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# Appeal Decisions

Site visit made on 11 January 2011

**by Roger Pritchard MA PhD MRTPI**

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

**Decision date: 10 February 2011**

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**Appeal Ref: APP/R3325/C/10/2137600**

**Bridge Horn Barn, Henley, Langport, Somerset, TA10 9BG**

- 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 Sid Cowling against an enforcement notice issued by South Somerset District Council.
- The Council's reference is EN10/00299/USE.
- The notice was issued on 1 September 2010.
- The breaches of planning control alleged in the notice are -
  - (1) Without planning permission the change of use of the land hatched green from an agricultural use to a storage use for the storage and display of tractors, tractor accessories, plant and machinery for onward sale; and
  - (2) The sale of ancillary tractor goods and accessories from the land hatched black in breach of condition no.8 of planning permission reference 06/02183/COU dated 5 June 2007, which states: *'The subject land including any building(s) thereon shall be used for a depot for agricultural contracting business and for the maintenance and sale of classic, vintage and compact tractors and for no other purpose (including any other purpose in Class B1, B8 and A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).*
- The development to which the permission relates is the retention of agricultural buildings and the change of use to (1) depot for a local agricultural contracting business, and (2) a base for the maintenance and sale of classic vintage and compact tractors. The notice alleges that condition no.8 (as set out above) has not been complied with in that the sale of ancillary tractor goods and accessories has been carried on from the land hatched black on the attached Plan.
- The requirements of the notice are to:
  - (i) Cease the unauthorised use of the land hatched green for the storage of tractors, tractor accessories, plant and machinery and return the land to the condition it was in before the breach occurred; and
  - (ii) Comply in full with condition no.8 of planning permission reference 06/02183/COU and cease the sale of ancillary tractor goods and tractor accessories from the land hatched black.
- The period for compliance with the requirements is by 31 December 2010.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: I direct that the enforcement notice be corrected in the terms set out in the Formal Decision. Subject to this correction, I uphold the enforcement notice and I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.**

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**Appeal Ref: APP/R3325/A/10/2137677**

**Bridge Horn Barn, Henley, Langport, Somerset, TA10 9BG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission for the change of use of land and under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Sid Cowling against the decision of South Somerset District Council.
- The application Ref 10/01915/COU, dated 30 April 2010, was refused by notice dated 2 August 2010.
- The application sought planning permission for the change of use of land from agriculture to form extension to business use together with variation to condition no. 8 of planning permission Ref 06/02183/COU, dated 5 June 2007, at Bridge Horn Barn, Henley.
- The condition in dispute is no.8 which states that: *'The subject land including any building(s) thereon shall be used for a depot for agricultural contracting business and for the maintenance and sale of classic, vintage and compact tractors and for no other purpose (including any other purpose in Class B1, B8 and A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).*
- The reason given for the condition is: *In the interests of the character and appearance of the area and of highway safety.*

**Summary of Decision: I dismiss the appeal insofar as it relates to the change of use of land from agriculture to business use but I allow the appeal, in the terms set out in the Formal Decision, insofar as it relates to the granting of planning permission without compliance with condition no. 8 previously imposed on planning permission Ref 06/02183/COU.**

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**Preliminary and Procedural Notes**

1. There is confusion over the appellant's name. However, I established at the site visit that his preferred and sole form of address should be Mr Sid Cowling. The Council agreed and this is the form I have used.
2. The appellant occupies a site in the hamlet of Henley outside the limits of any defined settlement. It was originally part of a working farm but in 2002 was granted permission (Ref 02/02423/FUL) for the conversion of a barn to a work/live unit. A further permission in 2007 (Ref 06/02183/COU) approved the change of use of the site to a depot for a local agricultural contracting business and a base for the maintenance and sale of classic, vintage and compact tractors. The site to which the 2007 permission applies contains three buildings – a dwelling in the south east corner and two workshops.
3. I shall deal with the matters before me, firstly, by considering the appeal on ground (c), which addresses the breach of condition allegation. If the appeal on ground (c) fails, I shall consider the section 78 appeal to vary condition no.8 of the 2007 permission. I shall then turn to the appeal for a retrospective change of use of the area to be added to that covered by the 2007 permission. (In considering both these aspects, I shall take account of the applications deemed to have been made under section 177(5) of the 1990 Act as amended.) I shall finally deal with the appeal on ground (g), which is relevant to both allegations, and which will need to be considered if the appeals fail on other grounds.

### **The enforcement notice**

4. Section 6 of the enforcement notice sets the time for compliance for both requirements as 'By the 31<sup>st</sup> December 2010'. An appeal having been made against the notice, the time for compliance is set aside until the date when the notice might be confirmed. As drafted, the form of the notice has therefore become meaningless. Moreover, the ambiguity of the notice in this respect is reflected in an apparent disagreement between the parties as to what it means. The appellant assumes that he has been given three months to comply, whilst the Council states that he has been given '...four months from the date of service...'
5. The period for compliance with an enforcement notice runs from the date on which the notice takes effect. In this case, that date is 4 October 2010. The period between 4 October and 31 December is effectively three months and I consider Section 6 of the notice should make this clear. Given that the appellant appears to understand the position correctly, I am satisfied that it would not result in any injustice to him if the period for compliance was 'Three months from the date that this notice takes effect.' I shall therefore correct the notice to this form, subject to considering the appellant's appeal under ground (g).

### **The appeal on ground (c)**

6. There is no dispute that the balance of the appellant's business has changed since 2007. The local agricultural contracting business seems to have largely ceased as has the maintenance and sale of classic and vintage tractors. The site is now predominantly devoted to the storage, sale and maintenance of compact tractors. Associated with that use is the storage and sale of spare and replacement parts and accessories for compact tractors, but also tools and implements – trailers, balers, mowers etc. - that can be temporarily attached to a compact tractor to carry out specific tasks. The appellant acknowledges that this is now the most significant part of his business.
7. Local residents have, however, pointed me to a wider range of goods advertised for sale on the appellant's web-site. Examples are mini-diggers, of which I saw a small number stored on the site at my visit. On the balance of probabilities, I conclude that there has been at least some extension of the appellant's activities beyond those compact tractors in which he claims a 'niche market'.
8. That the appellant has chosen, in response to market conditions, to focus on one element of the 2007 permission – compact tractors – is not a breach of control. The issue is the interpretation of condition no.8 and the span of activities that it permits.
9. The appellant states that the condition does not specifically preclude the sale of ancillary tractor goods and accessories, as cited in the allegation. In his view these activities are incidental to the lawful use of the site, as illustrated by the Council's own use of the adjective 'ancillary', and that they therefore do not breach condition no.8. The Council's case is that because the condition does not specifically identify the activities cited in the breach, it provides no lawful basis for these to be undertaken.

10. Condition no.8 can only be interpreted at face value. It limits the span of uses allowed on the site to '*the maintenance and sale of classic, vintage and compact tractors*'. Moreover, it is explicit that the site shall be used '*...for no other purpose...*' including no other purpose within the Use Classes within which the permitted activities fall.
11. However, there remains the question as to what activities might be defined as incidental to the permitted use to the degree where it would be unreasonable to conclude that they fall outside the ambit permitted by condition no.8. In addressing this question, I have not been assisted by the somewhat loose vocabulary that both parties have used to describe the activities undertaken or alleged to be undertaken on the site. As example, the word 'accessories' is not defined and sometimes used with a different meaning by the parties. In these circumstances, I consider that the activities in question should be divided into three groups, which need to be addressed separately.
12. Any customer purchasing a compact (or indeed a classic or vintage) tractor must have an expectation that their dealer will be able to provide them with a full range of spare and replacement parts essential for maintenance. They may also expect to be able to purchase accessories that are directly associated with and would normally be permanently fitted to those tractors. A condition that seeks to prevent the sale of such goods runs a serious risk of imposing restrictions on the business sufficient to call into question the value of the permission. In terms of the tests set by Circular 11/95, *Use of Conditions in Planning Permissions*, such a condition would be 'unreasonable'. I therefore conclude that the storage and sale of spare and replacement parts and accessories for compact (or classic or vintage) tractors should not constitute a breach of condition no.8.
13. It is, however, undisputed that the appellant now sells a wide range of what I have described in paragraph 6 as tools and implements that can be temporarily attached to a compact tractor for specific tasks. The appellant argues that potential customers would also expect such 'attachments', as I shall call them, to be available from a dealer selling compact tractors. The case here seems to me to be less clear cut. The Council makes the point that many dealers specialising in tractors do not sell the wide range of attachments that can be fitted to them. Moreover, it is less obvious that a condition preventing the maintenance and sale of such attachments would restrict the activities of the business to the degree where it might threaten its viability.
14. Given what I have already said in paragraph 10 about the interpretation of condition no.8, I therefore conclude that the maintenance and sale of such tractor attachments does constitute a breach of condition no.8.
15. There is a third aspect, which I consider I am unable to address. I have already commented that the appellant stores and sells some goods that seem to me to be outside any reasonable definition of tractors or tractor attachments, i.e. the mini-diggers. They appear to be beyond the scope of condition no.8 but they are not cited in the enforcement notice. I therefore conclude that they are beyond the alleged breach of control.
16. Overall, however, I conclude that there has been a breach of condition no.8 in that the appellant does store, sell and maintain on the site tractor goods, by way of attachments to compact tractors, which are beyond the uses permitted

by condition no.8 of the 2007 permission 06/02183/COU. The appeal on ground (c) therefore fails.

**The section 78 appeal seeking a variation of condition no. 8 attached to permission 06/02183/COU**

17. Having accepted that a breach of condition no.8 has occurred, the main issue raised by the application to vary that condition to add the maintenance and sale of *'...ancillary tractor goods and tractor accessories...'* to the lawful uses of the site is whether this would produce an increase in traffic, and particularly HGV movements, for which the surrounding highway network is unsuitable.
18. The appeal site is in an isolated location. The local highway network is sub-standard in many respects. Some sections are narrow and have a poor alignment. I have taken particular note of the difficulties at the Nythe Road/Henley Road junction to which the Highway Authority has drawn my attention and which I made a particular point of looking at during my site visit. My assessment is that increased traffic on the local highway network, and especially more use by HGVs, would put at greater risk the safety of highway users. In those circumstances, were significant additional traffic to be generated from the site, it would result in conflict with criterion 5. of Policy ST5 of the adopted South Somerset Local Plan.
19. I am aware that a number of local residents are already concerned that there has been recent evidence of greater traffic to and from the site. However, the appellant suggests that where there have been increases in traffic generation, these have resulted from an increase in activity derived from the implementation of permission 06/02183/COU rather than from any unauthorised change in the pattern of use.
20. Both parties have put forward evidence as to recent changes in traffic generation on the local highway network, including movements by HGVs and other forms of heavy traffic. However, it is difficult to disentangle any increases in traffic generation that may have resulted from changes in the pattern of activity allowed by permission, 06/02183/COU, from those that may result from unauthorised changes in the use of the site.
21. Detailed changes in the pattern of activities on the site may result in variations in the scale and type of traffic generated. Nevertheless, the capacity for greater activity on the site – and the consequent potential for traffic generation - seems to me to be largely determined by the land area available for the storage and display of those goods available for sale.
22. In respect of the application to vary condition no.8, no extension of the sales or storage area is proposed. Moreover, the consequences of whether the site is used by an agricultural contractor, for the storage and sale of classic, vintage and compact tractors, or for the storage and sale of attachments to be fitted to compact tractors seem inconclusive in terms of the scale and type of traffic that might be generated. The Council chose to give permission for a range of uses. In doing so, it must have accepted, subject to any conditions imposed, that the use of the site could expand to its full potential capacity and that the appellant could vary the pattern of activity undertaken on the site within the span of uses that the permission allows.

23. Moreover, I am not convinced that the storage and sale of attachments that can be fitted to compact tractors would necessarily result in a significantly different or greater pattern of traffic generation than could arise from the full use of the site under the terms of permission, 06/02183/COU.
24. In these circumstances, I consider that a variation of condition no.8 would be acceptable. It would obviously be in the appellant's business interest, but it would not lead to an intensification of current or potential activity on the site over that which could occur under the 2007 permission. In those circumstances, I see no reason why the type and scale of traffic generated, or its affects on the local highway network or local amenity, should be materially different from that which could occur under that permission. As such, it would not result in significant additional harm that would conflict with Policy ST5 of the adopted Local Plan.
25. However, I am concerned as to the wording of any variation to condition no.8. The appellant has suggested the inclusion of the same words as used in the Council's allegation, i.e. *'...ancillary tractor goods and tractor accessories...'* For the reasons I have set out in paragraph 11, this seems to me to be imprecise and to pose future issues as to enforcement. I consider a narrower but more specific variation to condition no.8 would be appropriate and I propose that it be varied by adding after, *'...the maintenance and sale of classic, vintage and compact tractors..'* the words *'...and spare and replacement parts and accessories for these, including tools and implements to be attached to compact tractors,...*
26. For the reasons given above I conclude the appeal to vary condition no.8 should succeed. I shall discharge the condition that is the subject of the notice and grant planning permission, on both the application deemed to have been made under section 177(5) of the 1990 Act as amended and the appeal under section 78 of the 1990 Act, for the change of use previously permitted without the disputed condition but substituting another, using the wording set out in paragraph 25 above, and retaining the relevant non-disputed conditions from the previous permission as they still subsist and are able to take effect.

**The planning application deemed to have been made under section 177(5) and the appeal made under section 78 which both seek permission for a change of use of land from agriculture to business use**

27. The main issue associated with this element of the section 78 appeal is the same as that set out in paragraph 17 above, namely whether the change of use would produce an intensification of activity on the site such as to lead to an increase in traffic, and particularly HGV, movements for which the surrounding highway network is unsuitable.
28. In respect of an application significantly to extend the site area, the arguments set out in paragraphs 18 to 26 above are equally applicable. However, in this respect, they point me to a different and opposite conclusion. A greater area for the storage and display of goods, irrespective of their nature, must increase the capacity of the site, which would result in a consequent increase in its capacity to generate additional traffic.
29. The appellant does not dispute that a greater site area could result in an increase in activity. However, he argues that this would be sufficiently limited

as to restrict any additional traffic generated to a level that would not result in greater material harm. I disagree. Whilst an increased site area might not generate very substantially greater numbers of traffic movements, the nature of the local highway network is such as to be unable to cope safely with any significant increase, especially if it resulted in more movements, however small in number, by larger, commercial vehicles.

30. In coming to this view, I have taken particular account of the Highway Authority's concerns, which I recognise are long-standing, and my own observations. Any increase in the sales and storage area of the site should be resisted as I consider it would result in significant additional traffic movements that would be incompatible with the state of the local highway network and conflict with Policy ST5 of the adopted Local Plan.
31. For the reasons given above I conclude that both the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended and the section 78 appeal against the Council's refusal to grant retrospective permission for a change of use from agriculture to business use of the land cross hatched in green on the plan accompanying the enforcement notice should be dismissed.

### **Conclusions on the appeals under ground (a)**

32. I conclude that the appeal on ground (a) should succeed in respect of the breach of condition but should fail in respect of the material change of use. I am unable to quash part of an enforcement notice to reflect that partial success and the notice therefore is upheld. However, I shall grant new planning permissions to retain the use of the land, subject to condition no. 8 as varied and to the other conditions, as subsisting and able to take effect, attached to permission Ref 06/02183/COU. As a result, section 180 of the 1990 Act will apply. The result will be that the enforcement notice will cease to have effect in respect of the alleged breach of condition so far as it is inconsistent with the planning permissions I shall grant.

### **The appeal on ground (g)**

33. The appellant has submitted that he would need 12 months both to comply with the Council's requirements in respect of condition no. 8 of permission 06/02183/COU and to clear stock from the extension to the site. If the period for compliance was less, the process of reorganising the site would lead to congestion and a general disruption to the business.
34. My correction to the enforcement notice makes clear that the time for compliance is three months. Moreover, my conclusion that condition no.8 should be varied in respect of the area to which permission 06/02183/COU applies, reduces the scale of re-organisation of the business required by the notice. In these circumstances, 12 months seems to me to be excessive given the continuing, increased traffic on the sub-standard local highway network that would result from the continuing, unauthorised use of the additional site area.
35. I therefore conclude that the period of compliance should not be extended beyond 3 months and that the appeal on ground (g) fails.

## Formal Decisions

### Appeal Ref: APP/R3325/C/10/2137600

36. I direct that the enforcement notice be corrected by deleting the words in Section 6, Time for Compliance, and substituting the words –

*'Three months from the date that this notice takes effect.'*

Subject to this correction I uphold the enforcement notice and dismiss the appeal.

In respect of alleged breach of control (1), namely the change of use of the land hatched green from an agricultural use to a storage use for the storage and display of tractors, tractor accessories, plant and machinery for onward sale, I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

In respect of alleged breach of control (2), namely the sale of ancillary tractor goods and accessories from the land hatched black in breach of condition no.8 of planning permission reference 06/02183/COU dated 5 June 2007, I shall grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, I hereby discharge condition no.8 attached to the planning permission dated 5 June 2007, Ref 06/02183/COU, granted by South Somerset District Council, and substitute the following new condition :-

*Condition no.8A 'The subject land including any building(s) thereon shall be used for a depot for agricultural contracting business and for the maintenance and sale of classic, vintage and compact tractors and spare and replacement parts and accessories for them, including tools and implements to be attached to compact tractors and for no other purpose (including any other purpose in Class B1, B8 and A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).'*

### Appeal Ref: APP/R3325/A/10/2137677

37. In respect of the application for the change of use of land from agriculture to form extension to business use, I dismiss the appeal. In respect of the application to vary the condition, I allow the appeal and grant planning permission for the retention of agricultural buildings and the change of use to (1) depot for a local agricultural contracting business (2) a base for the maintenance and sale of classic vintage and compact tractors in accordance with application, Ref 10/01915/COU, dated 30 April 2010, without compliance with condition no.8 previously imposed on planning permission 06/02183/COU, dated 5 June 2007, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition –

*Condition no.8A 'The subject land including any building(s) thereon shall be used for a depot for agricultural contracting business and for*



*the maintenance and sale of classic, vintage and compact tractors and spare and replacement parts and accessories for these, including tools and implements to be attached to compact tractors, and for no other purpose (including any other purpose in Class B1, B8 and A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).'*

*Roger Pritchard*

INSPECTOR