
Appeal Decision

Site visit made on 9 November 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 16 November 2020

Appeal Ref: APP/X1118/C/20/3258151

The Workshop, Westleigh Farm, Combe Martin, Ilfracombe, EX34 0NG

- 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 Nygel Martyn-Ball against an enforcement notice issued by North Devon District Council.
 - The enforcement notice, numbered 12432, was issued on 23 July 2020.
 - The breach of planning control as alleged in the notice is the unauthorised change of use consisting of the use of the building as a workshop falling within a B2 use for works to vehicles.
 - The requirements of the notice are:
 - 1 Cease the use of the building edged in blue on the location plan attached to the notice for any works to vehicles falling within a B2 use;
 - 2 Remove all vehicles, vehicle parts, tools, machinery, equipment and all other items and paraphernalia associated with the B2 use for work to vehicles from the building edged in blue on the plan;
 - 3 Remove all rubbish and debris resulting from compliance with steps 1 and 2 from the land edged red on the plan
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: Appeal upheld, notice corrected and quashed.**
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Procedural Matters

1. Although I carried out a site inspection attended by the Council officer, the appellant was delayed due to road conditions and I was therefore unable to enter the building the subject of the notice. However, as the appeal is on grounds (b) and (c), the value of the site inspection is limited because the case depends on matters of law and historic evidence of fact. In view of this I was satisfied that there is sufficient evidence provided in the statements to determine the appeal. With the agreement of the landowner who was present on the farm, I was able to carry out an inspection of the site in general. Additionally, as there is a gap to the left hand side of the main door of the appeal building I was able to have a limited view of the interior with the help of a camera.
2. In cases involving appeals on legal grounds, the onus of proof is on the appellant and the standard of proof is on the balance of probability.

The appeal site, relevant planning history and background.

3. The appeal site is in the open countryside in an Area of Outstanding Natural Beauty. It forms part of a larger agricultural style building erected without planning permission between 2005 and 2007 that has been subdivided to create a workshop occupied by the appellant, with the north part of the building in use for equestrian purposes. The appellant maintains that the building was erected in 2005 and used for B8 storage purposes.
4. The wider site, identified in red on the plan attached to the notice, is used for agricultural purposes, and is centred on the former farmstead buildings which includes Westleigh Farmhouse, a Grade II listed building and other buildings.. The farmstead has attracted a number of uses over time of which many were unauthorised. A number of unlawful uses have been subject to and compliance with enforcement action. It was evident that at the time of my site inspection that many of the vehicles, caravans and other structures connected with unauthorised development and shown on Photograph 1 in the Council's statement had now been removed and that large areas of the site had been cleared.
5. The appellant states that in 2011 planning enforcement 'raided' Westleigh Farm for unauthorised caravans and this was a regular event every other year but the Council never sought to challenge the workshop. He contacted the planning enforcement officer in November 2017 and this led to an inspection by the Valuation Office, the outcome of which was the backdating of business rates to April 2017.
6. In May 2018 the Council investigated all buildings on the wider site with powers of entry issued under warrant.
7. An application for a Certificate of Lawful Use was considered by the Council to be invalid and returned to the appellant.
8. An earlier enforcement notice was withdrawn due procedural errors and the current notice subsequently served.
9. The appellant has indicated that he has an impairment which appears to fall within the definition of disability set out in s6(1) of the Equality Act 2010. Accordingly I have had due regard to the requirements of that Act in determining this appeal.

The appeals on grounds (b) and (c)

10. An appeal on this ground (b) is that the breach alleged in the notice has not occurred as a matter of fact and an appeal on ground (c) is that there has not been a breach of planning control. It is useful to consider both grounds together.
11. The main issue in the appeal is whether at the time of the notice the alleged use was in Use Class B1 business use or Class B2 general industrial use. Class B1(c) is use for any industrial process, being a use that can be carried out in any residential area without detriment to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. Class B2 is use for the carrying on of an industrial process other than one falling within Class B1.

12. The appellant has been a tenant of the workshop since 1 October 2010, prior to which the building had been used for the storage of a motorhome, a wedding car and building materials. He carries out engine and equipment conversions on Mercedes Benz cars and G wagons and specialist design, research and prototyping systems to assist large companies with projects built elsewhere. He says that he makes parts using basic hand tools with complex parts made off-site. He does not rebuild engines and basic repairs are carried by local garages. There is no bench testing or engine tuning.
13. The appeal building was entered in May 2018 where the Council observed vehicles, machinery, tools and other paraphernalia associated with a vehicle workshop use within a Class B2 use. Photographs taken at the time indicate some 3 vehicles in the workshop. At my own site visit, only one vehicle was visible due to restricted view, but the machinery, tools, etc appeared similar to the situation in 2018.
14. From his own investigations, the appellant states that the workshop was a separate building built on the side of an existing barn in 2001/2005 (both years are given in the appellant's statement). The rear third of the new building was converted into stables and separated from the remaining area by a wooden wall. The workshop has always been rented out to a number of users at any one time for vehicle and caravan storage, and never used for agriculture. The Council acknowledges that the operational works of the workshop are beyond the period enforcement could be taken. The Council offers no evidence as to its use at the time of its construction. In the absence of any contradictory evidence, I accept that the workshop has been in use since its construction for storage purposes and that this represents Class B8 storage use.
15. The Council suggest that if the building has been used for storage and equestrian use since 2005 as indicated by the appellant, then this is a mixed use and is not interchangeable without planning permission and that the building is the planning unit. However, I am not convinced by this argument. The Council has set out the allegation in the notice as relating specifically to a single use in a specific part of a building complex. The occupation of the workshop and its use over a period of time indicates that the workshop subject to the appeal represents the planning unit and its use when first occupied was as storage. The Council could have framed the allegation and the extent of the building differently if they wished to pursue a case based on a material change from a mixed use to a different mixed use. I will not therefore pursue this particular argument further.
16. The Council consider the use to be Class B2 on the basis of the description of the use provided by the appellant, their observations of the premises, the surrounding C3 residential occupation of caravans and by reference to the Land Use Gazetteer description of the use and that akin uses include a vehicle repair place, vehicle engineering place, engine testing or engine tuning place which are all Class B2 uses. I note the appellant's reference to the Gazetteer being replaced by the National Land Use Database but this does not provide much assistance in determining whether the workshop use is within Use Class B1 or B2.
17. Although reference is made by the Council to the use being in close proximity to residential properties having material effects, they offer no evidence in respect of complaints from residents about noise or other nuisance.

Additionally, many of the caravans that I assume the Council refers to have been removed from the site although this does not mean that at the time the Council carried out their investigations there were no nearby residents. A former resident of 'The Bungalow, Westleigh Farm' advises that there was never an issue with noise or external storage or waste resulting from the workshop.

18. Categorisation of any particular type of land use, business or process is not clear at the margins. In this case there is a situation that appears to fall between two stools. On one hand, car repair and associated vehicular engineering activities can clearly fall within Class B2 but if it is of such a small scale that it does not have any material detriment on residential amenity then it could fall within Class B1. In this appeal there is a business operation which does not involve persons other than the appellant. The business may or may not be commercially viable and is of a type that suits the appellant's personal circumstances in which he claims some 90% of his work is Class B1(b) research and development, 75% of the workshop is B8 storage and that he does not offer any of the services carried out by local repair garages. He is critical of the Council making assumptions about the workshop based on their 'raid' in April 2019. An interested party indicates that the appellant's business is definitely a full-time hobby and is focussed on a very narrow range of interest.
19. It is possible that the Council has drawn conclusions about the use based on limited evidence. However, with the benefit of the evidence before me, I consider that, as a matter of fact, the use is not a use clearly falling within Class B2 but that on the balance of probability, the workshop falls within Class B1 business use of the Town and Country Planning (Use Classes) Order 1987, as amended. Class I of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, allows as a permitted change from a B8 use to a B1 use without the need for express planning permission subject to a limitation of the change relating to less than 500 square metres of floor space, which is the case in respect of the workshop here.
20. The recent amendments to the UCO removing Use Class B1 and introducing Class E from 1 September 2020 post-date the date of the notice and is not relevant to this appeal.
21. The appeals on these grounds succeed.

Conclusions

22. From the evidence before me I conclude that the allegation in the notice of use of the building as a workshop falling within a B2 use for works to vehicles is incorrect, in that I conclude that the use falls within B1. Accordingly the appeal should succeed on ground (b) to this extent. I shall correct the allegation in the notice to reflect this.
23. As to the appeal on ground (c) I am satisfied on the evidence that the change of use from B8 to B1 is permitted development and the appeal on this ground should succeed in respect of those matters which, following the correction of the enforcement notice, are stated in it as constituting the breach of planning control.

24. Should at any time in the future the nature or characteristics of the business change to the extent that a material change of use has occurred for which planning permission is necessary, it will be a matter for the Council to consider the expediency of exercising its enforcement powers, should no application be forthcoming.

Decision

25. It is directed that the breach of control alleged in the enforcement notice be corrected by the deletion of the words "use of the building as a workshop falling within a B2 use for works to vehicles" and the substitution of the words "use of the building as a workshop falling within a B1 use for works to vehicles. Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

P N Jarratt

Inspector