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# Appeal Decision

Site visit made on 6 February 2024

**by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

an Inspector appointed by the Secretary of State

**Decision date: 28 February 2024**

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**Appeal Ref: APP/Z1510/W/23/3321252**

**Land south of Rosemary Farm, Rosemary Lane, Castle Hedingham, Halstead CO9 3AJ**

- 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 Mr J Wright of JSN Vintage Motorcar Engineering Ltd against the decision of Braintree District Council.
  - The application Ref 22/02221/FUL, dated 23 August 2022, was refused by notice dated 2 November 2022.
  - The development proposed is change of use of building from agricultural to commercial B2 use for the purposes of vintage vehicle and vintage agricultural machinery repairs and workshop.
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## Decision

1. The appeal is allowed and planning permission is granted for the change of use of building from agricultural to commercial B2 use for the purposes of vintage vehicle and vintage agricultural machinery repairs and workshop at Land south of Rosemary Farm, Rosemary Lane, Castle Hedingham, Halstead CO9 3AJ in accordance with the terms of the application, Ref 22/02221/FUL, dated 23 August 2022, subject to the 5 conditions set out in the attached schedule.

## Preliminary Matters

2. The change of use has already occurred and so I have treated this appeal as seeking planning permission retrospectively. At my site visit, I noted four air conditioning units on the east side of the building and the Council also refers to an existing air source heat pump. However, these details are not shown on any of the submitted plans and so have not formed part of my considerations. Two shipping containers are located to the south of the building, but these appear to be beyond the red line site boundary and are not shown on any plans. Therefore, I have not considered these elements either.
3. The appeal site contains a steel-clad building measuring around 9m wide, 18m long and up to 4.3m tall. The building is situated on a concrete apron which also provides access onto Rosemary Lane. The site is surrounded on three sides by a large field and by the lane to the remaining side.
4. Planning permission was granted on 27 December 2018 (ref 18/01680/FUL) for an agricultural storage building in this location. There were no pre-commencement conditions. Condition 4 relating to the approval of external lighting details before they are installed was discharged on 5 February 2021. Condition 7 relating to the approval of landscaping details prior to the occupation of the development was discharged on 17 March 2021<sup>1</sup>. Condition 8

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<sup>1</sup> Both conditions were covered under the same discharge of condition application (ref 20/02010/DAC)

states that the building shall be used solely for agricultural operations associated with the storage barn and the land within the red line site plan.

5. Based on aerial photographs, the building was in situ by 17 September 2019. According to the appellant, the building was completed by December 2019 and then used for the storage of agricultural machinery. The application form associated with this appeal indicates that the current use for vintage vehicle repair and maintenance commenced on 1 February 2022.
6. The Council and interested parties have queried whether the approved use of the building for agricultural storage is lawful. The application to discharge Condition 7 (and 4) was not submitted until November 2020 when the building was already being occupied. However, the condition did not prevent the commencement of the development, only its occupation. Furthermore, the Council has approved the details relating to that condition which effectively regularises the situation. Moreover, I am not aware of any specific evidence that the approved use was not taking place at this time or that the current use commenced any earlier than stated. The absence of livestock or crops does not mean that the building was not being used for agricultural storage as approved.
7. In any case, it is not my role in a planning appeal under Section 78 of the Town and Country Planning Act 1990 (the Act) to decide whether something is lawful or not. There is a separate statutory process under Section 191 of the Act involving certificates of lawfulness for existing use or development.
8. While Condition 8 controls the approved use, the planning system allows applications to be made retrospectively. The Council validated the application relating to this appeal and issued a decision notice explaining why the change of use from agricultural to commercial B2 (vehicle repairs and workshop) was inappropriate. I have not been presented with evidence to demonstrate that a change of use cannot be considered. Therefore, I have assessed the appeal based on the development proposal applied for on the application form.
9. A revised version of the National Planning Policy Framework (NPPF) was published on 19 December 2023. There were no substantive changes of relevance to this appeal proposal.

## **Main Issues**

10. The main issues are (a) whether the development represents appropriate development in the countryside and (b) the effect of the development on the living conditions of occupiers of neighbouring properties with regard to noise.

## **Reasons**

### *Appropriate development in the countryside*

11. The appeal site is in the countryside beyond any development boundary. Policy LPP1 of the Braintree District Local Plan 2013-2033 (LP) states that development outside development boundaries will be confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils to protect the intrinsic character and beauty of the countryside.
12. LP Policy LPP7 specifies that outside development boundaries, proposals for small-scale commercial development, which involve the conversion and re-use

of existing buildings that are of permanent and substantial construction and capable of conversion without complete re-building, will be considered acceptable subject to meeting criteria relating to highway, amenity and character matters.

13. NPPF paragraph 88(a), under the heading of supporting a prosperous rural economy, states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through the conversion of existing buildings and well-designed, beautiful new buildings.
14. The current use involves the repair and maintenance of vintage vehicles and agricultural machinery. At my site visit, I observed three old agricultural machines within the building along with several workshop benches, shelves and equipment. Letters of support for the development indicate that the appellant carries out the servicing of vintage vehicles and machines for people living in the local area. While the building is not tiny, neither is it particularly large. Therefore, the current use can be regarded as a small-scale commercial development that contributes to the local economy, not dissimilar to an agricultural use.
15. The building meets the requirements in LP Policy LPP7 in terms of its construction condition and its capability for conversion. The policy and supporting text do not require the approved use to be well-established or for any marketing of that use to be carried out first. There is also no requirement for the appellant to demonstrate the absence of vacant sites on existing industrial estates.
16. Turning to the policy criteria, as an existing barn-like structure that is not overly large, it has a neutral effect on the character and appearance of the countryside and landscape. The site is over 150m from any residential property and so has little effect on privacy, outlook or light for any neighbours. Matters relating to noise are considered in the next section.
17. Rosemary Lane is a narrow single track road without pavements or streetlights where the national speed limit applies. However, it is advertised as a no-through road and serves relatively few properties. While it appears to be used by walkers and cyclists, I have little evidence that it experiences frequent or heavy traffic movements. The scale of the current use is unlikely to generate significant numbers of vehicle movements while it is only around 200m from the site to the wider Sudbury Road. Therefore, the current use is unlikely to have an adverse impact on the local road network.
18. It is possible that an unrestricted B2 use could result in any general industrial use of the site in the future. This could have a negative effect on various factors including the criteria in LP Policy LPP7. However, a suitably worded condition could restrict the use to that specified on the application form. While the word 'vintage' is difficult to define, it indicates an older or classic vehicle or machine rather than the everyday or modern and so would be sufficiently precise and enforceable.
19. Given that the LP expressly allows small-scale commercial development outside development boundaries and the development before me protects countryside character, the current use is an appropriate one. Thus, the development is compliant with LP Policy LPP1 and NPPF paragraph 88(a). Subject to my findings on noise below, the development is also compliant with LP Policy LPP7.

20. Although not referenced in the reason for refusal, interested parties note the relevance of the spatial strategy in LP Policy SP3. This focuses development within or adjoining settlements. Beyond the main settlements, the policy supports the diversification of the rural economy and the conservation and enhancement of the natural environment. For the reasons set out above, the development complies with this policy.

#### *Living conditions*

21. The appellant has submitted a Noise Impact Assessment (NIA) with this appeal. Dating from April 2023, it considers background and ambient noise levels and assesses various potential noise sources within the current workshop. The NIA demonstrates the considerable levels of noise that machines and tools can generate. However, while these are intense within the building itself, the NIA indicates they are less noticeable further away especially if the roller doors are kept shut.
22. As noted above, it is possible by condition to restrict the use to that applied for. This would control the likely noise sources that would occur. Moreover, it is possible to condition the hours of use to ensure that they do not take place outside of reasonable working hours on weekdays or weekends. Finally, it is also possible to condition noise mitigation measures by requiring a scheme to be approved in writing by the Council. Such conditions would also help to limit the effects of any noise on wildlife.
23. In conclusion and subject to the above conditions, the development has an acceptable effect on the living conditions of occupiers of neighbouring properties with regard to noise. Therefore, it complies with LP Policy LPP70 which, amongst other things, requires development to avoid unacceptable impacts arising from noise. There would also be no unacceptable impact on residential amenity and so the development complies fully with LP Policy LPP7.

#### **Other Matters**

24. The evidence before me relating to flooding issues along Rosemary Lane is limited. However, the appeal site is small compared to the length of the lane and the concrete apron is not very large. Landscaping measures could be implemented to help with any surface water run-off. Therefore, the development does not cause unacceptable flood risk effects.
25. The surfacing of the lane requires improvements in places but is not impassable and unlikely to get significantly worse because of the development. In any case, this is a matter to raise with the local highway authority assuming that the lane is adopted by them.
26. While it has only been just over five years since the original 2018 permission, the planning system does not necessarily prevent recently constructed buildings from being converted to new uses providing that it has an acceptable planning effect overall. Each case should be assessed on its own merits. The dismissed 2013 appeal decision<sup>2</sup> for this site related to a different proposal for two storage containers and predates the 2018 permission. Thus, it has little bearing on my decision.

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<sup>2</sup> APP/Z1510/A/13/2193789

27. Having regard to LP Policy SP1 which sets out the presumption in favour of sustainable development, proposals that comply with the LP, should be approved without delay unless material considerations indicate otherwise. Based on the evidence before me, the development complies with the LP and there are no reasons to withhold planning permission.

### **Conditions**

28. The Council and the appellant have both suggested draft conditions, which I have adapted as appropriate. As the development has already commenced, there is no need for the standard time limit condition for implementation. However, a condition specifying the approved plans is necessary for clarity and compliance.
29. Given that my decision has been based on the effects of the specific type of commercial B2 use, it is necessary to restrict the use of the premises to prevent adverse effects arising from other potential B2 uses. It is also necessary to control the hours of use to limit adverse effects relating to noise. There is no need for another NIA but it is necessary to provide noise mitigation measures to address effects on the occupiers of neighbouring properties. Finally, it is necessary to agree and implement a landscaping scheme to enhance the appearance of the development and safeguard living conditions.
30. It is reasonable to allow 2 months for the noise mitigation and landscaping schemes to be submitted and approved and to allow another 2 months for the approved mitigation measures to be completed. While the Council suggested 6 months for the approved landscaping scheme to be installed, it will potentially depend on the time of year for certain elements. Therefore, I have specified that the approved landscaping details should be installed in accordance with an agreed implementation programme.

### **Conclusion**

31. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*Tom Gilbert-Wooldridge*

INSPECTOR

### **Schedule of Conditions (5)**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: W01 (Site Plan), W01 (Block Plan), W01 (Car Parking and Vehicle Access Plan), JW01 (Floor Plan), JW01 (West and East Elevations), JW01 (South and North Elevations).
- 2) The premises shall only be used for purposes related to vintage vehicle and vintage agricultural machinery repairs and workshop and for no other purposes including any other purpose in Use Class B2 of the Schedule of 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).
- 3) Machinery shall be operated, processes shall be carried out, and deliveries shall be taken at or despatched from the site, only between 08:00 and 17:30 Mondays to Fridays, 08:00 and 12:00 on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
- 4) Within 2 months of the decision date, a scheme for protecting the living conditions of neighbouring residential occupiers from noise shall be submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be duly completed within 2 months of the date of the approved scheme and retained thereafter.
- 5) Within 2 months of the decision date, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, written specifications including cultivation and other operations associated with plant and grass establishment, together with a strategy for the watering and maintenance of the new planting, colour and type of material for all hard surfaced areas and method of laying where appropriate, and an implementation programme. The details approved shall be installed in accordance with the agreed implementation programme.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base, unless details have been submitted to and approved in writing by the local planning authority as part of the scheme.

All planting, seeding or turfing contained in the approved details of the scheme shall be carried out in accordance with the agreed implementation programme.

All hard surfaced areas shall be carried out in accordance with the agreed implementation programme.

Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the scheme shall be replaced in the next planting season in accordance with the approved scheme.