



Appeal Decision

Site visit made on 12 October 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/P0119/C/21/3276807

Land at Yew Tree Farm, Old Gloucester Road, Thornbury, Gloucestershire

- 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 Michael Fear (JD & SA Fear & Sons) against an enforcement notice issued by South Gloucestershire Council.
 - The enforcement notice, numbered COM/20/0105/COU/3, was issued on 5 May 2021.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the change of use of the land from agriculture to a mixed use for agriculture, open storage and parking and storage of vehicles. Siting of a kiosk (herein referred to as the "administrative building") to facilitate the use.*
 - The requirements of the notice are: 1. Cease the open storage and vehicle parking/storage use of the land. 2. Remove from the land all lorry/vehicle bodies together with the "administrative building" shown in the location marked 'X' (for illustrative purposes only). 3. Remove from the land all motor vehicles and trailers and other stored items not associated with the agricultural use of the land. 4. Remove from the land plant, machines and tools not associated with the agricultural use of the land. 5. Reinstate the land to the condition it was in before the unauthorised development began.
 - The period for compliance with the requirements is 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

2. The allegation refers to a change of use. This is not an act of development and I will correct the Notice to refer to a material change of use. This will not result in prejudice or injustice to either party.

The appeal on ground (b)

3. An appeal on ground (b) is a legal ground of appeal and is a claim that the matters alleged at Section 3 of the enforcement notice have not occurred as a matter of fact. It concerns the circumstances leading up to, and at the time of the issuing of the notice. The appellant must demonstrate that there has not

been a material change of use of the land from agricultural to a mixed use comprising agriculture, open storage and parking and storage of vehicles along with the siting of a kiosk ("administrative building") to facilitate the use. The burden of proof falls to the appellant and the test of the evidence is on the balance of probability.

4. The appeal site is a dairy farm to the east of Thornbury situated in the open countryside. The notice relates to two parcels of land separated by the B4061 Old Gloucester Road. I observed at my site visit cattle in the fields and around the farm buildings. In addition to farm machinery, the hardstanding yard area adjacent to the farmhouse accommodated numerous cars, vans, caravans, lorries and lorry bodies. Within a large agricultural shed, which was open on three sides, were 4 'shipping' containers. The container which is the subject of the notice as identified by the X on the enforcement plan, is described as the "Transport and HR Office" by a notice on the door and as an "admin building" by the appellant in their statement. On the land on the opposite side of the road, there were two lorries, a lorry body and three cars.
5. There appears to be no dispute that the site is used for both farming and a commercial activity as the appellant confirms in their statement that they have diversified to earn extra income. The Planning Contravention Notice (PCN) which was completed by the appellant on 11 February 2021 and provided by the Council with its evidence, says that "Stackia & AV Arts" occupies the appeal site and has an interest in the land and that the use of the land is for "truck parking and farming". It is said that this use began in July 2020.
6. From the evidence provided by the Council and from what I observed at the time of my visit, the site is clearly in a mixed use which involves agriculture and the use of the land for open storage and the storing and parking of vehicles not used in association with the farming enterprise. In addition to the truck parking that is referred to by the appellant in the PCN, there were vehicles not typically associated with either an agricultural use or trucking. Furthermore, the number of such vehicles present is considered to be more than the number of vehicles that would be expected in these circumstances.
7. Such observations serve to support the Council's contention that the site has been used for purposes in addition to the agricultural use and I have not seen anything to suggest that they are an unfair representation of the alleged use of the land. Moreover, it is also considered that, as observed at the time of my site visit, and comparing this to the undated aerial photo provided at appendix 2 of the Council's appeal statement, the operations may have expanded since the enforcement notice was issued.
8. Overall, from the evidence provided and on the balance of probability, it seems to me that the development, as alleged, had occurred at the time the notice was issued.
9. The appeal on ground (b) therefore fails.

The appeal on ground (a) and the deemed planning application

Main Issues

10. This is the effect of the development on i.) the character and appearance of the site and its surroundings within the rural landscape; and ii.) highway safety.

Reasons

Character and appearance of the site and its surroundings within the rural landscape

11. The appeal site is rurally located amongst agricultural land which is defined in the South Gloucestershire Landscape Character Assessment Supplementary Planning Document (LCA) as 18: Severn Ridges. This landscape is described as 'an extensive, complex landform of abrupt scarps and gentle ridges, which rises from the lower Levels area' characterised by a distinctive bowl landform. The Landscape Strategy within the LCA aims, amongst other things, to ensure that changes in the landscape character brought about by new development be considered in terms of effects on the views from, setting to and character of the area. It also aims to ensure that new development respects and integrates with the historic pattern of the landscape or settlement patterns and reinforces local distinctiveness.
12. The mixed use of the land for agriculture, open storage and parking and storage of vehicles with the siting of the administrative building is in stark contrast to its surroundings. The open rural nature of the environment is juxtaposed with the proliferation of the vehicles and parts which line the appeal site close to the boundary with the public highway. Visually exposed, the cluttered appearance of the site fails to respect the character of the landscape and is harmful to the appearance of the area. It is an alien form of development which does not reflect the dispersed and intermittent settlement pattern of traditional properties amongst agricultural fields flanked by hedgerows.
13. The use of the site in this way neither conserves or enhances the quality, amenity, distinctiveness and special character of the landscape. In this respect the change in the character of the land from being farmyard and open in appearance to being cluttered by numerous vehicles and equipment not associated with the agricultural use of the land is harmful to the landscape. It has not been demonstrated that the development results in benefits that outweigh the harm, and thus it is contrary to Policy PSP2 of the PSP and Policies CS9 and CS34 which seek to protect the special character of the landscape and the natural and historic environment.
14. The appellant argues that the "administrative building", due to its siting within an agricultural building which was previously filled with farm machinery and fodder, has little impact on the character and appearance of the area. I am not aware that the storage container is used for any purpose other than as an "administrative building" in association with the non-agricultural use of the land. In these circumstances, the "administrative building" facilitates the use of the site for what is alleged in the notice. S173(5)(a) of the 1990 Act confirms that a notice can require "the alteration or removal of any building or works" that facilitate the development. As the purpose of the notice is to remedy the breach of planning control. The requirements of the notice would achieve this and therefore, are not excessive.
15. The reasons for issuing the Notice also referred to Policy PSP27 of the PSP which sets out that proposals for B8 storage and distribution will be acceptable at the safeguarded economic development areas identified in Policy CS12 of the Core Strategy and does not provide for B8 storage and distribution in other

locations. As the appeal site does not fall within such an area, these policies are not relevant in this context.

16. Overall, I find that the use of the site as alleged by the notice and forming the proposal for the deemed planning application, would erode the rural character and appearance of the environment and surrounding landscape. The proposal would harm the character and appearance of the area and conflict with Policies CS1 and CS9 of the South Gloucestershire Local Plan Core Strategy 2006 – 2027 (the CS), and Policy PSP2 of the South Gloucestershire Local Plan Policies, Sites and Places Plan (the PSPP). Among other things, these seek to ensure that development responds to the existing pattern of the development in the area and respects and enhances the character and amenity of the site and its context.

Highway safety

17. The Council has not provided substantive evidence that the access to the northern part of the appeal site is effectively substandard for the alleged use of the site. Nevertheless, in terms of the particular circumstances on the ground, I observed that visibility is restricted to an extent, particularly from the west, when exiting the site. This is potentially detrimental to the safe and free flow of traffic on the public highway. The existing use of the access for farm machinery is well established. However, the increase in traffic movements generated by the additional vehicles that are parked and stored on the site, and in the absence of evidence to the contrary, the development is likely to represent a highway safety issue. This would be contrary to Policy CS8 of the CS and Policy PSP11 of the PSPP. These policies seek to ensure that new development does not have an unacceptable effect on highway and road safety. The conflict with the highway policies alone may not amount to conflict with the development plan read as a whole but taken along with the clear conflict with policies aimed at protecting local character, the development is clearly contrary to the development plan.
18. Policy PCP10¹ of the PSPP refers to Active Travel Routes and Policy CS12² of the CS refers to safeguarded areas for economic development, neither are relevant to the appeal site.

Conclusion on Ground (a)

19. For the reasons given above, I therefore conclude that allowing the continued mixed use of the site for agriculture, open storage and parking and storage of vehicles and the siting of the "administrative building" to facilitate the use would not be acceptable. The development would be contrary to the development plan and there are no other material considerations which outweigh this finding. The appeal on ground (a) should not succeed and the deemed planning application under s177(1) of the 1990 Act shall be refused.

S A Hanson

INSPECTOR

¹ The Council statement at paragraph 5.3 highlights an error in citing Policy PSP10 in its reason for issuing the notice and suggests that as no reference to the policy is made by the appellant, it should be removed from the notice.

² The Council's statement at paragraph 5.3 highlights the incorrect reference to Policy CS21 (Gypsy and Traveller Accommodation) in its reason for issuing the notice and clarifies that the policy reference should be CS12.