time of an earlier site visit by the Council. Consequently, this communication does not establish either that a plant hire business was or was not operating from the site either in January 2019 or earlier.
11. The Council also refers to photographs taken inside the building in March 2019, which it alleges show that at that time the barn was not in use for agricultural purposes. However, these photographs have not been submitted, nor has the appellant had the opportunity to comment on them. Therefore, they attract no weight in the determination of the appeal.
12. The Parish Council query whether the land is being used for mixed livestock and arable farming and cite the lack of reference to any agricultural use in the July 2019 application. However as the Council state in their report for the December 2019 application that where the building is being used for maintenance of farm vehicles, it will have the trappings of a workshop, making it less apparent as a farm building compared with a building used for the storage of hay, farm produce or animal feed. Also, the appellant argues that

the description for the July 2019 application was inaccurate and the SD asserts a continuing agricultural use.

13. Third parties question whether the wider land holding is being farmed and refer to the barn not being used for agricultural purposes as a consequence of this. However, the appeal relates to the building itself and the open areas only and the third parties have not provided any substantive evidence to demonstrate that the building is not in use at all for agricultural purposes.
14. During my site visit I noted that the building contained machinery and tools which could be used for the repair and maintenance of agricultural vehicles and in connection with the repair and reconditioning of electromagnets. There was storage space and a single office.
15. Drawing all of these strands together it is clear that the building is no longer in use solely for agriculture and that a material change of use has occurred. The evidence provided by the appellant indicates that the new use is a mixed use of agriculture and his electromagnet business, and not the use described in the notice as the alleged breach of planning control.
16. I have considered whether to vary the notice so that the breach is described with reference to the mixed use of agriculture and the electromagnet business. However, neither of the main parties has had the opportunity to address this use in their submissions under the ground (a) appeal. Therefore, to vary the notice in this way would cause injustice to both parties and would not pass the test set out in S176 of the Planning Act 1990.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
18. In these circumstances, the appeal on grounds (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Sarah Dyer

Inspector