The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 24/08/20

gan Mr A Thickett BA(Hons) BTP Dip RSA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 30.09.2020

Appeal Decision

Site visit made on 24/08/20

by Mr A Thickett BA(Hons) BTP Dip RSA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 30.09.2020

Appeal Ref: APP/A6835/C/20/3249659

Site address: Wood Farm, Deeside Lane, Sealand, Flintshire, CH1 6BP

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 S Banks against an enforcement notice issued by Flintshire County Council.
- The enforcement notice, numbered CEM/Enf/198879, was issued on 20 February 2020.
- The breach of planning control as alleged in the notice is; without the benefit of planning permission the material change of use of land from an agricultural use to a use comprising the following:-
  i. for the storage of motor vehicles, motorhomes and caravans and,
  ii. the importation of materials to create an area of hardstanding in the approximate position edged and hatched blue on the attached plan, in order to facilitate the unauthorised use and,
  iii. the erection of security fencing.
- The requirements of the notice are:
  1. Permanently cease the use of the land for the storage of motor vehicles, motorhomes and caravans,
  2. Permanently remove all motor vehicles, motorhomes and caravans from the land,
  3. Permanently remove the area of hard standing shown in the approximate position edged and hatched in blue on the attached plan and reinstate the land to its original levels and contours,
  4. Permanently remove the security fencing shown in the approximate position marked with x's on the plan,
  5. Permanently remove from the land all building materials and rubble arising from compliance with requirements 2, 3 and 4 above and restore the land to its condition before the breach took place by levelling the ground.
- The period for compliance with the requirements are:
  1 & 2; within two months of the notice taking effect,
  3 & 4; within six months of the notice taking effect,
  5; within one year of the notice taking effect
- The appeal is proceeding on the grounds set out in section 174(2)[a, f & g] of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed under ground (f) only. It is directed that the enforcement notice be varied by deleting the words; 'reinstate the land to its original levels and contours'

from Requirement 2 and inserting in their stead; 'restore the land to its condition before the breach took place by levelling the ground'. Subject to this variation 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

Appeal under ground (a)

Main issues

2. The site lies in a Green Barrier as defined by the Flintshire Unitary Development Plan, 2000 to 2015, adopted 2011 (UDP). The main issues are:

- whether the proposal would be inappropriate development in the Green Barrier,
- whether any harm by reason of inappropriateness would be clearly outweighed by other considerations; and if so, whether very exceptional circumstances exist to justify the harm to the Green Barrier,
- whether the proposed development conflicts with national and local policy regarding the location of development in areas at risk of flooding

Green Barrier

3. The appeal site consists of around 1 hectare of land previously used for agricultural storage. The site is to the north of a complex of large agricultural buildings. It is enclosed by 2m high palisade fencing and bounded by a row of trees to the north and a high earth bund to the west. At the time of my visit the site was used for storing caravans, motor homes, a few boats and by its northern boundary around 17 box trailers labelled 'Temporary Kitchen Company'.

4. Policy GEN4 of the UDP states that development within green barriers will only be permitted where it comprises, amongst other things, agriculture, small scale farm diversification or other appropriate rural uses/development for which a rural location is essential. Permissible development in a green barrier should not unacceptably harm the open character and appearance of the green barrier. The reasoned justification to the policy states that small scale farm diversification schemes or other appropriate rural uses should not involve additional activity which would unacceptably harm the openness of the green barrier. Although the UDP is time expired, Policy GEN 4 is in general conformity with national policy on green wedges set out in Planning Policy Wales 10 (PPW) and I afford it significant weight.

5. Policy RE5 is permissive of small scale farm diversification where, amongst other things, the proposed development does not involve external storage or operations which would be harmful to the character and appearance of the area. The UDP does not define small scale, stating that proposals should be assessed taking into account the characteristics of the site and surroundings and the nature and intensity of the proposal. Wood Farm is a large enterprise with a range of substantial buildings. Nevertheless, I do not consider that a storage operation that extends to 1ha can be descried as small scale. Nor can this use be considered to be one for which a rural location is essential. The site lies in a working agricultural landscape but is rural in character and appearance. The site is well screened but the caravans, motor homes and other things stored are incongruous in a rural landscape. They also have an adverse impact on the openness of the green barrier.

6. The notice does not require the removal of the trailers. The Council states that at the time the notice was served there were not the 40 to 60 trailers on the site alleged by the appellant in the statement of case. This is not disputed by the appellant and there was nowhere near that number of trailers on the site at the time of my visit. I do not consider that the failure to include the trailers is an indication that the Council considers them to be acceptable. The Council argues that the adverse impact of the trailers on the openness of the green barrier is the same as the caravans. From my observations I agree. Whilst the notice does not require the removal of the trailers, that does not weigh in favour of the grant of planning permission sought under ground (a).

7. I conclude that that the development is not of a type deemed by national and local policy to be appropriate in a green barrier and that it has a detrimental impact on openness. Inappropriate development is, by definition, harmful and PPW states that substantial weight should be attached to any harmful impact which a development would have on the purposes of a green barrier. PPW states that*; 'inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge'*. The site also lies outside a settlement boundary as defined in the UDP and in policy terms is in the countryside wherein development is strictly controlled.

8. I do not make light of the economic impact of the pandemic but I have seen no evidence by way of financial assessments or reports to show that the development is essential to the survival of Wood Farm. I don't doubt that a lawful fallback position could be storage related to the agricultural use of the farm. But that would be in keeping with the character and appearance of the area and would not be inappropriate development in a green barrier. I do not consider, therefore, that the appellant has demonstrated the very exceptional circumstances necessary to outweigh the harm I identify to the green barrier.

Flooding

9. The site falls within Zone C1. Technical Advice Note 15: Development and Flood Risk (TAN 15) states that development defined as less vulnerable, as is the case here, should only be permitted within zones C1 and C2 if determined by the planning authority to be justified in that location. Development should only be permitted in Zone C if it is necessary as part of a regeneration initiative, local authority strategy to sustain an existing settlement or is necessary to contribute to key employment objectives. Only if those criteria are met does one ask oneself if the development concurs with the aims of PPW and then turn to the technical requirements. Those criteria are not met in this case and I conclude that the development conflicts with national and local policy[1] regarding the location of development in areas at risk of flooding.

Appeal under Ground (a) – Conclusion

10. For the reasons given above, I find that the development constitutes inappropriate development in the Green Barrier and that very exceptional circumstances have not been demonstrated to justify the harm to the Green Barrier. The development also conflicts with the national and local policy regarding flood risk. The appeal under ground (a), therefore, fails.

[1] UDP Policy EWP17

The appeal under ground (f)

11. Whatever the reasons for not including the trailers in the notice, it does not alter the harm to the openness of the green barrier or conflict with TAN15 with regard to the storage of motor vehicles, motorhomes and caravans. It would appear to me that not including the trailers in the notice was an oversight by the Council and not an acceptance that the storage of trailers on the site is acceptable. The notice does not require the removal of the trailers but that does not mean that requiring the removal of motor vehicles, motorhomes and caravans is excessive or that the enforcement notice is a nullity. It is open to the Council to issue a further enforcement notice should the trailers not be removed at the same time as the motor vehicles, motorhomes and caravans stored on the site.

12. I acknowledge that a 2m high fence could be erected around the site without the need for planning permission and might be suitable for securing agricultural storage. However, as is clear from the appellant's statement of case, the 2m high palisade fence was erected to facilitate the use of the land for the secure storage of motorhomes and caravans and is part of the unauthorised development. As the owner of a touring caravan I know that security is a key selling point for businesses offering storage. The provision and level of security is also a factor in determining insurance premiums and so caravan owners are incentivised to look for secure sites. I am not persuaded that a 2m high palisade fence would be necessary to protect *'potato spoils heaps, storage of potato containers and boxes'* which is an alternative use suggested by the appellant.

13. I acknowledge that the site could be used for agricultural storage in relation to the appellant's farm. However, I am not persuaded by what I have seen or read that a 1ha hardstanding is reasonably necessary for the purposes of agriculture. The application for a lawful use certificate in relation to agricultural storage referred to in the appellant's statement of case has not been progressed. There is insufficient information before me to conclude that the hardstanding would benefit from permitted development rights under Class A(b), Part 6 of The Town and Country Planning (General Permitted Development) Order 1995.

14. I agree with the appellant that the requirements of the notice in 5(3) and 5(5) in relation to reinstating the land are inconsistent. The appellant submits 5 aerial photographs which show that the site has changed over time since 2011. It is not clear to me what the Council considers to be the original levels and contours of the site (requirement 5[3]) and I agree that the notice is imprecise in this regard. By requiring the land to be restored to its condition before the breach took place (requirement 5[5]) removes any doubt as to what is required and I will vary the notice as suggested by the appellant so that the requirements of the notice in 5(3) and 5(5) are consistent.

15. To this limited extent, the appeal under ground (f) is allowed.

The appeal under ground (g)

16. The appellant states that contracts with caravan owners are for a 12 month period starting and ending at different parts of the year. The appellant seeks a period of compliance of 12 months to avoid undue hardship and inconvenience to himself and his clients. However, it was the appellant's choice to enter into 12 month contracts. Given the previous history of enforcement against the unauthorised storage of cars on the site, I consider that the appellant must have known that the development required

planning permission and that there was a risk that any application would be refused and/or enforcement action taken.

17. In my view the appellant must have been well aware when agreeing 12 month contracts with caravan owners that enforcement action could ensue and that he may not be able to honour those contracts. Whilst I have sympathy for the caravan owners, I consider that two months is a reasonable time to arrange for the caravans and other items subject to this notice to be removed.

18. The appeal under ground (g) therefore fails.

Conclusions

19. For the reasons given above and having regard to all matters raised, the appeal should be allowed on ground (f) only. It is directed that the enforcement notice is varied by deleting the words 'reinstate the land to its original levels and contours' from Requirement 2 and inserting in their stead: 'restore the land to its condition before the breach took place by levelling the ground'. Subject to this variation, 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

20. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of building better environments.

Anthony Thickett

Inspector