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## Appeal Decision

Site visit made on 18 January 2022

**by Stephen Brown MA(Cantab) DipArch RIBA**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 March 2022**

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**Appeal Ref: APP/V0510/C/21/3272127**

**14 Second Drove, Little Downham, Ely CB6 2UD**

- 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 by Malcolm Roberts against an enforcement notice issued by East Cambridgeshire District Council.
  - The enforcement notice, ref USE/19/00041, was issued on 25 February 2021.
  - The breach of planning control alleged in the notice is the material change of use of the existing agricultural storage shed for the commercial service and repair of any motor vehicles.
  - The requirement of the notice is to cease the use of the agricultural storage shed for the commercial service and repair of any motor vehicles.
  - The period for compliance with the requirement is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid, so the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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### Decision

1. I direct the notice be varied by:

INSERTION of the word '*type*' between the words '*agricultural*' and '*storage*' in the allegation.

The appeal is allowed on ground (g), and I further direct that the enforcement notice be varied by:

DELETION of *3 months*; and,

SUBSTITUTION of *6 months* as the period for compliance.

Subject to these variations the enforcement notice is upheld.

### Background

2. The appeal site lies on the south-eastern side of Second Drove, one of a series of straight parallel Fenland drove roads about 3 kilometres to the north-east of Little Downham and 4 kilometres to the west of Littleport. The appeal site is a roughly square area in the northern corner of a larger plot, where the appellant has a house. The area generally is flat agricultural land criss-crossed by a network of dykes and hedges with small and sporadic groups of dwellings and business uses on the droves.

3. In 2018 planning permission subject to conditions was granted on an application for '*Erection of agricultural type storage shed. Land is currently Pasture and storage/smallholding use*<sup>1</sup>'. The decision to allow this was subject to three conditions. They required the building to be built in accordance with the application drawings, to start of development within the time limit, and for constructional materials to conform with the application details. The shed was duly built in 2018.
4. In 2019 a planning permission was refused on an application for '*Change of use existing Agricultural Storage shed. Used for storing/repairing own vehicles, has developed through repairing/modifying friends' vehicles etc into a business opportunity and want to take advantage of this to provide continued earning potential on site*<sup>2</sup>'.
5. A further application was made in 2020 for '*Change of use of existing agricultural storage shed from agriculture to a mixed use of agriculture and vehicle servicing and repairs (retrospective)*' and refused in December 2020<sup>3</sup>. This was subsequently dismissed at appeal<sup>4</sup>.
6. The appellant's son lives with his parents in the house on the no. 14 plot. He is a vehicle mechanic and has operated his business from the appeal site since he lost his previous job as a result of the COVID pandemic.

### **The appeal on ground (c)**

7. This ground is that there has been no breach of planning control. It is known as a 'legal' ground in which the burden of proof is on the appellant to show this is the case on the balance of probabilities.
8. It is argued that the 2018 permission was for an '*agricultural **type** storage shed*' (my emphasis) rather than an '*agricultural storage shed*'. Its use is not therefore described as an agricultural use. Further, the officer's delegated report on the application records that '*The shed will be used for the storage of tractors, off road vehicles and occasional repair of farm machinery*'. No conditions were imposed restricting use of the building or limiting to use in connection with the appellant's smallholding, and no agricultural justification was sought or given.
9. Given that the notice does not include the word '*type*' in the allegation it does not precisely reflect the lawful use. I intend to vary the notice to include the word '*type*', and do not consider any party will be significantly prejudiced by this.
10. I accept that the phrase '*agricultural type*' does little more than describe the form of building that can be expected, and indeed its appearance accords with such a description. It does not prescribe any actual agricultural use. Furthermore, comments in the delegated report are not incorporated into the decision notice and cannot be taken to limit or modify the approved development in any way.

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<sup>1</sup> Decision notice 18/00177/FUL, dated 26 April 2018.

<sup>2</sup> Decision notice ref. 18/01770/FUL, dated 25 March 2019

<sup>3</sup> Decision notice ref. 20/01421/FUL, dated 18 December 2020.

<sup>4</sup> Appeal decision ref. APP/V0510/W/19/3237780, dated 18 January 2020.

11. However, the description of the development as an '*agricultural type storage shed*' includes the functional term '*storage*'. In its natural and ordinary meaning, taken from the Oxford Shorter English Dictionary, storage must be regarded as the keeping or stocking of goods or possessions for future use or kept in reserve. It may be applied to an immense range of things, whether related to agriculture or not. Indeed the specific Use Class B8, as defined in the Town and Country Planning (Use Classes Order) 1987 as amended, covers storage and distribution uses. In this case it may possibly include occasional repair to stored objects, which may well include vehicles and other items that are incidental to the use of the appellant's holding. However, it cannot reasonably include bringing anything to the site from elsewhere on a regular basis – including vehicles – for the specific and commercial purpose of repair or maintenance works before taking those things away again.
12. The planning permission and any conditions must be taken to define what has been permitted. Only in exceptional circumstances can extraneous material be imported, such as information provided to support the application or mentioned in an officer's report. Such circumstances do not exist here. I consider the functional description of the building clearly defines what it is for – in this case '*storage*'. This does not include commercial motor vehicle maintenance, although I accept it might include maintenance of vehicles and farm machinery that are kept in the store or are incidental to use of the site.
13. I saw numerous vehicles on the site - some within the building - including private cars, commercial and agricultural vehicles. There was clearly servicing and repair work in progress in the shed. There may be some storage of vehicles, but that is not readily apparent, and by no means a primary activity. I have therefore come to the view that the alleged material change of use has occurred, and that on the balance of probabilities there is no planning permission for such a change. The appeal on ground (c) therefore fails.

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

14. This ground is that planning permission should be granted for all or part of the matters alleged in the enforcement notice.
15. I consider the main issue to be whether the alleged material change of use can be regarded as sustainable in this countryside location, with particular reference to local and national planning policy.
16. As noted above the area around the appeal site is predominantly agricultural, and this small area of residential/commercial development is at some distance from centres of population – notably Littleport, a market town some 4 kilometres away as the crow flies, and the villages of Little Downham and Pymoor.
17. Policy GROWTH 2 of the East Cambridgeshire Local Plan of 2015 (the Local Plan) seeks to ensure the majority of development will be focused on the market towns, and that more limited development will take place in villages which have a defined development envelope. This development is in a relatively isolated location at a considerable distance away from any of these.
18. The shed is a type common in the rural scene, and the site is largely enclosed by hedges and timber fences. I concur with the Council that the appeal site has little visual impact upon the surrounding area. However, it appears to me that

the use of the site, which introduces considerable numbers of vehicles coming to and from the site is out of place in this principally agricultural area. It is by no means characteristic of the flat open landscape where the small, isolated pockets of development are mainly farms, farm buildings and dwellings. I consider the vehicle repair use is of significant harm to the character of the countryside. While this may be seen as a small-scale employment development, it does not protect countryside interests as Local Plan Policy GROWTH 2 seeks to do.

19. Furthermore, in my opinion this cannot be seen as a site closely related to the built framework of a settlement when this is no more than a loose aggregation of houses and a few commercial sites quite remote from the nearest village or town. Nor is it readily accessible by foot or bicycle or maintain the character of the area. In this context it cannot reasonably qualify as new development for a small-scale business that may be permitted under Local Plan Policy EMP 3.
20. I accept that the business may make a contribution to the local economy of the wider area by providing a useful service. However, customers must come largely from the centres of population some distance away and leave their vehicles for a period before returning to collect them. While it may be a suitably sustainable arrangement for the appellant's son in that he does not need to travel to and from work, this is hardly the case for his more numerous customers. A relatively isolated site like this is not really suitable for such an operation and cannot be seen as land of the right type or in the right place. In terms of National Planning Policy Framework (NPPF) paragraph 8(a) this does not meet the economic objective of sustainability.
21. As regards the social and environmental objectives of sustainability identified in NPPF paragraphs 8(b) and (c), a business in this location is not readily accessible for people in the area, who will mostly have to make somewhat inconvenient journeys to use the service. Further, the business does not protect or enhance the natural environment or make particularly effective use of land.
22. It is argued that this use could be seen as analogous to working from home in terms of advice given on the Planning Portal website. This gives various examples, including use of buildings in gardens for such things as repairing cars connected with a business. However, it adds that the key test is whether it is still a home or has it become a business premises. In this case the son is clearly running a business, but as a matter of fact and degree I cannot regard the appeal site and shed, which are clearly separated from the site of the house, as 'mainly a home'.
23. I appreciate there are other sites in this small, developed cluster on Second Drove where there are a vehicle sales and maintenance business and a haulage yard. The appellant says these operate lawfully, but the Council say no similar uses by way of automobile businesses have been approved in this area. I therefore have no certainty of their actual planning status. Nevertheless, it appears these other sites have not been assessed in terms of their sustainability or effect on countryside interests. The presence of these other sites does not justify this recent development.
24. I understand there has been a significant increase in the number of rural home workers as result of the COVID pandemic, but to my knowledge that has

largely resulted from people unable to work in urban offices rather than operators of workshop type premises moving to rural locations.

25. The appellant says it has not been possible to find a suitable site in, or close to Little Downham, and that a potential site in Ely – some 7 kilometres away – was not viable for a start-up business on cost grounds. There has been no apparent investigation of any other potential sites in, for instance Littleport the nearest market town. Such sites are more likely to be available on industrial estates in larger towns. Furthermore it is not at all clear for how long the son has been looking for an alternative site.
26. I conclude on the main issue that the alleged material change of use cannot be regarded as sustainable in this countryside location. The development does not further the sustainability objectives of the NPPF. Nor does it accord with development plan aims, notably Local Plan Policies GROWTH 2 and EMP 3. The appeal on ground (a) therefore fails, and I shall refuse planning permission on the deemed application.

### **The appeal on ground (f)**

27. The appellant argues that the notice goes too far in requiring cessation of the use for the commercial service and repair of any motor vehicles, in that the building can properly be used for the repair of farm machinery, which includes vehicles.
28. I have reviewed the lawful use of the site under the ground (c) appeal above and come to the view that repair of vehicles or machinery stored in the shed or that are incidental to use of the larger site may be permissible. However, the requirement of the notice is quite specific in referring to '*commercial service and repair*'. This necessarily means vehicles are brought to the site for the specific business purpose of service and repair, rather than the sort of incidental uses that may be allowable. In that context the requirement is the only way to ensure the breach ceases and is not excessive. The appeal on ground (f) therefore fails.

### **The appeal on ground (g)**

29. The appellant accepts the period of 3 months is practically achievable, except that vehicle servicing is typically booked 3 months in advance, and a period of 4 months would be more acceptable. I concur that this would be a reasonable allowance, but also consider that more time should be given to allow for finding other premises in a sustainable location. I therefore intend to increase the compliance period to 6 months and will vary the notice accordingly. The appeal on ground (g) succeeds.

### **Conclusions**

30. For the reasons given above I conclude that there should be a variation to the allegation of the notice and that a reasonable period for compliance would be 6 months. I am varying the enforcement notice accordingly, prior to upholding it. The appeal succeeds to that limited extent on ground (g).

**Stephen Brown**

INSPECTOR