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## Appeal Decision

Inquiry held on 1, 2 and 3 July 2014

Site visit made on 30 June 2014

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

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

**Decision date: 8 August 2014**

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**Appeal Ref: APP/G2815/C/13/2208062**

**Manor Farm, Lower Benefield, Northamptonshire PE8 5AF**

- 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 M Cawthorne against an enforcement notice issued by East Northamptonshire District Council.
  - The Council's reference is EN12/00075/PPD.
  - The notice was issued on 24 September 2013.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a dwelling with ancillary grounds, to a mixed use (1) as a dwelling with ancillary grounds; (2) for wood storage, seasoning and cutting, that element taking place in the 'woodyard area' (land hatched blue on the plan attached to the enforcement notice) and the building (hatched green on the plan attached to the enforcement notice) and (3) the manufacture of wood products, that manufacturing process being carried out in the buildings hatched purple on the plan attached to the enforcement notice.
  - The requirements of the notice are 1) cease the importation of wood intended for storage, seasoning and cutting; 2) remove all wood materials and tools associated with cutting and working wood from the structure shown edged and cross hatched in green, demolish the structure, and remove all resulting materials from the land; 3) cease the production of wood products and remove from the land all machinery equipment and raw materials associated with that part of the use; 4) save for any wood to be used in lawful construction or renovation works on the land, remove from the land all wood stored in the 'woodyard area' and cease using the land for the storage, seasoning and cutting of wood; 5) remove the cutting and wood processing machinery housed in the open wooden structures shown cross hatched black on the plan attached to the enforcement notice and 6) demolish the open wooden structures shown cross hatched black on the plan attached to the enforcement notice and remove all resulting material from the land.
  - The periods for compliance with the requirements are 1) 1 month, 2) 3 months, 3) 6 months and 4), 5) and 6) 2 years.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### Other Matters

- 1) The appellant withdrew the appeal under ground (a) on 30 December 2013.
- 2) The parties agree that there is a mixed use at the site and that the planning unit is the whole of the land identified in the enforcement notice.
- 3) Some of the outbuildings are the subject of an ownership dispute. Determination of that dispute is not a matter for this inquiry. Clearly the

appellant has a relevant planning interest in the use of those buildings, having occupied them from about 1977. The appellant's appeal against the enforcement notice is to be considered.

- 4) The notice is aimed at 'use' and not 'operational' development. It is agreed that the summer house and sheds has been in place for more than four years. Where operational development is required to be removed it is in conjunction with the associated use, it being alleged that it was integral with and part and parcel of the associated unlawful change of use.

## **Decision**

The appeal is allowed and the enforcement notice is quashed.

## **Reasons**

### **Ground (d)**

- 5) The manor house comprises a large collection of buildings purchased by the appellant and his brother in the mid 1970s. The buildings were subsequently occupied by them. The appellant had a 'flat' located on the first floor of a stone outbuilding and constructed a woodworking workshop on the ground floor below the flat during the 1970s. The workshop was subsequently moved to another building and the flat extended into the ground floor area. Several of the existing buildings were used to store converted wood for use in the workshop, which was generally supplied by others. Joinery and woodworking were the appellant's business; the evidence shows that he also sold some of the wood that he bought in for use in his business to others, such as Mr Mould. He also taught wood working at classes locally. At the time and for some time after work was also undertaken in relation to the refurbishment of the buildings at the site.
- 6) The council say that the workshop use prior to the change alleged was ancillary to the residential use of the property. It says that when the workshop use of the new outbuilding commenced (in part of the purple building on the enforcement notice plan) the use effectively changed to a B1 industrial use. In my view, the use that the appellant makes of his workshop in relation to his joinery has changed very little from when he first started. I agree with the council that the joinery aspect of the appellant's business activities has now reduced and the sale of converted and seasoned wood has increased, but I do not accept that in terms of the joinery side of the business the use of the workshop has significantly changed in character, just a limited change in quantity.
- 7) So if the council say that the workshop is now a B1 use, in my view, it would also have been that use previously, when below the flat, and clearly with the extent of use not ancillary to the flat. The workshop use and manufacture of products has been established for well over 10 years and became lawful and there is no evidence to suggest that use has been abandoned. The move from one building to another on the planning unit did not result in a material change of use that would reset the time clock for the purpose of lawfulness.
- 8) I note the rule 6 party's view that the workshop would have been ancillary because access to the flat was from the workshop, but I do not agree that having the flat access through the workshop makes the use ancillary to the flat. In this respect I have also taken into consideration that the workshop would have also been used in relation to refurbishment of the premises, but in my view, the evidence does not indicate this to be a major part of its use. I

consider that there was a mixed use of the building and associated land and outbuildings, consisting of the residential and workshop use with associated storage of materials. I also accept that all the equipment in the current workshop is now not the same as that in the old workshop. However, the appellant notes that the old workshop equipment was removed to the new workshop. Some of that equipment may have been replaced with more modern machines and different equipment added, but that does not mean that the old equipment was of a lesser, say 'DIY' type suggesting ancillary use, or that the character of the use changed.

- 9) This is confirmed when photographs of the old workshop are viewed. The machinery is clearly of a substantial nature and not simply the type of machines that a person might ordinarily use in a 'DIY' way. Even noting that some of the wood would be for use in the refurbishment, the amount of wood stored is substantial as seen in an early 1990s photographs and not what would be expected for an ancillary use. The workshop is and has been in active use as the appellant's business and there have always been substantial amounts of timber stored in the many open outbuildings, providing the wood for the joinery business. I see some contradiction in the council's consideration of the stored wood. In relation to the summerhouse it notes that the amount of stored wood in the summerhouse, a relatively small part of the overall stored wood at the lower part of the site, is clearly for business use and not to be considered as ancillary to the residential use, yet all the other stored wood, a substantially greater quantity, could have been considered as ancillary to the residential use prior to the changes of use it identifies in the 2000s.
- 10) In my view, the nature of machinery, the use the appellant makes of it and the clearly considerable scale of the operation leads me to conclude that the joinery business prior to what has been alleged was not an ancillary use and this would have been the case from a very early stage in the appellant's ownership. The joinery use and small scale selling of timber would have been part of a mixed use on the site and would therefore have gained lawfulness some time during the 1980s. The moving of the workshop did not affect the overall character of the use. While I note that the application for the new workshop was done in relation to a 'householder development' application form there was no condition restricting any aspect of the the mixed use at the site from that building. The fact that the application was made on a 'householder' form does not restrict the use; that needs to be achieve through a condition.
- 11) I accept that the appellant did convert some lumber into boards prior to his purchase of the Pezzolato saw in 2000. However, the evidence is relatively clear that most wood that was at the site was bought in for use by the joinery business and any sales were simply selling on of that stock. The wood that was converted appears to be at a minor level on a large circular saw and would not constitute a separate processing of lumber prior to 2000. The evidence on storage of timber prior to 2000 is relatively clear in the yard area, where the outbuildings were used. However, in the 'blue' area of land the evidence is confused. The appellant, who would have the best knowledge of the land, clearly indicated only a relatively small amount of stored wood on the land up to about 2000, while other visitors, who purchased some wood at the time, had a clear recollection of seeing piles of wood on the land prior to 2000.
- 12) The aerial photographs provide little help in this respect because of their scale and the presence of tree canopies. The earlier black and white photographs

from the 1980s are more open and it is hard to identify any materials in these. Because of that confusion, and lack of any other confirming evidence, I attach little weight to any stored timber in the blue area before 2000, the quantities identified by the appellant being de minimis. In my view, on the evidence available, I consider that on the balance of probability there was not stored timber in any significant quantity on the 'blue' land before 2000 sufficient for it to have materially changed the use.

- 13) In 2000 there was a considerable change. The appellant purchased the Pezzolato saw and later a forklift truck to service it. The saw is a major piece of machinery for the conversion of lumber into usable timber following seasoning. The evidence was clear that the appellant then started to convert a considerable amount of lumber ready for seasoning and this would be logical, having just purchased the new machine. It was noted that he obtained some trees in anticipation of its arrival. The probability of this seems entirely likely as this is the main purpose of the machine. The wood then had to be stacked and seasoned. The appellant identified that the minimum seasoning time would be a year, and 4 years for up to 4 inch thick boards. He identified that some of the wood stacked on the land currently includes timber cut at that time.
- 14) I accept that there is little evidence for the significant sales of that timber in the early days, but by the nature of the process it would take time to be ready for sale and clearly the timber that was stacked and used would have been that sold in the later years, some still being there for sale now.
- 15) I have looked at the aerial photographs to see if they help with identifying stacked timber. In my view, they are of little help in some areas, particularly as the tree canopies would obscure the views of the stacks beneath them. In later photographs when there is no dispute that there were timber stacks, these were not all identifiable in the photographs in much of the area where they were known to be present. After some confusion about the correct date of the appellant's photographs taken in November 2003, photographs with the date of processing were provided. In my view, the processing date confirms the photographs were from, at the latest, November 2003. While this is a couple of months into the relevant 10 year period, the photographs clearly show major storage of cut wood stacked for seasoning. This is not over a minor area, but a substantial amount spread over a wide area. The stacks have the appearance of some age and grass has grown up around the stacks so these are not newly positioned. In my opinion, on the balance of probability, storage of wood on the land occurred well before the relevant 10 year period.
- 16) I accept that the storage and processing of wood will have had a negative effect on the Scheduled Ancient Monument and that the use is within the setting of various listed buildings as identified by the council. But that effect occurred in the early years as seen in the 2003/4 photographs. In my opinion, while the storage has grown from that time, the extent is not such that there has been a material change to the character of the use and impact that it has on the various assets. In relation to the significance and special architectural and historic interest of the heritage assets, this appeal relates to matters of law and whether the use has become lawfully established.
- 17) In my view, it is clearly demonstrated that the land has been used for wood storage, seasoning and cutting of lumber from early 2000. The council's case is that there was major change in the operation, probably being prompted by the

appellant's mother occupying the flat, when followed the move of the appellant's workshop to the new workshop and the repositioning of the Pezzolato saw from the yard area to the top of the 'blue' land in the mid 2000s. The council say that the Pezzolato saw move was to enable improved access for delivery with the introduction of hard surfacing on the blue land, wider gates for access and, later, another saw allowing easier squaring of the wood.

- 18) It is clear from the evidence that these matters all occurred, but for whatever reason they occurred, and the introduction of hard surfacing and sheds may have been unauthorised, the scale of the cutting and wood storage and seasoning had reached a major level by 2003 and the moves did not materially alter the character of the operation. Some surfacing and evidence of use of the top gate is provided by photographs from 2003/4 and the aerial photographs.
- 19) I have considered the accounting information provided. It is clear from this and evidence of other witnesses that the appellant is not a 'normal' business man. The impression I get is of someone pursuing a major interest in wood with money matters being of lesser importance. Much of the wood obtained appears to have been on the basis of covering the cost of felling and removing trees. There has been no major employment at the site, apart from the appellant. In a 'normal' business it might have been expected that the purchase of major pieces of equipment would result in substantially more use and employment to cover the cost. That did not occur. The only major period when someone else was employed was Mr Taylor, initially as an apprentice from about 1981, until 1993 when he had to leave because of the recession. This was before the 'step change' the council alleges in the 2000s.
- 20) While the accounts are in the appellant's own words unreliable for the purpose of this inquiry, they do indicate a trend and in my view, that does not suggest such a change that it can be concluded that there was a material change to the character of the use. Over the last few years, probably because of the recession, levels of income indicated by the accounts are back down to early 2000 levels. The concentration more on the lumber side, rather than joinery is not of such a significant extent that the overall character has changed. The business is still the appellant mixing a business of joinery, and conversion and supply of wood to others and for his own use. The council provides little evidence of external impacts of the use of the land, either before or after the material change alleged. The Rule 6 party indicates that there was one complaint about noise from a saw, but this is not sufficient to be suggestive of a change to the character of the use.
- 21) In my view, the timber that was sold from the site was cut, seasoned and stored at the site from early 2000. This was the time when the appellant's business changed significantly following purchase of the Pezzolato saw. The sales of that timber necessarily commenced much later than the time conversion first occurred, but even now the amount of sales indicated is not so significant to be a material change in the use and I note that sales of timber is not part of the allegation. The move of the saw to the upper part of the site did not represent a material change in the use of the land, but simply a move of the saw to a different location on the planning unit. The conversion of timber carried on the same. By 2003 there was substantial storage of seasoned and seasoning timber and the increase of storage that has subsequently occurred at the upper areas of the blue land is not such an increase as to be a material change in the character of the use. There is also photographic evidence that in

2004 timber was also stored at a farm away from the site and on land across the road from the appeal site for a short time.

22) There is no argument that the two buildings on the blue land housing the saws were in position more than 4 years before the enforcement notice was served and as I have found the use to be lawful, there is no justification for requiring their removal.

23) The appeal succeeds on ground (d) and the enforcement notice will be quashed.

### **Other Grounds**

24) The appellant indicates that the amount of wood stored on the land is not as extensive as suggested by the blue hatched area of the enforcement notice plan. While that may be the case, it was not unreasonable for the council to enforce against a larger area to ensure, if the enforcement notice were upheld, that the use alleged was not moved to another part of the land. The area identified was not unreasonable.

25) The council's case in relation to the summerhouse, workshop and the sheds on the blue land is that these were part and parcel of an unlawful use. Having found that the use at the site is not unlawful, there is no case to seek removal of these buildings, as it is common ground they have been in position for more than four years before the enforcement notice was issued.

26) Having reached the conclusion on ground (d) I do not need to consider the appeals under grounds (f) and (g).

*Graham Dudley*

**Inspector**

## **APPEARANCES**

### **FOR THE APPELLANT:**

Miss Stephanie Knowles	Of Counsel, instructed by Hewtison LLP
She called	
Mr M Cawthorne	Appellant
Mr J Taylor	
Ms I Barnes	
Mr G Mould	
Mr B Bradshaw	
Mr S Phillips	

### **FOR THE LOCAL PLANNING AUTHORITY:**

Miss Sarah Clover	Of Counsel, instructed by Ms Rosemary Lansdowne, Solicitor, East Northamptonshire Council
She called	
Mr D Ray	Development Control Officer, East Northamptonshire Council

### **RULE 6 PARTY**

Mr N Stephens-Dunn

### **DOCUMENTS**

Document	1	Council's appearances
	2	Appellant's outline opening statement
	3	Council's opening statement
	4	Folder of photographs from the Rule 6 Party
	5	Aerial photographs showing play areas etc
	6	Photographs of forklift moving logs
	7	Appellant's 2003 photographs
	8	Aerial photograph from 1989
	9	Photographs showing shelves stored in workshop area
	10	Extracts from accounts
	11	Inspector's summary of profit and loss from various years
	12	Appellant's photographs, with processing date (2003)
	13	Further account extracts
	14	Council's closing submissions
	15	Appellant's closing submissions
	16	Makanjuola v Secretary of State for Communities and Local Government and another