Christopher Osborne

From: Tom Elliott [Personal information redacted by the RHI Inquiry]
Sent: 16 October 2012 23:41
To: Christopher Osborne
Subject: Fw: Planning re willows [Scanned]
Attachments: Document (20).pdf

Chris

I enclose information that I received from John O'Doherty, senior planning officer, Fermanagh. Don't know if it is much assistance.

Regards

Tom

<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<
This message was sent by or on behalf of Tom Elliott MLA,
ULSTER UNIONIST PARTY

Fermanagh & South Tyrone
Contact;
Fermanagh office;
1 Regal Pass, Enniskillen, BT74 7NT
Tel: 028 6632 2028; Fax: 0286634 2846
Email: fstuup@btconnect.com
South Tyrone office;
20 Brooke Street, Dungannon, BT71 7AN
Tel/Fax: 028 8772 3265
Email: southtyrone1@btconnect.com
www.tomelliottmla.net

From: O'Doherty, John
Sent: Friday, October 12, 2012 4:58 PM
To: Tom Elliott

Tom

See attached as discussed earlier and of particular interest para 19.213.

Regards

John

Print

19.2 Rural industry COMPASS

Included in this section are industrial activities in countryside and village situations. Proposals range from craft workshops to a variety of manufacturing developments, including small-scale light industrial and high tech uses, in new and existing buildings. Such uses form a distinct group in development control terms, because of the special considerations which they raise, and the high policy profile given to rural industry in successive ministerial pronouncements in recent years. Rural vehicle related uses are covered in 20.1. Large scale light industrial and high tech developments are considered at 19, rural offices developments at 14.2 and industry at farms are included in 22.1. Mineral processing uses, such as may be found at working quarries, are included in 25.1.

19.21 Legal background

19.211 Use Class status

Nearly all of the uses considered in this section will fall with Use Class B1(c) as light industry or Use Class B2 as general industry, and the conventional problem with distinguishing between the two classes, as described at 4.334, may come into play. A good rural example of such a debate is Stratford-on-Avon 08/03/1999 DCS No 040-502-023 where an enforcement notice alleged a change of use from retail to the manufacture of timber sheds from a listed barn. The development required the use of a power saw and nail gun. These were harmful to amenity and therefore the use was B2 and not B1 as claimed by an appellant.

19.2112 The "Rural Business" Use Class idea

In 1996 the Government floated the idea that the Use Classes Order be revised to provide for a "Rural Business" Class. It was suggested that two new Classes be introduced based on existing B1 and B2 classifications, qualification for which would be that the amenity of a rural area is not harmed by reason of volume or character of traffic. The idea was that permission for suitable industrial uses in rural areas could be granted to developments falling within the new classes, and further permission would be needed when a development took itself outside of them i.e. into the standard B1 or B2 Classes. The new Classes would only operate on agricultural or forestry land, or on any land which was within 100 metres of land in agricultural or forestry use. However, due to adverse reaction upon consultation the idea was dropped.

19.212 Ancillary to agriculture?

Activities of an industrial nature are commonly carried on at agricultural holdings, and it is a common source of contention as to whether such uses are ancillary to a primary agricultural activity, or are either a) a component of a mixed use, or b) a separate primary use in their own right. In the latter cases it would almost certainly be judged that a material change of use had occurred.

Following the court case *Millington v SoS & Another 25/6/99* it is now established, contrary to the pre-existing view, that the small scale making of products derived from material produced at a particular farm, may be viewed as ancillary. In the *Millington* case a farmer planted vines on approximately a third of his farm. Wine was produced and members of the public could visit the site and buy the wine. A council enforced against the alleged change of use stating that the sale of wine and light refreshments and visits by fee-paying members of the public was a material change of use. At appeal an inspector concluded that the purposes were not related to agriculture, but rather involved an industrial process. The High Court upheld the view that wine making was development, but gave leave to appeal. The Court of Appeal stated that the correct approach was to consider the activities of the appellant and whether they were incidental to the growing of grapes, ancillary to normal farming activities and reasonably necessary to make the product marketable. It was held that the production of wine (or cider) on the scale of the appellant's business was found to be perfectly normal and the matter was remitted for consideration in the light of this judgment.

It is very unlikely that an animal feed business could be considered ancillary to agriculture. This is because raw materials are likely to have to be brought in from other farms and also an industrial process is almost certain to be involved. However, in policy terms there may be room for argument that the use can be considered allied to agriculture. In Chester 03/04/1990 DCS No 035-815-642 an inspector stated that an animal feed mill was a general industrial development, although the links with agriculture were obvious. He rejected extensive arguments by the appellants that the phrase "for the purposes of agriculture", contained in local green belt policy, embraced the use. He concluded that for the purpose of green belt policy the purpose of a proposed building and associated development would not be agriculture. In another case enforcement action was taken against the use of a redundant agricultural building for animal feed production. An inspector considered that the use would normally be considered an industrial one which would be appropriate in a green belt area but in this case he gave weight to the fact that the principle raw material, straw, came mainly from local farms and one third of the production was consumed on local farms. He felt that because of the interdependence of the use with agriculture the use could be considered appropriate to a green belt area, see Three Rivers 21/02/1992 DCS No 035-509-418.

An extension to a cheese store at a farm was allowed even though the inspector held that there was no overriding need

for processing milk on the appeal site. Whilst cheese might fall within the definition of agricultural products in some legislation, it did not fall within the definition of agriculture contained in section 336(1) of the 1990 Act, he concluded. Since imported milk was used in its production, neither was it ancillary to the agricultural operation, the inspector held. However food processing had been established on the site for some time such that despite the design and scale of the proposed building, it would not appear unduly large or out of keeping. The nature of the operation demanded a specialist storage building and it would reduce commercial vehicle movements thereby adding to sustainability objectives, see Mid Sussex 18/01/2001 DCS No 036-417-468.

A further case which highlighted the definition of agriculture was in Suffolk. An enforcement notice required the demolition of a building on 1 ha of land in the countryside. The building had been partially erected and had a concrete floor with a pitched roof and the upper walls constructed of corrugated sheeting. The council had refused permission for its retention along with its use as a joiners shop. An inspector held that a joinery workshop was a general industrial use and the development plan policies sought to concentrate such uses within existing towns and not in the countryside. It would adversely impact on the character of the area which would attract commercial traffic into the countryside. In relation to the possible use of the building as a worm farm, the inspector noted that MAFF accepted that it was an agricultural use. Although section 336(1) of the Town and Country Planning Act 1990 defined agriculture as including the breeding and keeping of livestock, dictionary meanings of the term 'livestock' did not encompass the use of a building as a worm farm. Worms were not creatures kept for the production of food and consequently the use would be of a commercial rather than agricultural in character. Overall the development plan policies which supported the re-use of rural buildings were not applicable because the building was only partly complete and was unauthorised. Accordingly the inspector agreed that the building should be removed from the site and upheld the notice, see Mid Suffolk 28/06/2001 DCS No 036-362-037.

However, in cases where an "industrial" activity at a farm involves the importation of material from elsewhere, the provision of services for others (be they other farmers or not) or where there is no linkage to the land concerned, it will almost certainly be considered that a separate industrial use is being carried on requiring planning permission. A specialised industrial process which served an agricultural end purpose was held not to be an agriculture use in the following case. An inspector upheld an enforcement notice requiring the cessation of an unauthorised use at a farm in Suffolk after concluding that it did not relate to agriculture. The appellants argued that the farm building was used for agriculture. They asserted that the construction of poultry sheds which were ultimately used in the rearing and keeping of chickens and turkeys was genuinely related to the agricultural use of the farm. The inspector rejected this claim. He observed that the poultry sheds were substantial constructions involving fabrications of steel mesh and sheeting supported on undercarriages of steel beams. The appellants used metal cutting, welding and grinding tools to construct the units and the delivery of materials occurred three to four times a week, he observed. In his view, the fact that the units eventually served an agricultural purpose did not mean that they formed part of the lawful use of the site as a farm. The noise and disturbance caused during their manufacture harmed the amenity of local residents, see Breckland 11/02/2008 DCS No 100-053-816.

Reference may also be made to 20.113 related to the servicing of agricultural vehicles, and 20.4111 pertaining to agricultural haulage and distribution activities.

19.213 Ancillary to forestry?

It is sometimes argued that activities involving the processing of timber on a woodland estate are ancillary to forestry. In Wyre Forest 20/11/1991 DCS No 055-077-616 even the sawing of logs was considered to fall outside what could be regarded as ancillary. In Colchester 28/10/1991 DCS No 044-565-030 the fact that timber had been removed from the estate where it originated and then been stored and sawn from a different planning unit was considered to be the crux of the argument that such a use was not ancillary.

A similar situation occurred in the York Green Belt where the erection of a new building measuring approximately 167m2 in a forest in the Yorkshire green belt was held to be inappropriate and unjustified. The site benefited from a planning permission which authorised the importation and processing of timber and the appellant stated that the building would mainly house operational equipment (including a large saw) and provide space for the storage of kindling. He asserted that this would be associated with the timber processing operation which in his view was similar to a sawmill in a forest. The inspector noted that the majority of the timber processed on site was generated by the appellant's tree surgery business. In his opinion, it was not a forestry building but rather would be akin to a contractor's workshop which was by definition harmful to the green belt. It would undermine the openness of the area and very special circumstances had not been demonstrated to justify its erection, he decided, see York 05/09/2008 DCS No 100-057-737.

In Ashford 06/07/00 DCS No 037-707-727 an enforcement notice alleged a material change of use involving timber processing. Part of the site had a lawful use as a forestry contractors yard with the remainder used as coppice woodland. The contractor's yard was *sui generis* whereas timber processing was a B2 use. The scale of timber processing exceeded that which would be ancillary to a contractor's yard and a mixed use had been created in 1998 and thus was not immune from action. Under ground (a) the use harmed an AONB and any forestry benefits were not overriding.

Another case of interest is Wealden 12/04/1994 DCS No 051-666-532 where enforcement action was taken against a use as a timber yard and sawmill. It was argued that the use was Part 7 permitted development. An inspector felt that most of the activities at the site could be considered ancillary to forestry, apart from the manufacture of trellis and fence posts. However, the plea failed as the site itself did not consist of forestry land. Timber was brought in from woods within a radius of ten miles.

In contrast a site in Sussex had a wooded area, however as the size of the wooded land was very small this was the

determining factor in this case. Enforcement action against a timber building in the High Weald area of outstanding natural beauty was upheld because it was not permitted development and was harmful to the landscape of the AONB. The site extended to less than a tenth of a hectare of wooded land and the building was used for the appellant's business of manufacture of timber products from locally sourced wood. His case was that the building was permitted by Class A of Part 7 to the GPDO 1995, being reasonably necessary for the purposes of forestry. An inspector, however, found it inconceivable that the permissions granted by Part 7 of the GPDO were intended to apply to any piece of land with trees on it, no matter how small. He had no doubt that the appeal site could not be properly described as forest. Hence, it could not be used for the purposes of forestry. In considering the deemed application, the inspector decided that the building did not preserve or enhance the natural beauty and character of the landscape, see Wealden 22/09/2004 DCS No 031-050-873.

Reference should also be made to the discussion at 4.3429 relating to permitted development rights for forestry uses.

19.214 Planning unit definition

As with other uses which take place at farms, definition of the correct planning unit may be important both to the success of enforcement action and the determination of whether a use is established. It is normal for the whole farm to be cited as the planning unit in cases where a farmer has diversified his activities.

19.23 Control practice

Some of the enthusiasm for new countryside industry is born of a romantic vision of a craft-based rural idyll which does not always square up with uses, such as scrap reclamation and repair workshops, which are a common feature of the applications list of many rural planning authorities. There are, however, many examples of small scale rural industries, some of them traditional, others high tech, which have set up in new and existing buildings and fit quite happily into the rural scene.

The principal planning control problem which this topic raises is one of reconciliation of an ideal with reality. Ministerial policy as cited below broadly encourages rural industry, but some form of conflict with amenity and traffic interests is almost inevitable, and fears of changes taking place to the nature and style of enterprises once permitted weigh heavily with local authorities. In these circumstances decision making can be difficult and the use of conditions is a very much heightened consideration.

19.231 National guidance

NPPF states that planning should support economic growth in rural areas in order to create jobs and prosperity. It requires lpas to take a positive approach to sustainable new development. National policy supports the expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings. NPPF promotes the development and diversification of agricultural and other land based rural businesses.

Within Green Belts, NPPF does not include any form of business or commercial development as "appropriate" development in the Green Belt. However, the re-use of buildings that are of "permanent and substantial construction" are not inappropriate in a Green Belt provided they preserve its openness and do not conflict with the purposes of including land in Green Belt.

The booklet *Planning permission and the Farmer*, dated January 1989 and issued jointly by M.A.F.F., D.O.E. and the Welsh Office, contains general practice and legal advice relating to many forms of farm diversification and includes illustrated examples of good and bad practice relating to farm shops and craft workshops.