



Appeal Decision

Site visit made on 11 September 2017

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 November 2017

Appeal Ref: APP/R3325/C/16/3164480

Land at West Farm, West Mudford Road, Mudford, Somerset BA21 5TL

- 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 Philip Gunning against an enforcement notice issued by South Somerset District Council.
- The enforcement notice was issued on 27 October 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from use for a mixed contracting business to use for:
 - i. A vehicle haulage contractor's yard;
 - ii. The manufacture of concrete products; and
 - iii. Office use associated with (i) and (ii) above.
- The requirements of the notice are
 - a) Permanently cease the use of the Land edged red as a vehicle haulage contractor's yard;
 - b) Permanently cease the use of the workshop sited on the Land and shown hatched purple on the attached plan for the manufacture of concrete products and for an office;
 - c) Remove from the land the hard surfacing and hard core laid in the area of the Land hatched green on the attached plan;
 - d) Restore the area of the Land hatched green to its former condition, namely as an area of grass;
 - e) Remove from the area of the Land hatched orange on the attached plan all vehicles and associated non-agricultural paraphernalia.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld

Background

1. West Farm is part of the hamlet of West Mudford, and lies some 800m to the west of Mudford and the A359. The farmhouse and brick outbuildings are Listed Grade II, and a large steel-framed workshop with floorspace of some 436m² is located to the north of these buildings. The workshop and adjoining yard areas were the subject of a Certificate of Lawful Use or Development ("LDC") issued by the Council on 21 October 2016¹. The use certified as lawful was an agricultural, general building, ground work, land drainage and irrigation, slurry

¹ Ref: 16/03580/COL

handling and sewage treatment contracting business, and uses ancillary to that business as particularised in the First Schedule to the LDC.

2. It is common ground that the current use of the appeal site goes beyond that certified as lawful in 2016. The evidence of the appellant is that there are two separate business operations which share the workshop premises and yard area. The first ("Business A") involves the manufacture of concrete products, and occupies around two-thirds of the workshop floorspace and part of the adjacent original yard area. The second ("Business B") is general haulage, the appellant's primary business activity. This use has involved the enlargement of the original yard area for stationing of up to 8 HGV tractor and trailer units, and the fleet of HGVs are serviced in the workshop. Both businesses share the ground and first floor office space located within the workshop.

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

3. The ground of appeal is that planning permission should be granted for the alleged breach of planning control stated in the enforcement notice. The Appellant's case is that planning permission should be granted in the first instance for the use of the land for both Business A and Business B, but also that in the alternative, since the two businesses are distinct and severable, it would be open to me to grant planning permission for either Business A or Business B and refuse permission for the other. I accept that since s177(1)(a) of the 1990 Act makes provision for the grant of planning permission "...in relation to the whole or any part of..." the matters stated in the notice, I can determine the appeal on that basis.

Main issues

4. The main issues are the effects of the development on the character and appearance of the area, and on the local highway network.

The character and appearance of the area

5. The aims of Policy EQ2 of the South Somerset Local Plan (2006 – 2028) are to ensure that development proposals are designed to achieve a high quality, promoting the district's local distinctiveness and preserving or enhancing its character and appearance. The Council considers the current use of the land to constitute an inappropriate industrial incursion into the countryside, which fails to preserve or enhance the character and appearance of the area.
6. The change to the current use has not involved any change in the appearance of the outbuilding involved, which remains a large steel-framed workshop. It is important to bear in mind that this workshop, and the adjacent yard area, have an existing lawful use (per the LDC issued in 2016) for a mixed contracting business and ancillary uses: the LDC refers specifically to the outside storage and operation of vehicles, and the outside storage of drainage materials, ancillary to the contracting business.
7. The outdoor storage areas for parked vehicles and storage of aggregates used in the concrete manufacturing processes of Business A are wholly contained within the yard area addressed by the LDC. There is consequently little difference, in terms of visual impact, between this use and the lawful use of the land. However, the outdoor area used for the stationing of HGVs and trailers associated with the haulage Business B has expanded beyond the yard area

addressed by the LDC, and has involved the creation of a new area of hard standing, extending the existing yard north-east toward the riverbank.

8. While this has extended the visual profile of the site's development, that is not obvious in views from West Mudford Road, and there are no other public viewpoints from which the extended yard is visible. I note that the Council's Landscape Architect considered that adequate mitigation of the landscape impact could be achieved through supplementation of the existing hedgerow to the east of the yard, riverside plantings to the north, and the creation of a new boundary native-species hedgerow to the west, running between the river and the road. A grant of planning permission could be made subject to a condition requiring the implementation, and future upkeep, of such landscaping work.
9. In my judgment the visual impact of both Business A and B is (or, in the case of Business B, could be made) minimal, and is not therefore a consideration that weighs heavily against a grant of planning permission. However, the effect on the overall character of area goes beyond visual impact, to include matters such as traffic generation and the experience of users of the local highway network. I turn to these below.

The effects on the local highway network

10. In assessing the implications of the number and type of vehicle movements generated by the development, it is again important to bear in mind the existing lawful use of the site, and the vehicle movements associated with that.
11. The LDC issued in 2016 refers to the outside storage and operation of one heavy goods vehicle, one articulated lorry plus trailer, and other smaller vehicles ancillary to the contracting business. The appellant has provided further information concerning the pattern of use of these vehicles by the previous occupiers of the site, A B Parkers, between 2004 – May 2015. I am told that the articulated lorry left the site on Monday and returned the following Saturday, with an occasional mid-week return. The HGV was a 7.5 tonne beaver-tail truck, and there were also two vans with trailers. These vehicles were used in connection with the contracting business, which would typically involve seven two-way trip movements per day.
12. The evidence of the appellant as to the current use of the site is that Business A operates two 3.5 tonne pick-up trucks, which deliver finished concrete products to customers within the local area, typically making four deliveries per working day. Aggregates and sand for use in the manufacturing process are delivered to the site once a week, by one of the tipper trucks operated by Business B on its return to the site at the end of a working day.
13. Business B operates one tractor unit; five specialist trailers used for the construction industry; two tipper trucks; three crane lorries (rigid and articulated); and two general haulage articulated lorries. Six of these HGVs leave and return each day, while the other two leave on a Monday and return the following Friday. The haulage vehicles leave the site between 0500-0600 and return between 1530-1700 Monday to Friday. HGV drivers arrive and depart by car up to 30 minutes before and after these times.
14. It is therefore clear that the operation of Business B alone generates considerably more vehicle movements than the existing lawful use of the site. I note that the Highway Authority was consulted on the appellant's application

for retrospective planning permission for the development now the subject of this appeal². Its response was that 12 HGV movements per day, plus the additional two HGVs that leave on a Monday and return on a Friday, would not put West Mudford Road beyond capacity. The Highway Authority raised no objection on highway safety grounds, subject to the creation of passing spaces along West Mudford Road. I return to the subject of passing spaces later, but note here that the question of a road's capacity is separate to that of its character.

15. West Mudford Road is a narrow, poorly aligned rural lane, with no footways or street lighting, and a number of sharp bends. Views ahead are very limited along sections of the road, due to the many curves and turns, and its containment for the most part between mature hedgerows. I saw at my site visit that there are few passing places; should vehicles travelling in opposite directions meet, one of them is generally obliged to reverse for some distance.
16. The road passes through attractive open countryside, and the evidence of local residents is that it is well-used by walkers, cyclists and horse-riders for recreational purposes. It also forms part of "The Monarch's Way", a long distance footpath which approximates the escape route taken by King Charles II after being defeated at the Battle of Worcester in 1651. While not a designated National Trail, the Monarch's Way is a well-publicised route which is marked on Ordnance Survey maps. It is therefore reasonable to assume that larger numbers of recreational walkers will pass along West Mudford Road than would ordinarily be the case for rural lanes of this type.
17. In my judgement, the introduction of a use generating 12 HGV movements each weekday (14 on Mondays and Fridays), some of which involve articulated vehicles and specialist trailers, is ill suited to the quiet, rural ambience and narrow, twisting nature of West Mudford Road. These type of vehicle movements are different in degree to those associated with the previous use of the appeal site for a mixed contracting business, a large number of which appear to have involved vans with trailers, a sight not uncommon in rural areas. By contrast, pedestrians meeting a specialist articulated HGV along this narrow lane may well feel intimidated by its bulk and somewhat disoriented, particularly walkers following the Monarch's Way who may not be familiar with the area. On several sections of the road pedestrians would be obliged either to flatten themselves against the hedge to allow the HGV to pass, or to retrace their steps.
18. I note the appellant's point that there are no commercial vehicle movements to or from the appeal site at weekends, when recreational use of West Mudford Road could be expected to be most popular, and that all haulage vehicles leave the site before 0600, when it is unlikely that recreational users would be about. Nevertheless, the appellant's evidence is that at the end of a working day, all vehicles return between 1530 and 1700 hours. This means there would be six (eight on Fridays) HGV movements along the road over a 90 minute period. It seems to me that there would therefore be a strong likelihood of weekday walkers, cyclists and horse riders using West Mudford Road during the late afternoon encountering at least one HGV.
19. The appellant has submitted a S.106 Unilateral Undertaking which aims to address the Highway Authority's safety concerns, through the construction of

² Ref 16/03738/FUL, Refusal Notice dated 18 October 2016

four passing bays along the section of West Mudford Road between its junction with the A359 in Mudford, and the appeal site. However, the Undertaking is problematic on two fronts. Firstly, the suitability of the suggested locations for the passing bays is unclear; the ownership of the land involved has not been confirmed, and the location of bays A and B in close proximity to a brook running under West Mudford Road may require additional works to prevent the risk of flooding.

20. Secondly, only one of the legal owners of the appeal site has executed the Undertaking, which means the other is not bound by it, and could continue to use the appeal site without complying with its provisions. Also, as the Highway Authority has pointed out, the undertaking given at paragraph 1.1 of the Schedule to the deed does not fall within the scope of section 106(1) of the 1990 Act since it does not restrict the development or use of land in which the appellant has an interest; require operations or activities to be carried out on that land; require the land to be used in a specified way; or require a sum of money to be paid to the Council. Similarly, the undertaking given at paragraph 1.2 of the Schedule does not fall within the remit of s106, amounting merely to an obligation to enter into an agreement.
21. I conclude that the Unilateral Undertaking could not be relied upon to secure the provision of passing bays if this appeal were to be allowed. In any event, I share the Council's concern that the creation of such bays, which would involve significant widening of the road at the expense of existing grass verges, would adversely affect its rural character and appearance. In light of this, and the concerns discussed above about the suitability of the proposed locations for the passing bays, it would not be appropriate to require their provision through the use of a condition.
22. In summary, I find that the traffic movements generated by Business B have a detrimental impact on the character of West Mudford Road, adversely affect the enjoyment of recreational users of this part of the highway network and the Monarch's Way and, in the current absence of adequate passing spaces, increase the risk of conflict between users of the highway.
23. The traffic movements generated by Business A have a lesser impact, since they are fewer in number and involve smaller vehicles. However, this is on the basis of the concrete manufacturing business as currently operated; that is, a relatively small-scale operation occupying only two thirds of the available workshop floorspace, and sharing yard and office space with the haulage business which also operates from the appeal site. As discussed above it would be possible, in the context of this appeal, to grant planning permission for the use of the site for Business A only. But in the absence of further details, such as a plan defining the floorspace occupied by the business, an equipment inventory, numbers of employees etc, there would be no means of imposing a condition to ensure the concrete business remained at its current level. No planning obligation has been proposed in this regard.
24. Without such a condition or obligation, the business could legitimately intensify and expand significantly. It could fill the workshop space formerly occupied by the haulage business; could greatly increase the amount of products manufactured; and could introduce additional mechanical apparatus for the manufacturing process, which may have consequences in terms of increased noise and disturbance. This would be likely to result in increased traffic in

terms of both delivering the finished concrete products to customers, and delivering the raw materials to the appeal site.

25. Conditions could be imposed to limit the hours during which commercial vehicle movements to and from the site could take place, but as the appellant acknowledges, a condition which sought to control the type and size of vehicles associated with a permitted use for concrete manufacturing at the appeal site would be unduly onerous, and difficult to enforce. I note that neither the appellant nor the Council proposes such a condition.
26. In summary, I am concerned that in the absence of any mechanism for limiting the scale of operations at the appeal site, an unrestricted grant of planning permission for its use for a concrete manufacturing business could result in a significant intensification of the manufacturing process and associated vehicle movements, such as would adversely affect both the character of the area and highway safety.

Other matters

27. I note that while the Environment Agency initially expressed concern about flood risk associated with the development, it withdrew its rejection on receipt of an updated Flood Risk Assessment from the appellant. I am satisfied that were I minded to grant planning permission, concerns about pollution control and foul drainage could be adequately addressed through the imposition of appropriately worded conditions.

Conclusions

28. On the basis of the evidence before me about the concurrent operation of both Business A and Business B from the appeal site, I find that the development conflicts with the objectives of Policy TA5 of the South Somerset Local Plan, which seek to ensure that the nature and volume of traffic generated by a development would not have a detrimental impact on the character or amenity of the area, and would not compromise the safety or function of the local road network.
29. I have considered whether it would be appropriate to issue a split decision, granting planning permission for the use of the appeal site for either Business A only, or Business B only. However, for the reasons set out above I have found that the traffic generated by Business B alone is such as to harm the character of the area and adversely affect highway safety, thus conflicting with Development Plan policy. In the absence of any appropriate mechanism to define the future scale of operations associated with Business A, I cannot be satisfied that these would remain at a level sufficiently minimal to preserve the character of the area, and not to compromise highway safety.
30. I therefore conclude that the appeal on ground (a) and the deemed application for planning permission must fail.

The appeal on ground (g)

31. The appeal on this ground is that the period specified in the enforcement notice for compliance falls short of what should reasonably be allowed. The appellant asserts that while the needs of the concrete manufacturing business could be met from suitable premises in the locality, there is no certainty that this could

- be achieved within a three month period, and seeks a period of six months for the relocation of this business.
32. The appellant contends that it will be more problematic to relocate the haulage business, since it requires a large yard area and an ancillary workshop located close to the primary road network, and it is unlikely that a site would be available with permission for this use. The appellant's view is that given the uncertainty involved in finding a suitable site and then pursuing planning permission for a change of use, and the adverse impact this uncertainty would have on the viability of the business, a 12 month period for compliance is justified.
33. I appreciate the difficulties involved in relocating an operational business that has specific locational requirements. However, the appellant has not provided any evidence to support the claim that suitable sites with existing planning permission are unlikely to be available. For example, the Council has suggested that a site at one of the trading estates and business parks in Yeovil (some 5 miles away) would be appropriate for this type of use; the appellant has not provided any information to suggest that such sites are not currently available, or would not be suitable.
34. The Council has advised that its Development Management and Economic Development teams can give support to find a policy compliant site (or sites) for the relocation of the businesses, and to progress any necessary permissions. It is also important, in the public interest, that the requirements of the notice should be carried out without undue delay to overcome the harm identified by the Council in its reasons for issuing the notice.
35. Taking all of this into account, I consider that the three month period for compliance specified in the notice is reasonable. I therefore conclude that the appeal under ground (g) should fail.

Formal Decision

36. 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.

Jessica Graham

INSPECTOR