



Appeal Decision

Site visit made on 8 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/J1535/C/20/3264147

Land at Unit 7 St Leonards Farm, St Leonards Road, Nazeing, Waltham Abbey EN9 2HG

- 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 Robert Moore against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 27 October 2020.
- The breach of planning control as alleged in the notice is Without planning permission: the material change of use from agriculture to B1(a) and B8 use.
- The requirements of the notice are Cease the unauthorised B1(a) and B8 use.
- The period for compliance with the requirements is 3 months.
- The appeal is made on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted but otherwise the appeal fails, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Preliminary Matters

1. The change of use alleged is to Class B1(a) (office) [at upper floor level] and Class B8 (storage and distribution) [at ground floor] of The Town and Country Planning (Use Classes) Order 1987 (UCO). I am mindful that from 1 September 2020, the government has made revisions to the UCO¹. These include that uses in the former A1, A3 and B1 Classes have now all been placed within a newly formed Class E. Accordingly the main parties agree that the allegation and requirements of the notice should refer to Class E rather than B1(a). I agree that the notice can be corrected accordingly without resulting in injustice.

The appeal on ground (a)

Main Issues

2. The main issues are:
 - whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the development on the living conditions of nearby residents with particular regard to noise disturbance and overlooking.

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Reasons

Green Belt

3. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 134 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
4. Paragraph 146 states that certain forms of development are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. These development types include material changes in the use of land and the re-use of buildings of permanent and substantial construction.
5. There is no dispute between the main parties that the building the subject of the notice, in terms of its physical form, benefits from planning permission. The enforcement notice issued by the Council does not suggest that there has been, nor does it seek to 'attack', any physical changes to the building. Traffic associated with the proposed uses would be relatively small in quantity, and moreover would be transient in nature.
6. Accordingly, the change of use would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. I conclude that it would not therefore amount to inappropriate development and would conform with the Green Belt protection aims of the Framework, as reflected in Policies GB2A and GB8A of the Epping Forest District Council Combined Local Plan and Local Plan Alterations 2006 (LP).
7. I consider that some of the requirements of Policy GB8A with regard to changes of use, including the need to avoid significant detrimental impact to the character or amenity of the countryside and for satisfaction as to the originally intended use of the building are not strictly in keeping with the Green Belt protections aims of the Framework. As such they do not attract weight in this specific regard.

Living Conditions – Storage use

8. The appeal site is part of the former St Leonards Farm. There is no dispute that agricultural activities there have now ceased, and that former farm buildings in the immediate locality have been converted to residential use. To the north of the appeal site, a number of former farm buildings have been converted to light industrial and storage uses, following the grant of planning permission in 2014².
9. The building subject to this appeal was also granted planning permission in 2014³, at which time its use was restricted by condition to uses ancillary to the farm. It forms part of a relatively tight grouping with residential properties, being situated immediately adjacent to the rear garden of a neighbouring

² Planning permission ref EPF/1343/14, dated 27 August 2014

³ Planning permission ref EPF/0909/14, dated 12 June 2014

cottage and close to the frontage of a terrace of dwellings, all of which share the same access road from the highway. By contrast the adjacent industrial / storage units utilise a separate vehicular access further to the north. These units, though close to the residential area, are also physically separated from it by a dividing wall.

10. The building subject to the appeal is essentially a single storey structure with accommodation in the roof space. It is currently occupied by a roofing company, which utilises the ground floor area as storage space and the upper floor area as an office. A forecourt area provides parking for two vehicles.
11. I have given careful consideration to the relationship between the appeal building and surrounding residential properties. With regard to the proposed storage use, whilst it would depend on the nature of the business, the materials being stored and the frequency of comings and goings, I consider there to be a strong likelihood that day to day activities associated with loading and unloading the unit, and related overheard conversations between employees, would result in disturbance to nearby residents, in terms of the peaceful enjoyment of homes and gardens.
12. I recognise that if the materials being stored at the unit always comprised of relatively small and light items and if due consideration was given to the presence of neighbours in the vicinity, then noise disturbance would not inevitably follow. However, the highly varied nature of materials that might potentially be stored, combined with the unpredictable behaviour of employees over the lifetime of the use means that this impact cannot be ruled out. Despite the limited scale of the unit and the possibility of controlling the hours of its use, I therefore find that a storage use in this location would potentially result in significant harm to the living conditions of neighbours in terms of noise disturbance. The appellant has referred to the absence of an acoustic assessment, however I nevertheless consider this finding to be reasonable on the basis of planning judgement.
13. I have taken into consideration that the units to the north of the appeal site can be lawfully used for storage purposes. However there is generally greater separation between these units and many of the residential properties. Even if storage related uses taking place there result in some disturbance, that does not justify the proposed storage use of the unit in this case. Whilst the proposed use may have a role to play in supporting the local economy, there is no information before me to suggest that an alternative more suitable site could not be found.
14. The appellant has suggested that the proposed use would potentially be less intrusive, when compared to its 'lawful' use for various agricultural related purposes. However I am not persuaded that this argument carries any significant weight because the agricultural use of the site has now ceased and would not therefore constitute a credible fallback scenario. In addition the proposed storage use would be new, and as such it cannot reasonably be argued that the presence of the existing housing is placing an unreasonable constraint on the use proceeding.
15. When planning permission was granted for the appeal building in 2014 it was subject to the following condition:

"The building hereby approved shall not be used separately from the site known as St. Leonards Farm, St. Leonards Road, Nazeing or the adjacent residential property, unless otherwise agreed in writing by the Local Planning Authority."

16. Notwithstanding this, the appellant states that the building has been used for purposes ancillary to the adjoining business units, which benefit from planning permission for light industrial / storage use. He suggests that the appeal site may therefore meet the 'ordinarily incidental' test of falling within the primary use class associated with St Leonards Farm, since the business units gained planning permission in 2014, and the agricultural use ceased. It is therefore inferred that weight should be given to this potential fallback position.
17. It is argued that the enforcement action has failed to have regard to whether the use of the unit should still reasonably be regarded as 'ordinarily incidental' to agriculture, having regard to the wording of the condition.
18. From the information provided and my visit it is apparent that the appeal building adjoins one of the aforementioned business units; also that toilets in the appeal building are physically accessible from the adjacent yard area serving those units. However it is undisputed that the appeal building was not part of the aforementioned planning permission in 2014 for the change of use. Nor is there anything to persuade me that the appeal building as a whole would at any time have been part of the same planning unit as any of the business park units. I am not persuaded that the wording of the planning condition has the effect of importing the terms of the aforementioned planning permission. For these reasons alone I consider that the ancillary use suggested by the appellant would fail to meet the 'ordinarily incidental' test.
19. Furthermore, from the evidence before me, it would appear that the aforementioned change of use did not cover the former farm area in its entirety, such that residual areas remained, notably buildings that have since been converted to residential use. It seems to me that the planning condition could in theory have continued to apply in relation to these residual areas thus further diluting the connectivity between the appeal site and the land to the north.
20. I am not therefore persuaded that the wording of the aforementioned condition, or the previous use of the appeal building, would be sufficient to establish a compelling fallback scenario, that weighs in favour of the appeal.
21. I therefore conclude that the storage related use would be in conflict with Policies DBE9 and RP5A of the LP insofar as they require that changes of use should not result in excessive loss of amenity by factors including noise. There would also be conflict with Policies DM 9 and DM 21 of the emerging Epping Forest District Local Plan (DLP), but which are nevertheless a material consideration, insofar as they seek to protect residential amenity.

Living Conditions – Office use

22. I noted during my visit that there are windows in the side elevations of the unit at ground floor level and a series of roof lights which face towards residential properties. I am satisfied that a condition could be imposed requiring these windows to be obscure glazed and fixed shut, such that they would not result in neighbouring properties being overlooked, and subsequent harm to privacy.

23. I am mindful that a previous appeal in relation to the continued residential use of the building was dismissed⁴. The Inspector in that case found, amongst other things, that the use would result in harm to the privacy of neighbouring residents, citing the raised entrance at side of the building. I cannot be certain of the circumstances at the time the previous appeal was considered. However, it was apparent from my visit that a section of trellis is now in place between the sites, adjacent to the office entrance. I am satisfied that alongside the proposed installation of a section of boundary fencing, and when also taking into account the likely limited and fleeting comings and goings associated with the small office use, the screening would be sufficient to safeguard against any significant overlooking of the adjoining rear garden and rear facing rooms in that property, that might otherwise occur. I am also satisfied that the limited scale of new fencing would not appear obtrusive or overbearing, when taking into account surrounding development.
24. I conclude that the proposed office use does not result in harm to the living conditions of neighbouring residents from overlooking. In this regard it would conform with Policies DBE9 of the LP and DM 9 of the DLP insofar as they seek to protect residential amenity.
25. In addition, the restricted size of the office in this case would be unlikely to result in any significant associated comings and goings, parking requirements, highway safety concerns or foul drainage impacts. It seems to me that the inherent characteristics of a small office use would reasonably be expected to coexist in the surrounding residential environment without causing undue disturbance, and which to my mind would not be an unsustainable location for the scale of development in question.
26. I also have no reason to disagree with the Council's findings that the proposed office use will not result in a likely significant effect on the integrity of the Epping Forest Special Area of Conservation in terms of recreational pressure, or atmospheric pollution or to find that there would be any such likely significant effect on the Lee Valley Special Protection Area. These considerations, however, do not overcome the harm that I have identified above with regard to the storage use.

Conclusion

27. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice, with corrections, and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
28. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the Class E use, because this will benefit from planning permission, albeit that the precise use within Class E would need to be restricted, and is therefore lawful for planning purposes.

⁴ Ref APP/J1535/W/19/3232117

Conditions

29. I have had regard to the conditions suggested by the Council. Conditions are required to secure obscured glazing and non-openable windows, the introduction of a boundary fence, and limitation on the nature and hours of the use of the building in the interests of the living conditions of residents.

Formal Decision

30. It is directed that the enforcement notice be corrected by deleting the wording at paragraph 3 and substituting the following wording instead:-

"Without planning permission: The material change of use from agriculture to Class E and Class B8 use."; and

By deleting the wording at paragraph 5 and substituting the following wording instead:-

"Cease the unauthorised Class E and Class B8 use."

31. Subject to these corrections the appeal is allowed insofar as it relates to the Class E use and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the material change of use from agriculture to Class E use, on Land at Unit 7 St Leonards Farm, St Leonards Road, Nazeing, Waltham Abbey EN9 2HG, subject to the conditions below.
32. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to the Class B8 use, and planning permission is refused in respect of material change of use from agriculture to Class B8 use on Land at Unit 7 St Leonards Farm, St Leonards Road, Nazeing, Waltham Abbey EN9 2HG, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The office use hereby permitted shall cease within **three months** of the date of failure to meet any one of the requirements set out in i) and ii) below:
 - i) Within **one month** of the date of this decision, the window openings in the west and east flank elevations and roof slopes shall be entirely fitted with non-opening, obscure glazing with a minimum level 3 obscurity, and shall be permanently retained in that condition.
 - ii) Within **one month** of the date of this decision, a 1.8m high timber fence shall be erected between the entrance to the office and the rear garden of Ash Cottage, St Leonards Road and shall be permanently retained thereafter.
- 2) The premises shall be used as an office and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). The primary part of the office use hereby permitted is restricted to the upper floor of the premises only.
- 3) The use hereby permitted shall not operate outside the hours of 07:00 to 18:00.

END OF SCHEDULE OF CONDITIONS