The Planning Inspectorate

Appeal Decision

Inquiry held on 20 September 2011
Site visit made on 20 September 2011

by James Ellis LLB (Hons) Solicitor

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

Decision date: 14 October 2011

Appeal Ref: APP/Y1138/C/11/2148300
Little Tidcombe Farm, Warnicombe Lane, Tiverton, Devon EX16 4NZ

- 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 Act").
- The appeal is made by Trevor John Veysey against an enforcement notice issued by Mid-Devon District Council.
- The Council's reference is ENF/10/00088/NUCU.
- The notice was issued on 19 January 2011.
- The breach of planning control as alleged in the notice is without planning permission change of use of the land from use for agriculture to a mixed use for agriculture and for commercial storage of tyres (use class B8).
- The requirements of the notice are to stop using any part of the land for the commercial storage of tyres (use class B8) and remove from the land all tyres and equipment brought onto the land for the purpose of that use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2) (d) of the Act. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act does not fall to be considered.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. At the Inquiry an application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Oral evidence given to the inquiry by the Appellant's witnesses and the Council's witness was given on oath.

4. The Appellant, his wife Margaret Ann Veysey, and some seven other witnesses gave oral evidence on his behalf at the inquiry. However, prior to this, the Appellant had submitted a number of statutory declarations in support of his appeal. These declarations all referred to a plan ("the plan") showing buildings where tyres are stored. The buildings on the plan are numbered 1 to 7, with Buildings 6 and 7 being extensions to "Building 1". However, an addendum to the Appellant's statement explains that for the purposes of the declarations, Building 1 as referred to in them is that between Buildings 2 and 5, whereas the building which was extended by Buildings 6 and 7 should be called Building

M1 (rather than "Building 1") to follow building numbers used for stock reference purposes. For the purposes of the inquiry, the building between Buildings 2 and 5 was referred to as Building 1 and the building between buildings 6 and 7 was referred to as building M1. I shall follow this in the decision letter.

Reasons

5. The ground of appeal is that at the time the enforcement notice was issued it was too late to take enforcement action. For the ground to succeed, the change of use the subject of the notice will need to have started ten years before the date of issue of the notice and continued throughout the ten year period. The material date for commencement of the use is 19 January 2001.

6. Office copy entries show that Buildings nos 1 2, 3, 4 and 5 were purchased by the Appellant with Little Tidcombe Farmhouse on 31 August 2000, whereas Building M1 on was purchased by the Appellant on 21 December 2000. Building M1 was subsequently extended by Buildings 6 and 7 some time after 19 January 2001.

7. The Appellant has been a director of North Devon Tyres Limited since 2002. Before this, he was a sole proprietor trading as North Devon Tyres and Batteries. Prior to purchasing Little Tidcombe Farm, the Appellant had a tyre store/depot in St Peter Street, Tiverton which he said was unsuitable in respect of vehicle movements by lorries and vans. This was confirmed by Mrs Veysey, and is also borne out by photographic evidence. It was explained by the Appellant that Little Tidcombe Farm was purchased so that tyres could be stored there. This was again confirmed by Mrs Veysey.

8. The oral evidence of Mr and Mrs Veysey is that tyre storage started to take place in Buildings 1 to 5 immediately after the purchase of Little Tidcombe Farm at the end of August 2000 and that storage in Building M1 actually started some time prior to its acquisition in December 2000. This was supported by the oral evidence of other witnesses. For example, Matthew Taylor who was involved in moving stock into the buildings gave clear evidence about when this took place. In particular, reference was made by him to tyres being moved into Building M1 over the Christmas/New Year period at the end of 2000/beginning of 2001. Witnesses also stated that the storage use has continued since the buildings were first used for that purpose.

9. The Council questioned the original marking of Building M1 as "Building 1" on the plan and suggested that there was an inconsistency of evidence because the statutory declarations stated that "Building 1" had been used for the storage of tyres after its purchase in August 2000, whereas the oral evidence referred to Building M1 being used for storage at the end of December 2000/beginning of January 2001. However, the Appellant explained that the plan attached to the statutory declarations, which plan had been prepared by his agent, was inaccurate and that "Building 1" for the purpose of the declarations was that between Buildings 2 and 5. Moreover, the Appellant's witnesses who gave evidence about when the tyre storage started gave clear and consistent evidence on oath which was the subject of cross-examination by the Council's advocate.

10. The Appellant's case also sought reliance on documentary evidence. For example, there is a letter from the Jelf IFM Group dated 8 October 2000 which

refers to "Little Tidcombe Farm – Tyre Stores and Buildings". The letter concerns insurance and confirms that general contents including tyres and stock relating to the tyre trade up to a certain value was added. There is also a letter from Michelin Tyre PLC confirming that 39 tractor tyres were to be delivered to Tiverton at the end of September 2000, this being after the St Peter Street depot had been sold.

11. The Council provided no direct oral evidence about what had taken place on the appeal site but relied on a number of documents from the planning file relating to the property. From these documents, it contended that it was likely that the breach of control had commenced between October 2002 and February 2003. In particular, reference was made to a number of notes made by officers following site visits made on 29 March 2001, 28 October 2002 and 12 February 2003. The 2001 site visit related to proposed extensions to Building M1. The site notes do not make any mention of tyre storage but there is reference to an open side of Building M1 to be rendered. It was therefore suggested by the Council that if tyres had been stored in building M1 at that time, they would have been seen by the relevant officer through the open side and noted. However, it was the Appellant's recollection of the site visit that the officer did not look inside any of the buildings and that stock within the buildings could not be seen from outside the buildings. It was stated that the "open side" of Building M1 was provided with tarpaulins to screen stock from view for security purposes.

12. The 2002 site visit was made by a Conditions Monitoring Officer of the Council who visited the site following a complaint by a neighbour that the appeal site was being used for the storage of tyres. The notes relating to this visit state that the officer could not find any tyre dump on site. However, there is no evidence before me to show that the officer looked inside buildings. On the other hand, oral evidence from the Appellant again indicates that at that time, a visitor to the site would not have been able to see inside the buildings. However, in February 2003 when a further visit was made by one of the Council's officers, it was noted that tyres were being stored at the appeal site. A planning application was invited to regularise the breach of planning control. Planning application Ref: 4/52/2003/599 for change of use of agricultural building to commercial tyre storage was subsequently lodged with the Council. The application, which referred only to Building M1 which had been extended by Buildings 6 and 7, was refused by the Council on 22 May 2003.

13. It is part of the Council's case that the Appellant has sought to deliberately mislead the Council so as to prevent the Council from any reasonable expectation of uncovering the unauthorised change of use. Here, the Council sought reliance on the case of Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government and another [2011] UKSC 15.

14. The Appellant stated that he purchased Little Tidcombe Farm for the storage of tyres but this in itself does not, in my view, indicate that the Appellant sought to mislead the Council. He also stated that he had been advised by a planning consultant that after 10 years, an enforcement notice cannot be served in respect of the tyre storage. When cross-examined on this point, the Appellant confirmed that he had received the advice from the planning consultant in connection with the current appeal, and not before he had purchased the appeal property.

15. The Council also referred to a number of Prior Notifications for agricultural buildings, one in 2001 and two in 2010 where the application forms state that the appeal site is part of an agricultural holding. The Council considered that the statements in the applications were intended to deceive the Council. When this was put to him in cross-examination, the Appellant explained that the various applications had been made on his behalf by an agent and he had not seen the forms. It was stated that the agent had been left to get on with the job. In addition, the Appellant said that he had understood that the storage of tyres on his land (for use on tractors and other agricultural vehicles) was an agricultural use of land. He went on to say that he had no expert knowledge of planning or legal matters. The Appellant underwent a rigorous cross-examination concerning the various applications and a possible attempt to deliberately mislead the Council. However, he emphatically denied that he had done so.

16. The Appellant's explanations as to what happened seem entirely plausible to me. In this particular in this case, I do not find that the Appellant has sought to deliberately mislead the Council so as to prevent the Council from any reasonable expectation of uncovering the unauthorised change of use. Indeed, the Council was well aware of a change of use back in 2003 when planning application Ref: 4/52/2003/599 was made. The use did not cease after refusal of the application but the Council had clearly been made aware of an unauthorised use. The making of the application itself is also suggestive to me that the Appellant did not intend to deceive the Council.

17. In an appeal on ground (d), the onus is on the Appellant to make out his case and the relevant test of evidence on the matter is "on the balance of probability". The evidence which was given on oath by a number of witnesses for the Appellant and which was tested by cross examination paints a consistent history about when the change of use the subject of the enforcement notice took place. There is also supporting documentary evidence about the use of the appeal site for the storage of tyres. I give substantial weight to the evidence that has been put forward on behalf of the Appellant.

18. On the other hand, no direct first hand evidence has been produced by the Council to contradict that put forward by the Appellant. The Council relied on documentary evidence and a number of good points arising from this were put to the Appellant's witnesses in cross examination. However, credible answers to the points were forthcoming. I am also satisfied that the Appellant did not seek to deliberately mislead the Council. After considering all the evidence before me, I therefore conclude that, on the balance of probability, the change of use cited in the enforcement notice started more than 10 years before the enforcement notice was issued and that the use has continued since it commenced. It was therefore too late for the Council to take enforcement action.

19. For the reasons given above, I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed.

James Ellis

Inspector

APPEARANCES

FOR THE APPELLANT:

Gavin Collett	of Counsel
He called	
Trevor Veysey	Appellant
Margaret Veysey	Appellant's wife
Mike Evans	
Andrew Luxton	
Rob Sandiford	
Matthew Taylor	
Roger Jones	
Simon Veysey	Appellant's son
Richard Kingdom	

FOR THE LOCAL PLANNING AUTHORITY:

Philip Langdon	Solicitor, Mid-Devon District Council
He called	
Glenn Crocker	Planning Enforcement Officer, Mid-Devon District Council

INTERESTED PERSONS:

Cllr Kevin Wilson	Ward Member, Mid-Devon District Council

DOCUMENTS

1 Council's letter dated 24 August 2011 giving notification of date, time and venue of inquiry.
2 Office copy entries – title number: DN436373
3 Office copy entries – title number: DN440936
4 Office copy entries – title number: DN608503
5 Copy transfer of building M1 and other land dated 21 December 2000
6 Copy Prior Notification Form for agricultural development dated 28 February 2001
7 Copy balance sheet of T J Veysey as at 31 March 2001
8 Copy letter from John O' Loughlin dated 19 September 2011
9 Copy judgement - Welwyn Hatfield Borough Council v Secretary of State and another

PHOTOGRAPHS

1 Colour aerial photograph showing the location of various buildings on the appeal site