



Appeal Decisions

Inquiry held on 20 and 26 June 2024

Site visit made on 20 June 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2024

Appeal A Ref: APP/X1545/C/22/3305559

Appeal B Ref: APP/X1545/C/22/3305560

Reddings Farm, Reddings Lane, Tillingham, Essex CM0 7NX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr A Skeggs (Appeal A) and Mrs J Skeggs (Appeal B) against an enforcement notice issued by Maldon District Council.
- The notice was issued on 27 July 2022.
- The breach of planning control as alleged in the notice is the unauthorised change of use of 'The Land' to a B2 commercial machinery repair and maintenance workshop and associated activity of vehicle movement, parking, and external storage.
- The requirements of the notice are: a. Cease the use of the land for unauthorised B2 commercial machinery repair and maintenance workshop use, including any associated storage use which is not agriculturally related; b. Remove any items associated with the unauthorised B2 workshop use from 'The Land' including all commercial equipment, materials, vehicles, waste, and paraphernalia; c. The removal of all vehicles, equipment, materials, paraphernalia, and waste associated with the completed compliance with requirements a, and b, as detailed above.
- The period for compliance with the requirements is 3 calendar months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are allowed following correction of the enforcement notice in the terms set out below in the Formal Decisions.

Application for costs

1. An application for an award of costs was made by Maldon District Council against Mr A Skeggs and Mrs J Skeggs. That application is the subject of a separate decision.

Preliminary Matters

2. It is incumbent on me to get the notice in order. Sections 55 and 57 of the Act set out that planning permission is required for the making of any material change in the use of any buildings or other land. The breach of planning control refers to an unauthorised change of use to a B2 use, as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended). In the interests of clarity, I shall correct the breach to ensure it refers to a material change of use and to the B2 use class specifically. The correction is minor in nature and does not cause injustice to any parties.
3. The appeals proceed on ground (d) only, and any planning merit arguments, such as effects on the living conditions of neighbouring residents, do not fall to be considered. All evidence was heard by sworn oath or affirmation.

Background

4. The land edged in red on the plan attached to the notice ('the Land') includes a steel portal framed building said to have been erected in the 1960s for agricultural purposes over part of an historic farmyard, and vehicular access from Reddings Lane. I shall refer to that building as 'the Barn'. The Land has historically formed part of an agricultural holding at Reddings Farm.
5. Another steel portal framed building covers part of the farmyard, to the east of the Barn, and adjoins a stable building. Other farm buildings surrounding the Barn include a brick former dairy building to the west and a timber framed Essex barn to the north. None of those buildings are on the Land.
6. The Land is in use as a commercial machinery repair and maintenance workshop, which involves a range of equipment to undertake works to machinery, plant and vehicles. Much of the machinery, plant and vehicles are agricultural in nature, such as combine machinery, tractors, and balers, but other generic items are also repaired and maintained on the Land, such as vans, dumpers, and diggers. The machinery, plant and vehicles are generally associated with agricultural contracting work. Tools and equipment in the Barn include workbenches, a gas welder, pillar drills and lathes.

Main Issue

7. The main issue is whether enforcement action could be taken in respect of the material change of use at the date when the notice was issued. Section 171B of the Act sets out that where there has been a material change of use in breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. The unauthorised use also has to continue substantially uninterrupted throughout that 10 year period to become exempt from planning control.
8. Therefore, for the appeals to succeed, the appellants need to demonstrate, on the balance of probabilities, that the material change of use took place on or before 27 July 2012 and that the use has remained uninterrupted since.

Reasons

9. The Council claims the Land has a lawful use for agricultural related storage purposes and that there were periods between 27 July 2012 and around 2019 when the Land was in a mixed use for agricultural and storage purposes. The appellants claim that the Land has been used as stated in the notice consistently since before 2012. The appellants' case conflicts with how Peter Le Grys described the Land being used in a Design and Access Statement¹ ('the DAS') in support of planning applications submitted by the appellants in 2012.
10. Mr Le Grys visited the Land at least 20 times over the periods 2011 to 2016 and 2019 to 2022, always seeing it used as a commercial machinery repair and maintenance workshop. Despite seeing the Land used in that manner as early as 10 January 2011, Mr Le Grys did not mention this in the DAS in January 2012; nor did he update the DAS when it was re-submitted on later dates.
11. The DAS provides an overview of activities at Reddings Farm in January 2012, focussing on the area the subject of the planning applications it was associated

¹ Planning Statement, Design & Access Statement & Heritage Statement dated January 2012

with, which does not include the Land or other parts of Reddings Farm. Mr Le Grys explained that this was because the Council had not raised concerns with the use of other parts of Reddings Farm at that time. With this in mind, I would not expect the DAS to provide a comprehensive or a particularly accurate description of how the Land was being used in January 2012.

12. However, even if the description of the Barn in the DAS was generalised and irrelevant to planning applications, it was substantially inaccurate if Mr Le Grys had seen it in use as stated in the notice. It would have been surprising for Mr Le Grys to describe the Land as set out in the DAS if the Barn² was in use as a commercial machinery repair and maintenance workshop.
13. For the reasons given above, I do not take the DAS as a reliable source for accurate descriptions of how the Land was used in 2012. Notwithstanding this, the oral evidence Mr Le Grys gave to the Inquiry relating to the use of the Land in 2011 and 2012 conflicts with statements previously written by him, and this inevitably limits the weight I give it.
14. An invoice for roller shutters dated 29 November 2010³ supports the appellants' claim that a roller shutter was installed to the Barn around that date. The photographs in PLG3 and 4 are of some age, but only 1 clearly shows maintenance/repair works being undertaken to a tractor prior to the installation of the roller shutter. In the absence of clear dates as to when the other photographs were taken, they also carry little weight.
15. The Council was unable to provide evidence from any witnesses who had been on the Land prior to June 2021. The Council rely on a conversation with Mr A Skeggs inside the Barn on 1 June 2022 where he stated that it had been used for the storage of straw and machinery up until some point in 2019, after which straw had ceased to be stored there. I accept the Council's recollection of that conversation as accurate, but it does not mean Mr Skeggs (who did not appear at the Inquiry) provided information which was accurate or true.
16. Against that background, the Inquiry heard evidence from 10 interested parties in support of the appellants and 1 interested party in support of the Council. I recognise some witnesses did not submit written evidence prior to the Inquiry, nevertheless their oral evidence was provided on sworn affirmation and was open to cross-examination. There was sufficient opportunity for their evidence to be appropriately scrutinised, considering the uncomplicated nature and scope of that evidence.
17. Turning to the evidence of those supporting the appellants; Susannah Skeggs, Charlotte Henry, Jeff Baron and Scott Parsons were concise, clear, and reasonably detailed. Their evidence was consistent with the Land being used for the repair and maintenance of vehicles, plant and machinery associated with agricultural contracting works outside of Reddings Farm since at least 2011. It was also consistent with the less detailed evidence of Graham Glover, Matthew Hennessey, Conor Murphy, Frank Taylor, and Mike Osborn. I assign significant weight to the evidence given by Mrs S Skeggs, Ms Henry, Mr Baron, and Mr Parsons on account of its unambiguous detail and consistency. The oral evidence of those other witnesses had less detail, but it was broadly unambiguous and consistent with other evidence and carries moderate weight.

² Comprising approximately half of what Mr Le Grys was referring to as a single building.

³ PLG5

18. Some witnesses confirmed that they had seen combine machinery within the Barn and that its presence was seasonal and for maintenance purposes. Large equipment, such as combines, could not access the Essex barn and has therefore always been stored, maintained, and repaired in the Barn. Witnesses described the nature of items worked on in the Barn since 2011 as changing depending on the seasons, due to the different timings of baling and other agricultural contracting works throughout each year.
19. Mrs S Skeggs explained that the nature of the work undertaken by SB Contractors Limited and SB Machinery Limited, which were not registered with Companies House until 2019, is the same as that which was undertaken by previous businesses referred to in the DAS. On the evidence provided, the nature of businesses registered with Companies House do not indicate the Land was used in any particular manner at any specific time.
20. I also heard from those supporting the Council. Tamsin Rogers, a chartered Architect, lives next door to the Land, at Old Reddings West. Mrs Rogers has not been inside the Barn, but she could see into it from Old Reddings West between 2015 and 2022 before a screen was erected. In common with the other witnesses, she has not seen straw stored in the Barn at any time.
21. She also explained that there was, in her opinion, a noticeable change in how the Land was used in around 2019, and that the roller shutter to the Barn was always closed before then. Furthermore, Mrs Rogers had not found or seen any evidence of the Land being used as a commercial machinery repair and maintenance workshop when researching Reddings Farm and carrying out viewings of Old Reddings West prior to purchasing that property in 2015. Mrs Rogers set out how the business run from Reddings Farm was “totally agricultural” when she moved next door, with the Barn used irregularly for minimal “agricultural maintenance” of the appellants’ own vehicles until 2019.
22. Since then, Mrs Rogers explained that the Land has been actively used as a commercial machinery repair and maintenance workshop from 0700 until late into the night daily, including on weekends and bank holidays. Tens of vehicles, including tractors, diggers and HGVs, visit the Land every day and there had been a “substantial intensification” of vehicle, machinery and plant repair and maintenance works since 2019. She had not witnessed any large vehicles or HGVs visiting before then.
23. The account of Mrs Rogers is largely unchallenged and, given the detail and clarity, carries significant weight. That is supported by the written evidence of Mr Rogers which is consistent with her account.
24. There is therefore some disparity as to what was occurring on the Land. It is not unreasonable to suggest that interested parties would not be able to differentiate between: a storage and/or maintenance use of the Land which was incidental/ancillary to an agricultural use at Reddings Farm; a mixed agricultural and storage and/or maintenance use of the Land; and a primary use of the Land as a commercial machinery repair and maintenance workshop. This does not greatly reduce the value of their evidence, as it is for me to identify how the Land was used.

25. To that end, a Council committee report from 2012⁴ states that the Barn is 'said to be used for the storage of combine equipment, straw and some agricultural maintenance'. However, I consider this as the author of that report referring to the information provided by the DAS, rather than an accurate description of how the Council had witnessed or knew the building to be used at that time.
26. The use of the Land for the storage of straw harvested from Reddings Farm, and vehicles, plant and machinery associated with that process, would have likely been incidental to the agricultural use of the holding. The same could be said for the repair and maintenance of those vehicles, plant and machinery. However, agricultural land at Reddings Farm comprised 39 acres in January 2011. Mr Le Grys explained that the vehicles, plant and machinery shown in his photographs dated 10 January 2011, and witnessed on the Land since, exceeded those required for a holding of that size. This was not disputed.
27. There is also no dispute that the appellants had contracts to farm 20,000 acres across Dengie and elsewhere in 2011. They have continued to undertake agricultural contracting work on land outside Reddings Farm, such as ditch clearing, hedge cutting, and drilling of seed since at least 2011. It is therefore likely that if any straw, vehicles, plant and/or machinery were stored, repaired and/or maintained on the Land in January 2011, they would have been mainly associated with baling and other agricultural contracting work outside of Reddings Farm. The use of the Land for that storage, repair and/or maintenance would have therefore been what can be described as a 'commercial' use, not agricultural, with regard to section 336 of the Act. The extent of operations undertaken by the appellants outside Reddings Farm since at least 2011 far exceeds what could reasonably be described as incidental or ancillary to agricultural activities on the holding.
28. Although I assign limited weight to the evidence of Mr Le Grys relating to how the Land was used in 2011 and 2012, Mr Baron confirmed that he helped install the radial drill within the Barn in 2011 and that a lathe was moved into the Barn from the Essex barn around that time. This is consistent with the evidence of Mr Parsons, who referred to the laying of a new concrete floor in the Barn in 2010. Mr Baron has since used the lathe in the Barn daily as a qualified miller and turner. Considering the close relationship with the Essex barn, the lack of shelving and tools along the interior of the north elevation wall of the Barn in January 2011 does not weigh heavily against the evidence in support of the appellants' case.
29. It is also relevant that Ms Henry saw repair and maintenance works being undertaken to vehicles and machinery such as diggers and tractors when she regularly went into the Barn and walked past it while employed by the appellants between 2011 and 2012. She lived next door to the Land during that period and would walk to and from work past the main entrance to the Barn. She also remained aware that the Barn was in the same use when visiting her parents regularly at weekends up until at least 2015.
30. Considering Ms Henry is now employed in the motorsport industry, she should be well-placed to know the difference between mechanical items being stored and those being worked on. All of this is consistent with Mrs S Skeggs' account of her husband using the Barn to repair vehicles and plant he purchased for

⁴ PLG1: South Eastern Area Planning Committee report for planning application reference FUL/MAL/12/00120

resale, alongside people employed to drive tractors and maintain agricultural contracting equipment since at least 2009.

31. Against that background, I do not doubt that noise and activity on the Land would be noticeable and intrusive to people living at Old Reddings West, even if the roller shutter to the Barn was closed. I also see no reason to doubt that the evidence of Mr and Mrs Rogers was given in good faith as an accurate account of their opinions and experience living next door to the Land. I accept their view that noise and disturbance from the Land intensified in or around 2019.
32. The conflict between the evidence of the witnesses is not surprising considering the different ways they have interacted with the Land over different periods. Mr and Mrs Rogers have described changes to the intensity of the use of the Land and how it has affected their living conditions since 2019 based on what they have seen and heard from outside the Land since 2015. In contrast, multiple people have given consistent evidence that they have been in the Barn and seen and/or actively used the Land themselves as stated in the notice over different periods continuously since before 2012.
33. Drawing all of this together, it is more likely than not that combine equipment was stored in the Barn seasonally when it was not in use outside Reddings Farm in the 10 years prior to the notice being issued. It is also likely that the combine equipment was routinely repaired/maintained in the Barn alongside a range of vehicles, plant and machinery mainly associated with agricultural contracting activities outside Reddings Farm (commercial activities) since before 2012. This is in addition to vehicles, plant and machinery repaired/refurbished for sale. It is unlikely that the Land was used for the storage of straw at any point after 2011.
34. I recognise that the use of the Land as a commercial machinery repair and maintenance workshop may have intensified to some extent since 2015. However, the notice makes no such allegation and there is a lack of detailed evidence as to how the use may have intensified and to what extent. The consistent evidence, in support of the appellants' case, is that the Land has been in use in the same unchanged manner since before 2012. A change in the definable character of the use would have needed to take place for a material change of use to have been brought about. Overall, as a matter of fact and degree, the evidence does not indicate that has happened.
35. The evidence does point to any storage of combine equipment being minimal, seasonal, and ancillary to a primary use of the Land as a machinery repair and maintenance workshop since at least 2011. The same can be said for any associated activity of vehicle movement, parking, and external storage. The detail and consistency of the sworn oral evidence convinces me, on the balance of probabilities, that the Land has been used consistently as described in the notice since before 2012.
36. In summary, with regard to the relevant caselaw and taking everything I have seen and heard into account, I find the evidence in support of the appellants' case sufficiently precise and unambiguous to show that it is more likely than not that the Land has been used as a commercial machinery repair and maintenance workshop (B2 use class) since before 2012. The evidence against does not make the appellants' version of events less than probable.

Conclusion

37. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is in need of correction. On the balance of probabilities, the appeals on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed.

Formal Decisions

38. It is directed that the enforcement notice is corrected by the deletion of the text 'unauthorised change of use of 'The Land' to a B2 commercial machinery repair and maintenance workshop' at paragraph 3 of the enforcement notice and its substitution with the text 'material change of use of 'The Land' to a commercial machinery repair and maintenance workshop (B2 use class)'. Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jack Barber	Barrister
He called	
Peter Le Grys	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Verity Bell	Barrister
She called	
William Coleman	Planning Enforcement Team Leader

INTERESTED PARTIES:

Susannah Skeggs	Occupier of the site and daughter-in-law of the appellants
Charlotte Henry	Former neighbour to the site and former employee of the appellants
Graham Glover	Sub-contractor hired by the appellants
Jacek Sapieja	Former employee of the appellants
Matthew Hennessey	Former employee of the appellants
Conor Murphy	Former employee of the appellants
Frank Taylor	Sub-contractor hired by the appellants
Jeff Baron	Sub-contractor hired by the appellants
Scott Parsons	Sub-contractor hired by, and friend of, the appellants
Mike Osborn	Sub-contractor hired by the appellants
Tamsin Rogers RIBA	Neighbour to the site

LIST OF DOCUMENTS SUBMITTED AT THE INQUIRY

Photograph dated 21 June 2012 by Conor Murphy