



Appeal Decision

Inquiry Held on 30 March 2022

Site visit made on 30 March 2022

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/P1615/C/20/3254650

Severn View Farm, Gatcombe, Blakeney GL15 4AU

- 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 David Jackson against an enforcement notice issued by Forest of Dean District Council.
 - The enforcement notice was issued on 18 May 2020.
 - The breach of planning control as alleged in the notice is the material change of use of the site to that of a builder's yard with associated storage building and facilities.
 - The requirements of the notice are: (a) cease the unauthorised use of the land as a builder's yard with associated building and storage facilities, (b) remove all associated building materials, equipment and machinery to the unauthorised use, (c) demolish the building located within the area hatched blue on the plan attached to the enforcement notice and (d) remove from the land all materials generated from compliance with step (c) above.
 - The period for compliance with the requirements is step (a) within 4 months from the date the notice takes effect and steps 2 and 3 within 9 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended.
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Procedural Matters

1. The parties have agreed as common ground that there has effectively been a drafting error between the requirements and time for compliance and that this matter should be corrected. I shall require the notice to be corrected by deleting the letters in the requirements and replacing them with numbers and to include the fourth requirement in the 9 months period for compliance. I do not consider there would be any natural justice issues involved.
2. The ground (b) appeal was withdrawn at the start of the inquiry.

Decision

3. It is directed that the enforcement notice be corrected by, in the requirements, deleting letters a, b, c and d and replacing with numbers 1, 2, 3 and 4. In the time for compliance delete 'step (a)' and replace with 'step 1' and delete 'Steps 2 and 3' and replace with 'Steps 2 to 4'. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground C

4. The appellant's case is that the barn that has been constructed accords in general with the planning permission from 2000 [3865B].
5. The appellant acknowledges the current barn itself was not constructed within the 5 years of the permission, suggesting about 2012 for this. He says that the permission was triggered or commenced by operations such as the construction of drainage, which was before 2012. While the application notes no foul drainage, it does indicate natural land drainage, although none is shown on the plans.
6. Photographs have been submitted of a drainage installation, although these are not dated and do not show what they relate to. However, even if these were associated with the current barn is not directly relevant as I conclude below that the barn as constructed does not relate to the planning permission and therefore the planning permission was not commenced.
7. When assessing whether a development has complied with its permission, as well as considering what does not comply with the permission, the similarities need also to be considered. The building as constructed is an agricultural barn type structure. The permitted building had a corrugated iron roof with concrete block walls. The constructed building has a corrugated roof, but walls are a mixture of timber slats with a low-level concrete block wall. The location plan is relatively small scale, but it clearly shows that the current building is not near the location shown on the permitted drawings, but in a different and slightly more prominent position. The existing use at the time was identified as grazing of sheep.
8. The approved building was about 16 x 7 x 2.7m to eaves, with a footprint area of about 112m². The building on site that has been constructed is about 18.45 x 12.4 x 3.4 to the eaves, with a footprint area of about 228m². So the floor area has doubled and the height of the eaves has significantly increased. I conclude that the building, while maintaining a barn-like structure, is much bulkier and materially different from the building that received planning permission. This is because of the significant change in location, some different construction materials, the greatly increased floor area and the change in eaves height. There is also no evidence that it was ever used for agriculture.
9. I accept that there were other buildings that have been replaced and there are other buildings remaining in this location, but these were/are of a smaller scale, lower and consequently their bulk and impact was/is not as great. Conversely the appeal building is of a much larger size, so its scale and bulk has a significantly greater impact. The approved building was much closer in scale and bulk to those existing.
10. I therefore do not consider the permitted building to be any sort of fallback position, because what is built does not accord with the planning permission of 2000. Even if the appellant wishes to build what was permitted in 2000, the evidence suggests that the drainage commenced the current building and not the permitted building. I conclude that the permission of 2000 has expired.
11. The appeal on ground (c) fails.

Ground (d)

12. The appellant identifies that he has been a builder most of his working life. Since arriving at Severn View Farm it has been his base. It was also noted that a large percentage of any building materials ordered are delivered direct to the sites they relate to and not to Severn View Farm. I accept this and that the building operations are managed from Severn View Farm, but the appeal relates to the use of the appeal site, not Severn View Farm. The question is whether the appeal site has been demonstrated, on the balance of probability, to be used as a builder's yard for any continuous period of 10 years before the enforcement notice was issued. It is also agreed that the shed/store has been constructed for more than 4 years.
13. The appellant says the barn was a replacement barn and that its use has not changed. However, the existing uses are required to be provided on the 2000 planning application form for the shed/store. This notes the only existing use is grazing land for sheep. Whether this was submitted directly by the appellant or on his behalf, the use at the time would have been clear. There may have been some other use, such as for small amounts of building items. However, if that use had been material at the time I would expect it to be noted on the application form, particularly if the proposed use was for the same use as the replaced sheds. It is contemporaneous evidence and I place considerable weight on it.
14. The appellant provides a number of invoices dating from 1997. These relate to various building materials. As the appellant notes, most materials are delivered direct to the associated site, and this is reflected in most of these invoices where delivery is to different addresses or collected. A wallpaper stripper and some plumbing was delivered to Severn View Farm. Apart from showing building work was taking place, the invoices do little to show that the appeal site was operating as a builder's yard and I place little weight on them.
15. There is also a list of sites worked on with appropriate dates. However, there are large gaps of a number of years between the jobs/sites identified and they do not demonstrate continuity of the use.
16. There are statements from some contractors. Mr Veney's statement does little to show the use at the appeal site or Severn View Farm, other than that Mr Jackson owned scaffolding and worked as a builder. Mr Baker's is similar, and confirms projects at Severn View Farm itself, but is not directly related to the use alleged. Mr Probert's statement confirms supply of building materials to various projects, including at Severn View Farm, but again not identifying a builder's yard there. Mr Wilkinson's statement just confirms Mr Jackson is in the building trade. These provide little evidence in relation to the alleged use or continuation of use.
17. There are photographs which show some building material storage at the site, both before and after the new barn was constructed. The old barn is seen to be in a poor state of repair and falling down, with some scaffold support. The photographs, while showing some building materials and scaffolding, probably as seen by Mr Saunders, a Council officer, are limited and do not demonstrate on the balance of probability that the use was continuous. I attach limited weight to these photographs.

18. I also note that other officers from the Council's building control and planning departments have visited on various occasions and the lawfulness of the building has not been brought into question. Mr Saunders, seemed to support the case of the appellant, but later explained that he had misunderstood the situation and asked for the email to Mr Jackson to be ignored. There is no direct evidence of the support given by other officers, but only what the appellant's understanding was. Even if no problems were raised by them, an officer's view is highly unlikely to be sufficient to confirm lawfulness. There is a proper process of showing lawfulness or not through application for a Lawful Development Certificate. I attach little weight to the officer visits, given the limited evidence and availability of the LDC process.
19. The planning practice guidance notes in relation to Lawful Development Certificates, and ground (d) is similar, that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
20. While I have accepted that the appellant is a builder and his business is probably managed from Severn View Farm, the evidence is not nearly precise enough to show the use of the appeal site as a builder's yard that has continued for any period of 10 years prior to the enforcement notice being issued, on the balance of probability.
21. The appeal on ground (d) fails.

Ground (a)

Character and Appearance

22. The ground (a) appeal and the deemed planning application relate to the allegation 'the material change of use of the site to that of a builder's yard with associated storage building and facilities'. This is an allegation of change of use and not operational development. Although the building hatched blue is included in the requirements, that is a consequence of its association with the change alleged, not part of the allegation. The building is not included in the application for planning permission.
23. The development plan includes the Forest of Dean District Council Core Strategy [CS] and the Allocations Plan 2006-2026 [AP]. Also relevant is the Forest of Dean Council's Landscape Character Assessment 9a [LCA].
24. CS Policy CSP1 relates to design and environmental protection. Development must take account of important characteristics of the environment and conserve, preserve or otherwise respect them in a manner that maintains or enhances the environment.
25. CS Policy CSP4 relates to development at settlements. Development must contribute to reinforcing the existing settlement pattern. It notes that areas outside settlement boundaries will be treated as part of the open countryside. The appeal site is not identified in the Key Diagram. Development is mainly directed to principal towns and villages with settlement boundaries, but it

acknowledges some development will be outside of settlements. These will need to be justified in accordance with the CS.

26. CS Policy CSP7 promotes economic development throughout the district, encouraging new and diverse employment in accordance with the spatial strategy. However, the location must be justifiable in terms of the settlement hierarchy and policy CSP4. It also notes that it supports economic development in rural areas, but it needs to be compatible with the surroundings and landscape, contributing to the locality, rather than just being conveniently located.
27. CS Policy CSP16 relates to development proposals in villages, taking account of scale, function and services and availability of public transport.
28. AP Policy AP1 relates to sustainable development, and it refers back to policies in the CS. AP Policy AP4 relates to design and the need for high quality.
29. The National Planning Policy Framework supports a prosperous rural economy, but it should be sensitive to its surroundings, and not have an unacceptable impact on local roads.
30. The appeal area is part of Severn View Farm and is relatively isolated up the hill from the farm and a little away from the property at the entrance. In the area generally there is dispersed built form with frontages intermingled with agricultural land. The area is not intensively developed or in easy reach of basic facilities or public transport. There are more dense clusters of houses in Etloe and Blakeney. The area around the appeal site looks and feels part of the countryside. The fact that there are neighbouring buildings near by does not mean the group in general is not isolated. The existing buildings at the appeal site are generally of a much smaller scale than the shed/store and all have a field setting. There were seen to be sheep grazing on the adjacent land. The appellant says only cutting of hay occurs at Severn View Farm.
31. The appellant identifies that there has been some change to uses generally in the area with conversion of some farms, holiday homes etc. However, this does not affect or change the overall countryside character of the area.
32. The alleged use of a builder's yard is alien to this rural location. I accept that if it were to occur only in the shed/store this would mitigate the impact, but not nearly sufficiently, as there would still be the presence of and comings and goings of vehicles that are not usually associated with the countryside. Photographs also indicate that the use spreads out from the building, with stored items visible. It is out of character with the countryside in which it is located.
33. I acknowledge that business uses are promoted in rural areas by the development plan and the National Planning Policy Framework. However, the policies are qualified policies, requiring general compliance with some other policies. Policy CSP7 requires it to be in accordance with spatial strategies but in rural areas it needs to be compatible with the surrounding landscape. The National Planning Policy Framework support for a prosperous rural economy notes development should be sensitive to its surroundings and not have an impact on the rural network. The use is not sensitive to the surroundings and does have an unacceptable impact on the roads in the area.

34. I appreciate that the business is of some benefit to the local economy, providing employment opportunities including for the appellant, who lives locally. There is little information related to the actual benefits. However, given the size of the use these are unlikely to be great, and in my view would not justify this use in this location.
35. The use does not contribute to sustainability, is not compatible with the location and does not accord with development plan policies CSP1, CSP4, CSP7 and CSP16.

Noise and Disturbance

36. There are no noise readings by which to assess the extent of any disturbance caused by noise at any particular receptor, so I attach little weight to this. I appreciate that LEL Scaffolding do not own any scaffolding at the appeal site or lease land there, but it is clear that it collects and returns scaffolding to the appeal site that is hired to LEL, which the appellant notes as his own.
37. Representations and photographs provided by interested parties indicate that there is significant disturbance from the comings and goings of LEL vehicular traffic related to the appeal site. There are difficulties when meeting the traffic from the site in the bendy, narrow country lanes, causing vehicles to back up or pull into gateways to pass. There is also disturbance from early and late movements associated with the use.
38. I conclude that there is plainly unacceptable disturbance caused by the use. While matters may not have reached a level that would constitute a statutory nuisance, that does not mean that it is acceptable in terms of a planning application.

Pollution

39. The Council notes in the reasons for issuing the notice that there is no non-porous hard surfacing, or systems in place to deal safely with oil or chemical fluids that could be spilled within the building. There is no evidence of any pollution having occurred at the appeal site in the past. Externally a tarmac surface has been added, but this appears to be after the enforcement notice was issued.
40. The appellant notes that no oil or contaminants are kept at the appeal site and any vehicles using the site are fuelled off site at a local filling station.
41. CS Policy CSP1 requires respect for the environment and notes the potential for development to cause pollution to be considered together with any mitigation measures to help avoid pollution. I conclude that while there is no evidence of pollution at the moment, clearly, even with the current tarmacadam surface, there is a potential for pollution with this type of use and it is not unreasonable to seek mitigation measures if any spillage occurs. I therefore attach a little weight to this.

Highway Safety

42. The use of the site generates significant vehicle movements, some in large trucks or lorries, evidenced by various photographs. There was also an application for a vehicle operator's licence (subsequently withdrawn), suggesting larger vehicles could be involved in the future. The highway

network local to the site consists of mainly narrow lanes with grass verges and many with raised banks. It is very poorly suited to larger vehicles.

43. Neighbours' photographs show the difficulties caused by vehicles using the site. Meeting vehicles cannot pass, so one or the other has to back up to a suitable passing space, which includes residential gateways. While to some extent this will occur without the use at the appeal site, it clearly adds significantly to the occurrence, which will impede traffic flow and increase the risk to highway safety.
44. Residents also identify the problems associated with safety for them when going along the lanes, horse riding, walking, dog walking and with children. This is clearly going to cause significantly increased difficulties, with a lack of walkways, the narrowness of the lanes and in places the raised banks.
45. I accept that there will be agricultural traffic, which can also be large, but this is part and parcel of the countryside and needs to be in this type of location. The current use is also in addition to any agricultural uses taking place and the use at the appeal site could intensify, particularly if the vehicle operator's licence were reapplied for.
46. The roads are not suitable for the traffic generated and will significantly increase the risks associated with highway safety, particularly for the more vulnerable users of the lanes.

Conditions

47. There are proposed conditions that would limit operation hours, use class restrictions, and clearance of the buildings should the operation cease. However, these would do little to mitigate the impact of the vehicles' presence in the countryside and access down narrow lanes when in use. There are also conditions to identify outside storage and parking and for biodiversity gains, but again, while being of some benefit, considering the overall harm of the use, I conclude that these are insufficient to outweigh that harm.
48. I conclude that the use is unacceptable, because it is incompatible with the countryside location and the highway network and other vulnerable road users. Conditions proposed and the economic benefits would not make the use acceptable or overcome the harm.

Ground (f)

49. The appellant applied for planning permission for a replacement store/shed with the existing use identified as sheep grazing. That shed was not constructed. While the date of drainage is not completely clear, the appellant says the actual shed that is present was started in 2012. The appellant says the previous shed and constructed shed were not used in association with the sheep grazing use. 2012 is the same time the LEL became a company. I think that it is most probable that the shed was constructed mainly for use by LEL and that a larger building was more suitable. Even if this is not the case the only use of the shed was related to the alleged use and not for any meaningful agricultural purpose. I consider the shed/store is part and parcel of the alleged use and therefore it is reasonable that its removal should be included within the notice.

50. The appellant considers the building should not be demolished, as it is sound and constructed in accordance with the approved plans. While it is sound, it has not been constructed in accordance with the approved plans as identified under ground (c) above. In addition, on the balance of probability, the approved building was not commenced, so the previous permission is not a fallback to be considered. I accept that it may be suitable for an agricultural use, but while as a generality that may be the case, there is no evidence of an agricultural need to justify this large building.
51. The appellant maintains that the use is confined to inside the building. At the site visit the site was seen to be tidy, with tarmac hard surfacing and most of the materials/scaffolding inside. There were some building materials and items associated with scaffolding outside, but only a small amount. There was also some machinery, including a tractor and what appeared to be a mower. However, photographs provided by the Council show that the use has occurred on a fairly large scale inside and outside the building. Even if only the inside were used, the unacceptable disturbance from the comings and goings to the appeal site are experienced elsewhere on the road network, so keeping the use inside the building is only a little help.
52. I accept that there may be some agricultural materials and plant on site that could be accommodated within the buildings that are associated with Severn View Farm, but this is a very large building and possible use by the owner does not justify its retention.
53. There was a question as to whether the hard standing was included within the terms of the notice. The hard standing is not mentioned in the allegation or in the requirements. The Council refers to requirement (b), now numbered (2) and suggest that 'removal of all associated building materials' should be taken to incorporate the hard standing. I do not agree. This requirement if read fairly relates to the materials that are stored at the appeal site, and in my opinion it would be unreasonable to widen its understanding to the hard standing.
54. It is also clear that there is some hard standing associated with the appeal site but parts appear to be associated with the buildings further down the hill. Some of this appears from plans to date from before the current use. The extent of hard standing associated with the use is not identified within the documents. It would also appear that the recent tarmacking occurred after the enforcement notice, and some of this could be considered to be associated with the drive to the house.
55. The appeal on ground (f) fails.

Ground (g)

56. The notice requires the use to cease within 4 months and removal of the materials and building within 9 months. I consider that these are readily achievable. I appreciate that it will be difficult to find alternative premises, but the use causes considerable harm to the surrounding environment and needs to cease as soon as possible, so this and the economic benefit of the use do not justify an extended period of compliance. The appeal on ground (g) fails.

Graham Dudley

Planning Inspector

