



Appeal Decisions

Site visit made on 17 February 2021

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2021

Appeal A: APP/W1850/C/20/3260020

Land at New House Farm Barn, Grafton Lane, Grafton, Herefordshire HR2 8BL, shown edged red on the plan attached to the notice

- 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 Patrick Gethling Lewis o/b Gamber Logistics Ltd against an enforcement notice issued by Herefordshire Council.
- The enforcement notice was issued on 24 August 2020.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the Land for the parking of vehicles.
- The requirement of the notice is (1) cease the use of the land for parking of vehicles between the hours of 7pm and 7am within the area hatched blue shown on the attached plan.
- The period for compliance with the requirement is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: Appeal A is allowed, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/W1850/W/20/3255562

New House Farm Barn, Grafton Lane, Grafton, Herefordshire HR2 8BL

- 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 Gamber Logistics Ltd against the decision of Herefordshire Council.
- The application Ref 200150, dated 20 January 2020, was refused by notice dated 10 June 2020.
- The development proposed is hardstanding and access road – originally permanent grass. The area is used for vehicular parking and access generally, short term holding of deliveries of materials and display of cut Christmas Trees for sale mid-November to 24 December each year.

Summary Decision: Appeal B is allowed and planning permission granted in the terms set out below in the Formal Decision.

PRELIMINARY MATTERS

1. New House Farm is a former agricultural holding which is now lawfully used for mixed commercial purposes as described further below. Gamber Logistics Ltd relocated to the property in 2018, and planning permission (ref: P182130/F) was granted in that year for the change of use of (the former farmhouse) to use for office accommodation.
2. The land edged in red on the plan attached to the enforcement notice essentially includes the whole of New House Farm. However, there has not

been a material change of use of the whole property to parking. The alleged use only takes place within the site edged and hatched in blue on the plan attached to the notice – which is the same as the site that is subject to Appeal B. I shall refer to the parking area as ‘the appeals site’.

3. The notice should be corrected so that either it relates just to the appeals site or so that it alleges a change of use to a mixed-use comprising office and other commercial uses as well as parking. It would be simpler to correct the notice in respect of the site and doing so would cause no injustice to the appellant or the Council. The correction would reduce the scope of the notice and ensure that there is no confusion over which land is subject to ground (a) and the deemed planning application.
4. I shall also alter the description of development that is subject to Appeal B simply by deleting superfluous words and creating a single grammatical sentence: “the construction of hardstanding and an access road and the change of use of the land to use for vehicular parking and access, the delivery and short-term holding of materials and the display of cut Christmas Trees for sale from mid-November to 24 December each year”.

Appeal A on Ground (a), The Deemed Planning Application and Appeal B The Appeals Developments and Fallback Position

5. An appeal on ground (a) is that planning permission ought to be granted in respect of the matters stated in the notice. As set out above, the notice only alleges that there has been an unauthorised change of use to parking. Thus, the ground (a) appeal and deemed planning application for Appeal A are strictly concerned with the merits of the use of the appeals site for parking. Permission is sought under Appeal B, however, for a mixed use of the site and for the laying of hardstanding and an access road to facilitate the use(s). I shall consider the ‘appeals developments’ together but distinguish where appropriate.
6. I have also noted above that the notice only requires the cessation of the alleged parking use between the hours of 7pm and 7am. The Council in its submissions acknowledges that it has opted to “under-enforce” by not requiring, as it could have done, the use to cease completely.
7. S173 (11) of the Act states that where –
 - (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
 - (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
8. If and when the notice is complied with, the effect of s173(11) would be that planning permission is deemed to have been granted for the use of the appeals site for the parking of vehicles between the hours of 7am to 7pm – and that “fallback position” is a consideration that I must take into account when considering the merits of the developments before me. If these appeals are

dismissed, it seems likely that the appellant would use the site for daytime parking. The fallback position is a realistic prospect.

9. It is undisputed that the appeals site is currently used for parking prior to 7am. The appellant's case is not that parking should be allowed to take place 24/7, but that this use, and indeed the uses subject to Appeal B, should be permitted subject to a condition allowing earlier morning starts. Permanent permission is also sought under Appeal B for the hardstanding and access road.

Main Issues

10. The main issues are i) whether the appeals site is a suitable location in principle for the appeals developments, with regard to the effect of the developments on the character and appearance of the surrounding rural area; ii) the effect of the developments on the living conditions of residents; and iii) their effect on highway safety.

Reasons

The Suitability of the Location

11. New House Farm is used lawfully for the following purposes: office use in accordance with the 2018 planning permission, the retail sales of gun cartridges in accordance with another planning permission that was granted on appeal¹; the production of Christmas trees – and their sale during November and December; and, for no more than 28 days per year, clay shoots². The appellant has made a planning application to run a laser clay shooting business from the property but I have not been informed of any decision on that proposal and I shall therefore discount the activity.
12. The appellant uses the office for the management of the various businesses, which include a cleaning service. I cannot comment on whether any (non-parking) activities which take place at New House Farm in relation to the cleaning company are authorised by the 2018 planning permission, not least because I have not seen a copy of the decision notice. However, the Council has not enforced against the operation of the business from the site or said that it requires a grant of planning permission.
13. The office, retail, Christmas tree and temporary shooting uses can reasonably be expected to generate vehicular traffic movements on a regular basis. It is likely that these uses, collectively, will generate a higher level of traffic than the former agricultural use – but the planning consequences of that should, or at least could have been considered when the decisions were made to permit the office and retail uses. In any event, the uses are now lawful, and parking is a normal incidental use.
14. If the appeals are dismissed, therefore, vehicles will still be driven to New House Farm along Grafton Lane and parked somewhere on the property. For that reason, and since the Council is only enforcing against the use of the site

¹ Ref: APP/W1850/W/20/3251878 on 21 September 2020.

² Class B, Part 4, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 sets out in B. Permitted Development - The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for purpose of – (a) the holding of a market; (b) motor car and motorcycle racing including trials of speed, and practising for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use.

for parking overnight, and not enforcing against the hardstanding at all, I find the appeal developments acceptable in principle on the site.

15. The site does not fall within an area that is designated for its landscape or visual qualities. The Council objects to the effect of the developments on the tranquillity of the area but does not describe any other harm to the character of the countryside. I am satisfied that the hardstanding and access road, and the uses of the land for parking, access, deliveries and the sale of Christmas trees do not unacceptably harm the appearance of the surrounding rural area.
16. Moreover, the Council has not enforced against the parking use between the hours of 7am and 7pm, even though the activity will result in some noise, and the period will include hours of darkness in the winter. Given the location and the fallback position, I find that the use of the site from 6am to 7pm for parking, access, deliveries and Christmas tree sales would result in no unacceptable loss of tranquillity or indeed light pollution within the countryside.
17. I conclude that the appeals site is a suitable location in principle for the appeals developments. They do not conflict with Policy RA6 of the Herefordshire Core Strategy (CS) which supports employment generating proposals that help diversify the rural economy and are of a scale that is commensurate with its location and setting. They preserve the tranquillity and character of the area as required by Policies CH1 and CH6 of the Callow and Haywood Neighbourhood Development Plan 2011-2031 (NDP). The developments also comply with the National Planning Policy Framework (the Framework), which supports the sustainable growth and expansion of all types of business in rural areas so long as it is sensitive to its surroundings.

Living Conditions

18. The appellant's cleaning business offers a specialist service for the cleaning of poultry houses and "other facilities requiring a 'high clean'" within a 90-mile radius of New House Farm. The appellant employs 5 people to work in the approved office, but the cleaning business has another 22 members of staff. They drive to the appeals site in their own cars and park on the hardstanding before being transported collectively to their places of work. The appellant also states that the *"specialist plant and equipment associated with the cleaning business is usually transported directly from one customer site to another although periodically it must return to New House Farm for routine maintenance or repair... machines are transported by articulated lorry low-loader."*
19. Grafton Lane is a narrow lane with passing bays. There are a number of residential properties along the lane situated at varying distances from the highway. Albeit some of these properties face the road, a number are set well back from it behind vegetation, others behind varying boundary treatments. Moreover, the majority of these properties are located some way from the site.
20. It is clear from the photographs and traffic logs provided by the Parish Council and other representations, that local residents have suffered disturbance in particular from vehicles travelling along Grafton Lane between 4am – 5am. However, the proposal is for the use to start at 6am. The appellant's proposal would preclude any vehicles, or plant being parked on the site overnight.

21. I am not aware of any objections to noise from the car park itself, such as the manoeuvring of vehicles into and out of parking spaces, the slamming of doors and people talking. What residents hear, and the Council is concerned about, is noise of vehicles on the public highway being driven to the site. Grafton Lane is a rural road which will be reasonably quiet, especially at night, but it is also a public highway upon which traffic can pass at any time. It is not unreasonable to expect traffic of commuters and/or farms from around 6am.
22. The site can accommodate approximately 20-25 vehicles including cars, vans and the low-loader. This, in my view, is not a high number. Furthermore, even if the car park was filled between 6am and 7am, it is reasonable to assume not everyone will arrive at the exact same time or from the same direction.
23. I conclude that allowing the appeals site to be used from 6am until 7pm daily for the parking of vehicles as alleged, and also for access, deliveries and the display of Christmas trees for sale from mid-November to 24 December as proposed would not cause unacceptable harm to the living conditions of any nearby occupier. The developments accord with CS Policies SD1 and RA6, which protect the amenity of existing nearby residents from unacceptable adverse impacts by virtue of noise and lighting.

Highway Safety

24. I note the concerns raised by many residents, including those set out in the Grafton Lane Neighbourhood Petition, to the effect that the appeals developments undermine highway safety, particularly by exacerbating the poor condition of Grafton Lane. However, the evidence does not show that the use of the site for parking, access, delivery and the display and sale of Christmas trees causes unacceptable danger on the roads, especially when New House Farm is lawfully used for commercial purposes and the enforcement notice would allow the site to be used for parking from 7am to 7pm.
25. Concerns regarding the use of a private lay-by and condition of verges are not matters for my consideration. The Highways Authority made no objection to the developments and the Council raised no concerns about effects on road safety or infrastructure. I find that the developments cause no unacceptable harm to highway safety and do not conflict with CS Policy RA6, which expects that economic development in rural areas does not generate traffic movements that cannot safely be accommodated within the local road network. The developments do not conflict with NDP Policy CH1, which requires consideration of the traffic impacts of development on local roads and networks. Similarly, they do not conflict with the Framework, which expects rural business development to not have an unacceptable impact on local roads.

Other Matters

26. I note comments regarding the appellant's apparent disregard of the planning process, but I have to consider the development on its individual planning merits and enforcement action is intended to be remedial and not punitive. Also, any use of the site involving other commercial vehicles and any other possible breaches of planning control are matters for the Council.

Conclusion and Conditions

27. CS Policy SS1 indicates that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained within

national policy. The Framework has been revised since the CS was adopted, but still indicates that development proposals which accord with an up-to-date development plan should be approved without delay.

28. I have found that the appeals developments comply with CS Policies SD1 and RA6, also NDP Policies CH1 and CH6. There are no material considerations that indicate that the appeals should be determined other than in accordance with the development plan. I conclude that Appeal A should succeed on ground (a) and Appeal B should also be allowed. It follows that the notice shall be quashed and grounds (f) and (g) for Appeal A do not fall to be considered.
29. I have considered the merits of the use of the appeals site for parking, access, deliveries and the sale of Christmas trees between 6am and 7pm. It is reasonable and necessary to impose a condition that restricts the use to those hours in order to protect the living conditions of residents. The Council has not suggested any other conditions and I consider that none are necessary.

Formal Decisions

Appeal A - APP/W1850/C/20/3260020

30. It is directed that the enforcement notice is corrected by the deletion of the word 'red' and substitution of the words 'and hatched blue' in paragraph 2.
31. Subject to the correction, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land for the parking of vehicles at land at New House Farm Barn, Grafton Lane, Grafton Herefordshire HR2 8BL as shown edged and hatched blue on the plan attached to the notice and subject to the following condition:
1. The use of the land for the parking of vehicles shall only take place between the following hours: 6am to 7pm daily.

Appeal B - APP/W1850/W/20/3255562

32. Appeal B is allowed, and planning permission is granted for the construction of hardstanding and an access road and the change of use of the land to use for vehicular parking and access, the delivery and short-term holding of materials and the display of cut Christmas Trees for sale from mid-November to 24 December each year at New House Farm Barn, Grafton Lane, Grafton, Herefordshire HR2 8BL and the plans submitted with it, subject to the following condition:
1. The use of the hardstanding and access road for vehicular parking and access generally, short term holding of deliveries of materials and display of cut Christmas Trees for sale mid-November to 24 December each year shall only take place between the following hours: 6am to 7pm daily.

Elizabeth Jones

INSPECTOR