



Appeal Decision

Site visit made on 11 January 2011

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 10 March 2011

Appeal Ref: APP/D3505/X/10/2134344

Adams Well, Colchester Road, Assington, Sudbury CO10 5LX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is by Miss Laura Roberts against the decision of Babergh District Council.
 - The application ref. B/10/00502/CPU dated 15 April 2010, was refused by notice dated 8 July 2010.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the proposed use of a farm building as a shop.
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Decision

1. I dismiss the appeal.

Reasons

2. The appellant proposes to use a vacant agricultural storage building for retail sales of farm produce. The building stands towards the back of a site with a frontage onto Colchester Road of about 30 metres and is about 55 metres deep. It lies some 1½ kilometres to the south-west of the settlement of Assington. Much of the site is hardstanding. The building itself is of utilitarian concrete block construction with a corrugated sheet roof. The appellant's company farms about 280 hectares in the immediate vicinity of the appeal site, and have a total holding of about 640 hectares.
3. It is intended to sell produce mainly derived from the appellant's holding, including eggs, beef, potatoes, pumpkins, sunflowers and sunflower seeds, game and venison. This may be extended to include Brussels sprouts, rape seed oil and dressings, and flour milled from wheat produced on the farm. Other produce would include up to 20% from other local farms.
4. Grid references on the Rural Land Register (RLR) maps submitted show that substantial areas of the appellant's holding lie some 12 kilometres to the east and 4 kilometres south of the appeal site – probably in the neighbourhood of East Bergholt or Stratford St Mary – with other areas some 10 kilometres and 19 kilometres further to the east again. Although the holding may be farmed by a single company, it must be regarded as several separate planning units.
5. It is highly likely that the appeal site and the building have only ever been used for agricultural purposes, as have the 280 hectares of land farmed by the appellant's company in the immediate vicinity. Furthermore, it is the case that

the sale of indigenously grown produce – 'farm gate sales' - may be incidental to an agricultural use.

6. On the appellant's own evidence, about 20% of the produce on sale would be from other farms in the locality. Furthermore, the appellant's land around the appeal site constitutes somewhat less than half of the entire holding, with substantial parts being dispersed, and a considerable distance away. Almost inevitably, a significant amount of produce would be brought in from these other parts of the holding, which cannot reasonably be described as indigenous to the planning unit under consideration. To my mind this produce should be taken into account along with goods imported from other farms in the locality, and the totality of imported goods is likely to be considerably greater than 20%.
7. Paragraph C.6 of Annex C to the government publication '*A Farmer's Guide to the Planning System*' of 2002 advises that it is normally assumed that the use of a farm shop only for the sale of unprocessed goods produced on that farm is a use which is ancillary to the use as a farm, and therefore does not require specific planning permission. However, use as a farm shop selling a significant amount of produce from elsewhere is a separate use and therefore requires planning permission.
8. As a matter of fact and degree, the amount of produce imported from elsewhere would be such a considerable proportion of the whole that the proposed shop could not be regarded as incidental to the agricultural use of the appellant's farm that is in the vicinity of the appeal site. I consider the shop would go beyond what might be regarded as 'farm gate sales', and that there would be a material change to the use of the site.
9. I appreciate that the courts have made a number of judgements on the level of imported goods for retail sale that might be allowable without initiating a material change of use from agriculture. However, in the case of *The London Borough of Bromley v George Hoeltzsch & Son Ltd and the Secretary of State for the Environment* the judge said that the Secretary of State was entitled to make the decision that the sale of about 20% of imported produce was above the *de minimis* level. In this case it is likely that the proportion would be well above 20% and in my opinion could not be considered *de minimis*.
10. Other examples have been put forward of farm shops in the area. However, I understand the majority of these have been granted planning permission for a material change of use, and that the lawfulness of one other is being investigated. I do not consider these examples provide a precedent for granting a LDC in this instance.
11. In the light of this I consider the Council's refusal was well-founded. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed.

Stephen Brown

INSPECTOR