
Appeal Decisions

Site visit made on 9 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04/01/2022

Appeal A Ref: APP/W1850/C/21/3272421

Land at New House Farm, Grafton Lane, Grafton HR2 8BL

- 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 Gething-Lewis of Gamber Logistics Ltd. against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice, numbered EN/2021/003207/ZZ, was issued on 16 March 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission unauthorised material change of use of the Land from agriculture to a mixed use of agriculture and laser clays operation.
 - The requirements of the notice are:
 - (1) Permanently cease the use of the Land for laser clays operation.
 - (2) Permanently remove the viewing lodge, as shown in the approximate location marked with an 'x' on the attached location plan from the Land.
 - (3) Remove all rubble arising from the above works from the Land.
 - The periods for compliance with the requirements are 90 days from the date the notice takes effect for requirement (1); 150 days from the date the notice takes effect for requirement (2); and 180 days from the date the notice takes effect for requirement (3).
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/W1850/W/21/3270767

Land at New House Farm, Grafton Lane, Grafton 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 193707, dated 22 October 2019, was refused by notice dated 4 February 2021.
 - The development proposed is described as: Permission to incorporate laser clays sporting option to existing area involved with existing established clay shooting layout. Replacement of a portacabin with a small lodge and viewing area.
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Summary Decisions: The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matters

1. There are two other appeals for a different site within the same wider New House Farm (NHF) complex. These appeals (reference APP/W1850/C/21/3269939 and APP/W1850/W/21/3269938) will be the subject of a separate decision.

2. I find the description of the development given in the application form that is the subject of Appeal B to be a little imprecise with regard to the development for which permission is sought. I asked the parties for their view on an amended description, bringing this more closely aligned to the description of development on the enforcement notice. I received no objection to the proposed change and, as such, will determine Appeal B on the basis of the development comprising a material change of use of the land to a use for laser clays shooting and the replacement of a portacabin with a small lodge and viewing area.
3. Having regard to the above, I am satisfied that the development for which permission is sought in both appeals is broadly the same. I have, therefore, considered the ground (a) appeal and the appeal against the refusal of planning permission together, acknowledging where there are differences between the two.
4. The revised National Planning Policy Framework was published after the appeals had been submitted and initial statements made. As such, the written comments of the parties were sought with regard to the National Planning Policy Framework (20 July 2021). All comments received have been taken into account in determining this appeal.

The ground (a) appeal, the deemed application for planning permission and the appeal against the refusal of planning permission

Main Issues

5. Having regard to the Council's reason for refusal of the planning application and the substantive reasons for issuing the enforcement notice, I have identified the main issues as follows:
 - i. Whether or not the development results in inconveniences for road users and is prejudicial to highway safety as a result of any additional traffic to and from the site; and
 - ii. The effect of the development on the living conditions of nearby residents by reason of noise and disturbance from traffic to and from the site.

Reasons

Highway Matters

6. The appeal site is located outside of the nearest settlement and is accessed via Grafton Lane, which the appellant describes as a meandering lane devoid of footways. He also states that, from Hereford to the village of Grafton, the lane forms part of the National Cycleway Network. There are a number of premises also accessed off Grafton Lane in the close vicinity of the appeal site. The majority of these are residential properties.
7. The appeal site is within the wider NHF complex, which is occupied by a number of other uses listed by the appellant as including, but not limited to, offices, gun cartridge sales, poultry house cleaning business, and a 5 pitch caravan site. Christmas tree sales also take place at NHF, but this is, of course, only for a limited period each year. All are accessed by a single point of access off Grafton Lane. The laser clays shooting operation is an additional

- use of the NHF, but is confined to a defined area of the wider complex adjoining both the larger barn and caravan site.
8. The appellant suggests that traffic is generated by the laser clays shooting operation between 0930 and 1530 in the winter and 0930 to 1630 during the summer, with Saturdays as the most popular day. It is suggested that small groups of visitors typically stay for 2 hours, with larger groups of up to 30 visitors staying between 3 and 4 hours. This pattern of use is not disputed by the Council.
 9. The appellant kept a record of vehicle numbers visiting the NHF from June 2019 to the start of the movement restrictions imposed as a result of the Covid-19 pandemic. This information has informed the evidence of suggested future vehicle movements for the laser clays operation. It is suggested that, whilst up to 24 vehicle movements could be generated by the development on the larger corporate event days, these events are infrequent, as noted from the appellant's records. The evidence suggests an average of 5 vehicle movements generated each week from smaller groups. These are in addition to an average of around 29 vehicle movements per day for the other activities on the site, excluding those generated from Christmas tree sales.
 10. The appellant has considered the characteristics of the lane as a route to the site, but has not identified any particular issues. He also points to the lack of any recorded traffic accidents on the lane. The appellant suggests that the modest level of traffic movements do not result in an unacceptable effect upon road safety. Nevertheless, a travel plan has been provided that seeks to promote car sharing for visitors to the laser clays operation, with the aim of reducing vehicle numbers.
 11. The Council has not disputed the figures provided by the appellant. Nevertheless, in its briefly stated evidence it suggests that the additional traffic movements to the site are detrimental to the safety of neighbouring residents who live on the lane and those who use the lane. The Council has not, however, suggested that the existing traffic using the lane means that it is already at or above capacity, such that the additional traffic has caused or would cause an unacceptable degree of harm to safety. Neither has it pointed to any particular highway safety issues on the lane that are exacerbated by the additional traffic. Indeed, the Council's transport manager notes that the vehicle movements associated with the development, as shown on the information submitted by the appellant, are generally low and do not result in a cumulative impact on the highway network that they regard as severe.
 12. Notwithstanding the above, I note the representations of the Parish Council, that some of the traffic to and from NHF is generated by activities that do not have the benefit of planning permission. Both parties have, however, provided me with the planning history for NHF that is considered relevant to my decision. This does not include evidence that supports the contentions of the Parish Council. Whilst I note the representations with regard to damage to highway verges along Grafton Lane, I do not have any evidence that points to this resulting from the development in this case. It is unlikely that the development that is subject of these appeals generates the movement of large commercial vehicles along Grafton Lane referred to by interested parties.
 13. Having regard to all of the above, I have been given no reason to conclude that, even without the measures set out in the travel plan, the additional traffic

generated by the development is prejudicial to highway safety on Grafton Lane or that it causes harm if visitors to the operation increase as anticipated by the appellant. Similarly, I cannot conclude that the development results in inconveniences for road users on the lane. For these reasons I do not find conflict with Policy SS1 (Presumption in favour of sustainable development) of the Hereford Local Plan Core Strategy 2011-2031 Adopted October 2015 (HLPCS), which secures development that improves the social, economic and environmental conditions in Herefordshire.

14. Furthermore, the development does not conflict with HLPCS policies RA6 (Rural economy), SD1 (Sustainable design and energy efficiency) and MT1 (Traffic management, highway safety and promoting active travel). These inform that development proposals should, amongst other matters, create safe environments, and demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network.
15. In addition to the above, I note that CH6 (Supporting tourism and local business development in Callow and Haywood) of the Callow and Haywood Neighbourhood Development Plan 2011-2031 dated September 2016 (CHNDP) permits development that improves the quality and diversity of existing tourism facilities and attractions, such as the appeal development. The development does not conflict with the criteria of this Policy, or with policies CH1 (protecting and enhancing the rural landscape) and CH2 (Building and transport design principles) of the CHNDP, all of which require, amongst other matters, that development considers traffic impacts on local roads and networks.
16. For the reasons given above, the development also accords with the Framework, in particular paragraphs 85 and 111 (paragraphs 84 and 109 of the previous version), which provide advice on, amongst other matters, the effect of development on highway safety and local roads.
17. Both the decision notice and enforcement notice refer to Policy CH5 (Managing new business development in former agricultural and other land-based rural businesses buildings) of the CHNDP. However, this policy is of limited relevance to either of the main issues in this case as it relates to conversion of former agricultural buildings. Nevertheless, I find no conflict with the policy.

Noise and Disturbance

18. The Council's case is briefly stated and its concerns with regard to noise and disturbance centres on the traffic to and from the site using Grafton Lane, and the effect of this on the living conditions of local residents.
19. In this regard, I agree with the previous Inspector's¹ description of the character of Grafton Lane and residential properties along it. She notes that properties along the lane are at varying distances from the highway; that a number are set well back from it, behind vegetation; others are behind varying boundary treatments; and that the majority are located some way from the site.
20. Due to the nature of the laser clays shooting operation, traffic on the lane generated by the development is only likely to occur during daytime hours, but will occur during the weekends. However, as the Council's transport manager

¹ For appeal references APP/W1850/C/20/3260020 & APP/W1850/W/20/3255562

notes, any traffic movement is likely to be generally low. Furthermore, I am not advised that the type of vehicles visiting NHF in association with the laser clays shooting operation are likely to need to reverse or manoeuvre in the lane, generating additional noise and disturbance.

21. I can see from the planning history that activity at NHF has increase in recent times and nearby residents might have become more aware of this through an increase in vehicle movements passed their homes. Whilst I do not dismiss their concerns about this, I do not have sufficient evidence to conclude that any increase in traffic that results from the development causes an unacceptable degree of noise and disturbance, such that it has a harmful effect on the living conditions of nearby residents.
22. I note that third parties have raised concerns regarding noise generated by the laser clays shooting operation itself. The operation does not, however, involve the use of live rounds, rather the guns fire a laser to hit the clays that are shot into the air. Having observed the shooting at the site visit, the noise generated is limited to the clay firing mechanism and the click of the laser gun trigger. Whilst noise might be generated by the visitors themselves, I have no evidence to suggest that this, together with any other noise resulting from the activity has an unacceptable effect on the surrounding area or living conditions of local residents. Indeed, I note that the Council's environmental health officer does not object to the development from a noise and nuisance perspective.
23. For the reasons given above, I conclude that the development does not conflict with policies SS1, SD1 and RA6 of the HLPSCS, in particular the requirements to safeguard residential amenity for existing residents and ensure that development does not cause an unacceptable impact by virtue of noise. Furthermore, I have no reason to conclude that the development conflicts with CHNDP policies CH1 and CH6, in particular the requirements to maintain or promote the areas sense of tranquillity. Neither can I identify conflict with policies CH2, particularly with regard to the effect of the development on residents arising from noise generated traffic movements. Finally, I find no conflict with the Framework in respect of this second main issue.

Other Matters

24. I note the suggestion that the development of the site is piecemeal and that the appellant has a disregard of the planning process. I must, however, consider the development on its individual planning merits. In this case I have not been provided with evidence that leads me to the conclusion that the development, together with other operations on the site, causes harm. As the previous Inspector notes, enforcement action is intended to be remedial and not punitive.
25. I am only able to consider the appeals that are before me, and am not able to review other decisions of the Council. If there are other possible breaches of planning control on NHF, this is a matter for the Council. That other clay shooting businesses operate in the area does not alter my conclusions with regard to the merits of the development in this case. I note the suggestion that there was not formerly a portable cabin at the site prior to the erection of the lodge that is the subject of Appeal B. Nevertheless, other than the use it serves, the Council has not objected to the building and I have no reason to

disagree with this position. Its use can, however, be limited to that associated with the development.

26. The matter of a licence for alcohol and food on the site, even if part of the laser clays operation, cannot be considered within the remit of this appeal. As for w.c. facilities, at the site visit I was shown the existing w.c. on site used by visitors to the laser clays shooting operation. This does not, however, form part of the application that is before me. Neither does it include the storage of explosive material. As already noted, the laser clays operation is, essentially, electronic and does not involve the firing of live rounds.

Conditions

27. I note the list of suggested conditions which have been agreed by the parties. I consider each of these as follows, and where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance: Use of Planning Conditions.
28. My conclusion with regard to the first main issue has been reached regardless of the measures proposed in the business travel plan. Nevertheless, for the laser clays operation to comply with HLPSC Policy MT1 requires it to, amongst other matters, encourage active travel behaviour and promote access to services by means other than private motorised transport. Accordingly, the suggested condition requiring compliance with the measures in the business travel plan is considered necessary and reasonable as a means of achieving compliance with the development plan.
29. The condition limiting the hours of operation is also necessary and reasonable in the interests of limiting noise and disturbance. The control of external lighting is necessary in the interests of preserving the character and appearance of the rural setting.
30. Although not suggested by either party, the condition limiting the use of the site to the laser clays shooting operation is necessary and reasonable, in order to limit the effect of the development with regard to noise. The condition has been drafted so as not to restrict the rights for the temporary use of the land for other forms of shooting².
31. With particular regard to Appeal B, the condition referring to the approved plans is necessary in the interests of clarity and precision. The restriction on the use of the building described as a lodge and viewing area is also necessary in the interests of clarity with regard to the extent of the permission granted in this case.

Planning Balance and Conclusion

32. The determination of these appeals must be in accordance with the development plan unless material considerations indicate otherwise. I have not identified any conflict with the development plan. Whilst I understand the concerns of local residents, there is no substantive evidence to justify the dismissal of the appeals on the grounds of harm to their living conditions, highway safety, or any inconvenience for road users. For these reasons, and

² Rights granted by Class B, Part 4, Article 3, of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

having regard to all matters raised, I conclude that the appeals (Appeal B and ground (a) of Appeal A) should be allowed.

Overall Conclusions

33. For the reasons given above, I conclude that Appeal B should be allowed and Appeal A should succeed on ground (a). I shall grant planning permission for the material change of use of the land from agriculture to a mixed use of agriculture and laser clays operation, as described in the notice.

34. As a consequence, the appeal on ground (f) does not fall to be considered.

Formal Decision - Appeal A

35. The appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the material change of use of the land from agriculture to a mixed use of agriculture and laser clays operation at New House Farm, Grafton Lane, Grafton HR2 8BL as shown on the plan attached to the notice and subject to the following conditions:

- 1) The use hereby permitted shall be limited only to a laser clays shooting operation that comprises the sport of outdoor shooting of an infrared gun at flying targets launched from traps, or ground based spring-loaded devices. The use shall not involve any other type of shooting, including the shooting of live rounds, other than that permitted by reason of Class B, Part 4, Article 3, of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
- 2) The use hereby permitted shall be carried out in accordance with the document entitled 'Business Travel Plan'. A detailed written record shall be kept of the review of the travel plan which shall be made available for inspection by the local planning authority upon reasonable request.
- 3) The use hereby permitted shall operate only between 1000 to 1600 hours Mondays to Fridays and 1000 to 1500 hours on Saturdays. The use shall not operate on Sundays, Bank or Public Holidays.
- 4) No external lighting shall be installed on the site.

Formal Decision - Appeal B

36. The appeal is allowed, and planning permission is granted for the material change of use of the land to a use for laser clays shooting and the replacement of a portacabin with a small lodge and viewing area on Land at New House Farm, Grafton Lane, Grafton HR2 8BL, in accordance with the terms of the application 193707, dated 22 October 2019, subject to the following conditions:

- 1) The development hereby permitted shall be completed and carried out in accordance with the plans referenced 225.411.C2, 225.411.C3, and 225.411.C4.
- 2) The use hereby permitted shall be limited only to a laser clays shooting operation that comprises the sport of outdoor shooting of an infrared gun at

flying targets launched from traps, or ground based spring-loaded devices. The use shall not involve any other type of shooting, including the shooting of live rounds, other than that permitted by reason of Class B, Part 4, Article 3, of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

- 3) The lodge and viewing area hereby permitted shall not be used other than for purposes incidental to the laser clays shooting operation.
- 4) The use hereby permitted shall be carried out in accordance with the document entitled 'Business Travel Plan'. A detailed written record shall be kept of the review of the travel plan which shall be made available for inspection by the local planning authority upon reasonable request.
- 5) The use hereby permitted shall operate only between 1000 to 1600 hours Mondays to Fridays and 1000 to 1500 hours on Saturdays. The use shall not operate on Sundays, Bank or Public Holidays.
- 6) No external lighting shall be installed on the site.

J Moss

INSPECTOR