



Appeal Decision

Site visit made on 29 September 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2020

Appeal Ref: APP/V2635/C/20/3252375

Land and building(s) at Swimmers Barn Potato Stores and Farmyard (Leicester Square Farm), Leicester Road, South Creake, Norfolk

- 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 George Topham of The Woodhall Farm Partnership against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice was issued on 20 April 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the Land from agricultural land to a mixed use as agricultural land and vehicle servicing, maintenance and repairs.
- The requirements of the notice are:
 - i) Permanently cease using the Land in association with servicing, maintaining and repairing of vehicles not ancillary to the adjacent agricultural land.
 - ii) Restore the Land to its condition before the unauthorised material change of use took place.
- The period for compliance with the requirements is 28 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.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. The appeal was made under ground (b) of section 174(2) of the Town and Country Planning Act 1990 as amended (the Act) that the matters described in the notice have not occurred. However, it is clear from the evidence submitted that the appellant accepts that servicing, maintenance and repair of vehicles have occurred. As a result, the appeal must fail under that ground. Taking account of the evidence presented by all parties, the submissions would be better considered under ground (c) of section 174(2) of the Act, i.e. that those matters do not constitute a breach of planning control. As a result, I will deal with the appeal under that ground.

The Appeal on Ground (c)

2. 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.
3. The main issue in this case is whether the matters stated in the alleged breach of planning control comprise development as defined by Section 55 of the Act. In particular, whether the use for servicing, maintenance and repair of vehicles

is a material change of use that would comprise development requiring planning permission; or whether it is ancillary to the main agricultural use of the yard for agricultural purposes.

4. Swimmers Barn potato stores and farm yard at Leicester Square Farm comprise two barns and surrounding yard area. One barn is used for storage of produce, potatoes, from the tenant's agricultural enterprise. The tenant uses the other barn for storage and carries out servicing, maintenance and repair of their own vehicles used in their agricultural enterprise. That is not in dispute.
5. I understand that the agricultural enterprise relates to land rented from the appellant on the estate of which Swimmers Barn forms part, and other land further afield. The Council accept that the servicing, maintenance and repair of vehicles for use in association with the agricultural land intimately associated with Swimmers Barn would be ancillary to the agricultural use of the land. Consequently, such a use would not constitute a material change of use of the land, so would not constitute development within the meaning of Section 55 of the Act.
6. However, the Council suggest that use in association with land other than that in the vicinity of Swimmers Barn would comprise a material change of use and constitute development within the meaning of Section 55 of the Act. I have limited information as to what land is in potato production by the tenant, nor is the land associated with that use, other than the buildings and adjacent yard, identified on the plan attached to the enforcement notice.
7. Taking account of the above factors, it is clear that the servicing, maintenance and repair of vehicles only relates to vehicles used in the agricultural enterprise of which Swimmers Barn forms part, albeit including vehicles used on land located some distance away. Therefore, there is a functional relationship between the use for servicing, maintenance and repair of vehicles and the agricultural use of Swimmers Barn. As such, it is ancillary to the main agricultural use of the yard for agricultural purposes.
8. For these reasons and having regard to all other evidence before me, I conclude that, on the balance of probability, the servicing, maintenance and repair of vehicles as alleged in the enforcement notice is not a material change in the use of the buildings and land at Swimmers Barn. As such, it does not constitute development within the meaning of Section 55 of the Act. As a result, planning permission is not required for the use alleged in the notice and it does not constitute a breach of planning control.
9. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

Formal Decision

10. The appeal is allowed and the enforcement notice is quashed.

AJ Steen

INSPECTOR