



PLANNING COMMITTEE

Wednesday 30 July 2014 at 6.00 pm

Council Chamber, Ryedale House, Malton

Agenda

25 Late Observations

(Pages 2 - 55)

Agenda Item 25

RYEDALE
DISTRICT
COUNCIL



Please Contact: Mrs Karen Hood

Extension 386

Email: karen.hood@ryedale.gov.uk

All Members of the Planning Committee
Council Solicitor
Head of Planning & Housing
Development Manager
Managing Development Team Leader

Ref: Agendas/Planning/2014/2015

25 July 2014

Dear Councillor

Meeting of the Planning Committee - 30 July 2014

With reference to the above meeting I enclose for your attention the late observations received since despatch of the agenda.

Yours sincerely



Mrs Karen Hood
Managing Development Team Leader

Enc

Application No: 14/00383/MOUT
Applicant: Mr David Tatham
Location: Land To North Of Sutton Grange Langton Road Norton Malton North Yorkshire
Proposal: Erection of 15no. dwellings (site area 0.7ha)

UPDATE REPORT

Following the publication of the Committee Agenda, comments were received from the applicants agent on the 23rd July 2014, citing the following:-

Shaun,

I understand that you will not be preparing a revised committee report as the item was deferred for a site visit at the last committee. However, since the site visit has occurred, I have re-read the committee report. As you will note for yourself, it has clearly been overtaken by events that need to be reported to Members, viz:

- 1. The mature hedge with hedgerow trees between the paddock and barn site, mentioned in the conservation officer's response, is outside the application site and will not be removed nor affected by the planning application proposals. Since the wider setting of the listed barn is cited as a reason for refusal, this fact is crucial since only glimpsed views of the barn are available from the paddock and they will be obliterated over time by the growth of the trees and hedge.*
- 2. The immediate setting of the barn is also not as described in the conservation officer's report. Now that the conversion and construction process is underway the 'secluded and private feel' has been removed. With 8 houses on the site soon to be occupied, this is not the character from now on.*
- 3. The private drive is currently an informal farm track. With potentially 16 cars using the drive, it will have to be formally surfaced and edged. The developers have retained the rights to land to each side of the drive so that widening may also happen. Thus the 'approach to the barn down a narrow drive framed by belts of woodland on either side' ignores the open nature of the northern boundary beyond which bungalows have been approved. It also assumes that the two planning permissions granted by the Council will not affect this character. The developer for the barn site has also purchased the bungalow site and will progress to that on completion of the barn.*

You will know that the councillors have to be advised accurately, if any decision that they take is to be sound. The above 3 inaccuracies in the committee report affect the conclusion that the report comes to, in our opinion.

*With kind regards
Janet*

Clarification has been sought from the Council's Building Conservation Officer with regard to the above comments, her response is as follows:-

Shaun,

In response to Janet O'Neil's e-mail sent earlier today;

- 1) I understand that the hedge on the western edge of the site (boundary with the listed building) is outside the red line of this application but is part within the blue line (i.e. part within the applicant's ownership). It is shown on the Malcolm Tempest Ltd drawing 'Proposed Model Farm Scheme' as being removed (this goes back to my earlier concern about it being an outline application). Notwithstanding that, the information received today states that the hedge will not be affected by this application. I acknowledge that this is a mature hedge and that views of the barn are limited however this is subject to seasonal variation. At present, the view is probably the most obscured given the season. However, there are still presently views of the roof of the barn over the hedge from the paddock. At other times of year the upper storeys and roof of the barn is visible. I have walked along Langton Road at other times of year when both the roadside hedge and paddock/barn boundary hedge have not been so verdant. This has allowed readily accessible views from a public viewpoint across the paddock over to the upper storeys and roof of the listed barn showing the grassed paddock in the foreground giving it its rural setting.*
- 2) The existing permissions will affect the immediate setting of the barn however this was given due consideration at the time and was considered to be a sensitive and thoughtful scheme with the benefit of the repair and re-use of the barn. The 8 dwellings includes 5 in the barn, 2 sensitively sited to the rear well below the level of the existing barn and 1 conversion of existing buildings. It also included the removal of large modern agricultural building which was seen as an enhancement to the setting of the listed building. I acknowledge that the secluded and private feel is likely to alter with regard to the immediate setting of the listed building however I strongly believe that the approved scheme will not affect the wider landscape setting of the barn.*
- 3) The track is currently as described in my memo but I acknowledge that it is likely to alter as a result of the existing permissions (indeed your e-mail of today confirms this). What is important however is that the belt of trees labelled 'copse' on the Malcolm Tempest Site Layout drawings is shown as unaltered. This is an important aspect of the wider setting of the listed barn as it creates a separation between the more urban Norton to the north and the rural Norton to the south.*

Regards Emma

In regard to the mature hedge with hedgerow trees, for the avoidance of doubt, the extent of the application site (red line) does not include the planting. The extent of the applicants ownership, the blue line, does extend to and include part shared ownership of the hedge row with the owner of Sutton Grange Barn. The setting of the Barn is as described by the Conservation Officer and it is worth noting that the views will not be 'obliterated' over time as raised by the applicant's agent. The Building Conservation Officer has corrected identified that the barns indivisibility alters due to the seasonal variation. The impact on the setting on the barn is still considered to be unacceptable when weighed in the planning balance, therefore the recommendation of refusal remains.

With regard to the immediate setting of the barn, this issue was raised and debated at the previous committee. The development/alterations to the barn to create 5 dwellings and the erection of two new build dwellings and a further conversion to create a single dwelling was weighed against the removal of unsympathetic extensions and the removal of a large modern agricultural buildings. The large modern agricultural building has since been demolished. It was considered that the level of sympathetic alterations/conversions and the creation of 2 subservient dwellings, which will not detrimentally impact on the character of the listed barn, was an enhancement. Therefore the suggestion that 'character' has irreversibly altered/changed is not considered to be correct.

Finally, with regard to the access to the barn, the existing arrangement is to be widened as part of the approved application. The access is to be widened at the point that the existing arrangement joins the highway to a width of 4.5 metres which will extend for that width for a distance of 10 metres into the site. The majority of the track/road remains at a width of 4.1m, with a further widening close to the barn. It is considered therefore that the minimal alteration and the potential of an alternative surface treatment will not alter the character of the track of the surrounding area.

It is important and worth noting that the belt of trees labelled 'copse' on the applicants layout drawings remains unaltered. This is expressed by the Building Conservation Officer as "*an important aspect of the wider setting of the listed barn as it creates a separation between the more urban Norton to the north and the rural Norton to the south*".



4237_03_MM

24th July 2014

For the attention of Karen Hood
Managing Development Team Leader

Dear Ms Hood

Erection of 15 no. dwellings (site area 0.7 ha.)
Land to north of Sutton Grange, Langton Road, Malton North Yorkshire.
Application ref. 14/00383/MOUT.

We write on behalf of of Mr Paul Sedman, owner of Sutton Grange house to clarify the detail of the permissions which have previously been granted in respect of the listed former agricultural buildings to the north east of his property. There seemed to be some confusion about this when it was discussed by committee members at the last planning meeting. Important points to note are:

- ◆ The buildings are a group described in an historic appraisal done at the time of the original application be a fine example of *'late 18th Century architectural style' ...set 'in the context of late 18th Century improvement undertaken in handsome gentrified style set in a designed parkland landscape'.*
- ◆ The farmstead was also thought to have had earlier archaeological connections with a mill in the area of the nearby watercourse. At the time the Council's Conservation offer also described the principal barn building to be of a type that is *'highly unusual in the Ryedale area.'*
- ◆ The Councils Conservation officer had strong concerns about development and much care was taken to engineer a suitable solution to the problem of conserving the special characteristics of the group of buildings and to give them a sustainable economic future. Their value in the landscape was considered to be important.
- ◆ Attempts to secure change of use were made on a number of occasions since 2000, resulting in two refusals and several modified applications. Eventually consent was granted in early 2008 for change of use of the buildings to form a number of small dwellings together with the erection of 2 no. new three bedroom dwellings . This was finally agreed after an independent historic appraisal was carried out on the buildings.
- ◆ The permission No. 07/0116/FUL, with supporting listed building consent no 07/01117/LBC, was granted as an 'enabling' development which included the

erection of two new dwellings to support the conversion proposal. The 2 new dwellings were permitted for two special reasons: 1. They were sited in such a way to enforce removal of a large inappropriate modern farm building and 2. it was recognised that the two new dwellings would help to support the unusually high cost of converting the barns.

- ◆ Enabling development of this type is occasionally permitted under special circumstances against current policies where it brings benefits which which outweigh potential harm.
- ◆ As part of the supporting application documentation detailed costings for the conversion of the barn were supplied and these were assessed for their soundness by the Council's Estates Department

While discussing the current application at last month's planning meeting committee members also referred to another development of 8 bungalows near to the site. The is not connected in any way to the Sutton Grange farm buildings, is visually and geographically quite separate from them and has no connection with the current application site.

Mr Sedman welcomes that fact that Committee members visited the site and hope that this enabled those who attended to understand the physical layout better. The Sutton Grange Farm buildings are important buildings historically for Norton, and contribute to its distinctiveness and sense of place in a town which already has more than its fare share of undistinguished modern housing development. The listed building group and the more rural character of this part of Norton must be protected.

Please ensure that this letter is put before committee members when the application for 15 new dwellings is further discussed at their next meeting.

Yours sincerely

Margaret Mackinder

Margaret Mackinder AA Dipl . CA . RIBA

Conservation Architect

For and on behalf of Stone & Bean Associates. Ltd

To:

Development Management
Ryedale District Council
Ryedale House
MALTON
YO17 7HH

SHE
24/7 M&W
object

RYEDALE DM

24 JUL 2014
**DEVELOPMENT
MANAGEMENT**

22nd July 2014

Dear Mr Housden and Councillors,

Re: Application 14/00383MOUT

I could not attend the planning meeting for the above application as I was on holiday, although I did deliver a petition of over 100 signatures against the application.

I was very pleased to see on the late papers recommendation for **REFUSAL**, however I was amazed to come home and find out it had not been refused and in fact councillors seemed to be going against officers recommendations.

Firstly, the history of the barn must be told. It was in near ruin and about 6/7 years ago planning permission was given with over 40 conditions on to ensure the barn would be saved. This was a very significant and special permission; the barn was saved and NOT compromised.

This new application will totally ruin the setting and the 1990 Conservation Act, and not protect the barn.

Please could officers and councillors uphold this act and REFUSE planning permission.

Yours sincerely,

Alison Barker (Mrs)
147 Lanaton Road
Norton

RYEDALE DM

24 JUL 2014

DEVELOPMENT
MANAGEMENT

SHK
24/7 Mail
K.B. & J. Fisher
145B Langton Road
Norton, Melton
YO17 9AF

Att' Mr Housden & Chairperson Planning Committee.

Ref' Application 14/00383/mout

Dear Sirs,

I attended the last planning meeting and was very very disturbed to hear councillors have no regard for officers recommendations to refuse this development,(to this end I made my feelings known in both the Gazette and Mercury).

This is the only Grade 2 listed building in Norton and has been kept alive by RDC by giving planning permission to the barn , with over 40 conditions on, to ensure the preservation of the barn. Councillors were totally unaware of all the detailed history and effort that previous councillors and officers went too to preserve this building.

Some councillors said the building had already been compromised, how blatantly untrue this is and shows severe lack of understanding by councillors.

I applaud RDC Officers for recommending refusal under the Listed building conservation act 1990. Please could you ensure councillors who make planning decisions, understand this preservation act.

Kind regards,.

Ken Fisher.

PS I would appreciate this letter being shown to councillors.

WYEDALE DM

24 JUL 2014

DEVELOPMENT
MANAGEMENT

K.B. & J. Fisher
145B Langton Road
Norton, Malton
YO17 9AF

SHR
24/7 MAR

Att' Mr Housden & Chairperson of Planning.

Ref' Application 14/00383/mout.

Dear Sirs,

I attended a recent planning meeting and was appalled by the Councillors total disregard for the thorough Officers report and total disregard for their recommendations.

Norton only has this one listed Barn on the edge of our town, it may be rural to some Councillors, however under the 1990 conservation Green act, Authorities should give special regard to listed buildings, to preserve heritage assets and their surroundings, Councillors must give due regard to this.

Why are Councillors going against Officers recommendations?

Please stress the importance of this green area in Norton and uphold your recommendations.

Regards,

Jean Fisher.

PS, please show this to the Councillors.

RYEDALE DM

SRK

24/7 MEO

24 JUL 2014

DEVELOPMENT
MANAGEMENT

22nd July 2014

Dear Head of Planning,

RE: APPLICATION 14/00383MOUT

I am absolutely amazed that after very good officer's appraisals to refuse this application, it was not at the last meeting.

Ryedale District Council officers and consultation officers put to councillors a strong, sound, robust reason for refusal and followed the 1990 Conservation Act.

Councillors seem to have no regards for this at all? Why is this?

I feel that the officers report would stand up to appeal, however if this is passed we only have one other way to appeal.

I strongly urge that councillors should listen to their officers as this is a very special site with lots of planning history to ensure the building was saved and not ruined by a modern housing estate.

I do hope that councillors will give thorough consideration and refuse this planning permission.

Yours sincerely,

David Barker

SHE 24/7MSL

RYEDALE DM

24 JUL 2014
DEVELOPMENT
MANAGEMENT

151. LANGTON ROAD.
NORTON.
MARTON.
N. YORKSHIRE.

16th July 2014

Dear Head of Planning,

Re Application 14/00383 MOUT

I would like to object to the above application and fully support Ryedale District Council officer's recommendations for REFUSAL.

Due to the significance of the listed Grade II building and surrounding area (1990 Conservation Act).

I feel that this application will severely harm the surroundings and setting of the Grade II listed building.

I do hope councillors will follow officer's recommendations and REFUSAL is granted.

Yours faithfully,

(MRS A.E HENDERSON)

SHE
24/7/14

RYEDALE DM

24 JUL 2014

DEVELOPMENT
MANAGEMENT

Langton Road
Norton
Milton

July 2014

Dear Sir and Councillors,

Re: 14/00383/MOUT

I attended the recent planning meeting and quite frankly I was very unhappy listening to the councillors discussions that seemed to have no regard for the listed building.

I felt that the officers gave an excellent reason as to why they recommend refusal and also this was backed up by the Conservation Officer's report.

I know that officers make recommendations on sound planning grounds, which must hold up to the challenge. Why are councillors questioning your recommendations?

Why should an application be passed due to councillors not trusting their officers?

Please ensure that councillors understand how important this area is in Norton.

All 100 plus residents would be grateful if this application is refused.

Yours faithfully,

(PETE. M)

SHR 24/7/2014

RYEDALE DM 149, Langton Road

24 JUL 2014

DEVELOPMENT
MANAGEMENT

NORTON

MALTON

YO17 9RF

Dear Mr Housden. The 14/00383/MOUT

I wrote to R.D.C re the above application recently and was delighted to see your officers had recommended REFUSAL

I attended the planning meeting and was very very worried that councillors seemed to disregard your recommendation. They had no regard for the listed building and surrounding green and wanted to go against officers recommendation. Can you explain why councillors want to go against officers advice?

I understand that your recommendation is put to councillors after a lot of consideration and is robust enough to win at appeal if challenged. Your conservation officers report was excellent.

"Councillors" as I understand must give due regard to local listed buildings and settings. This is a very special part of Norton and due care must be given to the visual importance of the entrance to Norton and impact on the Grade 2 listed building. I do hope councillors will reflect and take officers recommendations for refusal seriously

Yours Sincerely,

(MRS J. POWER)

Please could this letter be shown to councillors.

SHE 24/7mco

145A Langton Road,
NORTON,
Maltón

21st July 2014

RYEDALE DM

24 JUL 2014

DEVELOPMENT
MANAGEMENT

July 2014

Dear Mr. Housden,

RE: 14/ 00383/MOUT

Unfortunately I could not attend the planning meeting due to ill health, also I was pleased to see your officers had recommended refusal.

I am amazed that now there is a site meeting and also councillors are not giving due care and attention to the listed building importance.

This is a very special area in Norton with unusual planning history. Please protect the barn and its surrounding area under the 1990 Conservation Act.

Please could you reiterate your sensible recommendation for refusal at the next planning committee meeting?

Yours faithfully

Edith Shaw (Mrs)

Could councillors please see my letter.

RYEDALE DM

24 JUL 2014
DEVELOPMENT
MANAGEMENT

SHR

24.7.14

TSC

Object -
recommend
refusal

155 Langton Road
Norton on Derwent
Malton
North Yorkshire
YO17 9AF

23rd July 2014

Ryedale District Council
Ryedale House
Malton
North Yorkshire YO17 7HH

For the attention of Mr. Houseden & Councillors

Dear Sirs

Re: Application No. 14/00383/MOUT

I wish to place on record I fully support your recommendation that the above application be **REFUSED.**

Under the 1990 Conservation Act, authorities have a duty to regard listed buildings and their settings and I feel that all Councillors really need to take this Act seriously. Norton only has one listed building which is all the more reason why the area needs protecting.

Passing an application for a housing estate on this field is not giving the listed building the protection it requires.

All residents in Norton hope that Councillors will follow officer's recommendation – give due consideration to the listed barn and surrounding area and **refuse this application.**

Yours faithfully

(Mrs) Christine Davenport

RYEDALE DM

SH2
26/7/2014

24 JUL 2014

REF 14/00383/MOUT DEVELOPMENT

We the undersigned agree with planning officers recommendations that this application should be **REFUSED** due to the adverse impact the proposed development will have on the setting of a Grade II listed building, which the council must have special regard to in determination of the planning application.

Name	Address
	149, Langton Road, Norton
	147 L/Road Norton
	45 B LANGTON RD Norton
	" " "
	78 (Pitt) Road Norton
	5 Westdon Court Norton
	145H Langton Road Norton
	11 Commercial St, Norton.
	29 Langley Drive
	" " "
	" " "
	" " "
	57 Langley Drive.
	57 Langley Drive.
	167 Langton Rd, Norton
	15 L. LANGTON ROAD. NORTON.
	159 LANGTON ROAD NORTON
	25 Glenmore Drive Norton
	76 Commercial St Norton
	157 LANGTON ROAD.

REF 14/00383/MOUT

We the undersigned agree with planning officers recommendations that this application should be **REFUSED** due to the adverse impact the proposed development will have on the setting of a Grade II listed building, which the council must have special regard to in determination of the planning application.

Name	Address
	157 LANGTON ROAD
	6 Langley Drive
	6 Langley Drive
	23 Maple Avenue.
	19 LANGLEY Drive
	19 Langley Drive
	8 THE CHASE
	8 THE CHASE
	12 LANGLEY DRIVE
	14 LANGLEY DRIVE
	18 Langley Drive
	20 Langley Drive
	22 LANGLEY DRIVE
	24 LANGLEY DRIVE
	"
	24 Langley " Drive
	26 Langley Drive
	"
	30 LANGLEY DRIVE
	32 LANGLEY DRIVE

Mel Warters

Subject: FW: Planning application REF: 14/00511/MFUL Linton Mill

From: elaine.tarver@btinternet.com [mailto:elaine.tarver@btinternet.com]

Sent: 25 July 2014 06:51

To: Shaun Robson

Subject: Planning application REF: 14/00511/MFUL Linton Mill

Shaun

Planning application REF: 14/00511/MFUL Linton Mill

I live adjacent to Linton Mill in the Mill House, the applicant has contacted me to explain the application.

I am writing to support the application to convert the buildings from commercial, heavy haulage and distribution to agricultural use.

I am aware that this will include the storage of agricultural produce and the housing of livestock.

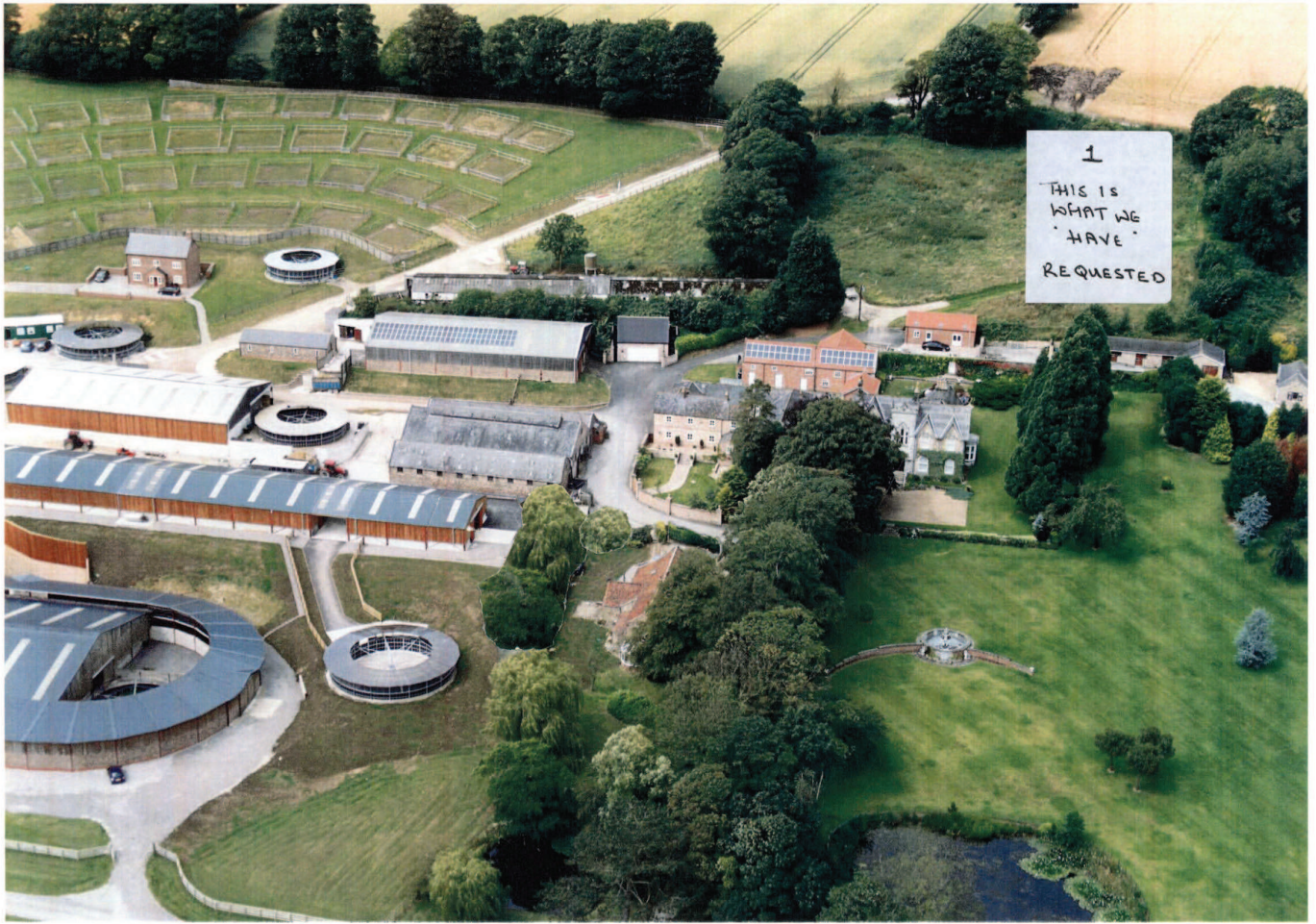
I also do not believe there is any need for a condition restricting the hours of operation for the proposed new agricultural use.

Elaine

Elaine Tarver
The Mill House
Linton Mill
Wintringham
Malton
YO17 8HP
01944 758057
0771 275 1336

Image submitted by
Mr I Brisby
Musley Bank House

23rd July 2014



1
THIS IS
WHAT WE
'HAVE'
REQUESTED

From: Virginia Drummond
Subject: R.F.Racing Planning Application
Date: 24 July 2014 11:53:25 GMT+01:00
To: Alan.hunter@ryedale.gov.uk



Dear Mr Hunter,

Meeting at Ryedale District Council Planning Department.

Present:

Ian Brisby, Musley Bank House, Musley Bank, Malton.
Joyce Brisby, Musley Bank House, Malton.
John Drummond, Grooms Cottage, Musley Bank, Malton.
Sean Robson, Development Management Officer.
Alan Hunter, Development Management Officer.
Mathew Mortonson, Development Management Officer.

RYEDALE DM

14 JUL 2014
DEVELOPMENT
MANAGEMENT

The purpose of the meeting was to discuss the various aspects of Application No 14/00574/MFUL
br R.F.Racing (Mr Richard Fahey).

Points discussed:

- 1. The removal of mature Weeping Willows to the East of the site.**
These trees were clearly shown on the 2008 and 2010 plans and were well back from the proposed building. In the Design and Access statement by R.F. Racing they stated that they would not be removed.
- 2. New stable building moved forward by over 8 metres.**
The design was changed. The foundation level changed. The building positioning changed. The building line on the original plans was properly worked out and the new building could not be seen from Grooms Cottage. It is now grossly obtrusive and directly facing both the Cottage and Musley Bank house.

Before this building was erected I asked for a stop notice to be placed and I understand why this didn't happen due to the possible threat of litigation from R.F Racing.

What I don't understand is why R.F.Racing were not advised what was wrong when the the officer investigating my complaint visited the site. At this stage only the footings were in place. Even without measuring them it was obvious the building was in the wrong position. Surely the officer should have pointed this out to Mr Fahey who was on site, or if not, then someone in Planning should have 'phoned him that afternoon or the following morning to let him know of the error and to position the building correctly, as per the planning permission granted.

- 3. Ground level raised by over 2 metres**
This is contrary to the Design and Access statement which states that the new buildings will be built into the hillside.
- 4. Enlarged Horse Walker.**
R.F Racing caught out! They erected this building without Planning Permission!
- 5. Traffic and Parking**
We are deeply concerned about the volume of traffic and the amount of parking on the part of the bridleway which runs from the new link road past Mews Cottage, Musley Bank House and Grooms Cottage before entering the East side of R.F.Racing.
With the arrival of daytime staff at 5.00am there are as many as nine vehicles crammed up the side of Mews Cottage, another 4 on or at the side of the Bridleway plus the staff bus parked in front of the stables.
Horse Boxes up to 18 tons also use it at various times during the day and night, 7 days a

week. The sheer volume of traffic is starting to break up the road in several places. This and the narrowness of the Bridleway renders it unfit for purpose. Safety issues are also starting to raise their head.

In the Design and Access Statement they stated that 'A new link road is proposed for visitors, deliveries and collections'. They were given permission for a new road on this basis and all traffic in and out of R.F.Racing should use it.

They also got permission for car parking to be centralised into two main locations. The aforementioned vehicles should be redirected to one of these car parks.

This would mean that all R.F. Racings activities would be contained within their own development and leave the Bridleway to act as the divide between the Racing Stables and the residential properties. In my opinion the perfect solution.

6. **A way forward**

Both Mr and Mrs Brisby and myself would be prepared to withdraw our objections to this application if the following two points were agreed to:

1. **The corner of the site in front of the new building and directly facing Grooms cottage to be completely screened off with mature trees and the fence along the side of Mews Cottage to be replaced with a screen of laurel bushes. If possible the landscape plan to be approved by myself and Mr and Mrs Brisby.**
2. **All R.F Racing traffic to enter and leave by way of the new link road and all vehicles to use the new car parking facilities now available. This would remove all R.F.Racing traffic from the Bridleway.**

Given the significant breaches of planning which have taken place, not forgetting the horse walker which was erected without planning permission and is not included in the Planning Application, we think this proposal is a very reasonable solution.

Having made a site inspection, the Parish Council has given the letters of objection by myself and Mr Brisby their full backing. Without such a visit, it is difficult to understand how this new building has impacted on the residential properties, which it directly faces, and how the traffic and parking by R.F Racing is damaging the amenities of the Bridleway.

Yours Sincerely,
Without prejudice,

John M. Drummond.

RYEDALE DM

24 JUL 2014

DEVELOPMENT MANAGEMENT

Musley Bank House

Malton

North Yorkshire

YO17 6TD

23 July 2014

Ryedale District Council
Planning Committee
Ryedale House
Old Malton Road
Malton
North Yorkshire
YO17 7HH

Without Prejudice

Dear Sirs

Re – RF Racing Retrospective Planning Application

I have had a meeting today with officers Sean Robson, Alan Hunter and Matthew Mortensen with regard to breaches of planning consent at Musley Bank and breaches in the undertakings laid out by RF Racing in the initial planning application and their design and access statement.

They explained to me how powerless they were with respect to enforcement and how difficult it was to impose retrospective conditions to return to the status quo with the threat of litigation hanging over them.

Richard Fahey enrolled my support personally showing me his plan, the landscape and visual assessment report he had commissioned and the design and access statement – It was an extremely good plan, well thought through and with great concern for the neighbours welfare and amenity. If the project has progressed properly there would be no need for this letter.

The pertinent undertakings in the design and access statement are as follows:-

2.6 The site is self-contained

More accurately the site is serviced by 3 main accesses and spills out onto the bridleway/private drive adjacent to it day and night.

3.2 It is intended that this road (the new access road) is used for deliveries and collections and so minimise any disturbance, loss of privacy to the neighbouring properties to the east of the yard.

In fact some of the yard traffic does use the new road but more than 50% of it either does a loop round to the bridleway or comes in and out on the bridleway disturbing the residences day and night – One instance CC RACING's mega truck reversed up the bridleway and did a three point turn outside the groom's cottage at 5am on a Sunday morning – Reversing alarm sounding all the way and horses kicking and neighing.

- 5.1 A new link road is proposed for visitors, deliveries and collections. N.B there is no reservation or exclusions for horseboxes.

Perversely this does not refer to the traffic going in and out past the residences on the bridleway.

1. Horseboxes 15-20 tonnes
 2. Cement wagons 20 tonnes plus
 3. Service engineers
 4. Jockey/stable staff/office staff
 5. Hay and straw Philip Pools tractor and trailer more than 50' long which cannot get around the corner without damaging hedge and walls
 6. Feed wagons – which should use the back track!
- 5.5 Car parking will be centralised in two main locations.

Again this does not cover the jockeys and stable staff piling into the Grooms Cottage area and the crew bus delivering, collecting and parking opposite the Grooms Cottage with other attendant nuisance from the occupants: smoking and intrusive behaviour. Entering the straw filled building still smoking which is a massive fire risk.

The bridle path is maintained: it has, but: It also has been electric gated with remote switching which deters and alarms walkers as they see it goes through the yard.

The new stabling block is a completely new design, in a new position, the barn and storage area has been changed into a stable, the office block and treadmill have been added to the application.

Bizarrely the new horse walker which has been enlarged and re-positioned even after the retrospective application. Has been omitted from the retrospective application. It is larger than permitted and closer to the Mews Cottage than planned.

Personally within this scenario I would have thought there are enough grounds to 'recall in' the original design and access statement and refer to Ryedale Policy SP20 to apply new condition. Surely the original promises made should follow the trail completely, as the site is built out?

I cannot believe it is reasonable for a determined violator to go roughshod over the aims of the Planning Officers and the Planning Department with such ruthless efficiency and with such apparent complete impunity.

The Parish Council have made a site visit and submitted unanimous support for all the conditions. John Drummond and myself have requested, but this seems to count for nothing within the system as it stands.

There is absolutely no reason the residents and the yard cannot co-exist in harmony again.

The minimum I ask for is the committee asks for a deferral and examines the situation more thoroughly with a site visit. I am nervous the Committee has not had sufficient opportunity to read the neighbours' complaints in full as John Drummond submission on 30th June was not posted on line until the 22nd July (22 days) it is totally frustrating and stressful to take on both the planning department and RF Racing in breach of consent and the same time.

Yours faithfully

Ian R Brisby



Maria Ferguson

PLANNING CONSULTANCY

YOUR REFERENCE: 14/00574/MFUL

OUR REFERENCE: MF/14/025

Ryedale District Council
Planning Department
Ryedale House
Malton
North Yorkshire
YO17 7HH

24th July 2014

BY EMAIL

Dear Mr Hunter

Erection of stabling buildings with ramp, toilet block, temporary portable office building and horse treadmill building at Musley Bank Stables, Malton

I refer to the above application for planning permission. I am instructed by Mr Fahey, the applicant, to respond to concerns raised by his neighbours in relation to his application and trust that the comments made will be reported to Members of the Planning Committee. I have seen the various late representations made over the last two days, as well as the 'offers' made by the objectors.

In particular, I would like to first address the concerns regarding the access which seem to have arisen since approval of the previous planning permission, and provide further information to assist in the consideration of the application.

Firstly however, I must point out that the main issue for the objectors appears to be the activity associated with the stable yard, which is not the subject of this planning application, or something that can be controlled as part of this application to regularise some deviances from a previously approved planning permission.

Stables have operated at this site for decades. Indeed, when Mr Fahey took ownership some 11 years ago, three separate trainers operated from the site. Historically, the access to the site ran east of the site (marked A on the attached annotated plan). Whilst there were fewer horses, far greater traffic movements would have been using this access, owing to the operation of 3 training yards, and the absence of the access to the south (marked B).

Where possible, and without horses, Mr Fahey and his deliveries, staff and visitors use the access marked B. It is far more convenient and accessible. However, it is impossible and impractical for him to do so when transporting horses, for reasons which I will set out below. There is therefore still a **NET REDUCTION** in the vehicles using the eastern access.

Maria Ferguson Planning Limited.

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The yard and business operating from it trains thoroughbred racehorses. Not only are the horses highly strung, but they are also very valuable. I have marked on the attached plan the area where horses are loaded. Horses have been loaded and unloaded in this area, again, for decades. The reason for this is that the loading area is familiar to the horses because of the circulation within the site, and it is also enclosed. There are therefore likely to be fewer incidents of a horse becoming distressed in an area with which it is familiar. If a horse does become distressed, because it is a more enclosed space, it is easier to bring under control and prevent the horse from bolting or causing injury to itself or to staff.

My client and his visitors can, on occasions, be transporting horses with a collective value of £5m. Regrettably, the topography of the site and the tight layout of the buildings mean he cannot adopt the 'loop' system as suggested by S.M Newby of Yew Tree Planning in his submissions. This would pose a significant health and safety risk to all concerned, but would also put at risk the very valuable horses my client transports. There is simply insufficient space within the site and the gradients would make it impractical.

For the above reasons, the imposition of conditions requiring the use of the southern access, or preventing the free use of the access to the east, would significantly damage my client's business operation. He operates a nationally recognised racehorse training business, and in doing so employs a significant number (in excess of 70) people. He has an extremely important contribution to make to the rural economy in this location. It would also seem unreasonable to impose conditions on access, given that the previous approval for a similar development did not contain any. Such a condition would prevent the safe operation of the site, would be unreasonable given the historic and approved access to it, and would therefore fly in the face of paragraph 28 of NPPF which required LPA's to be supportive of land based rural business and the growth and expansion of businesses in the countryside. **In the event of the unreasonable refusal of planning permission on this basis, or the imposition of conditions, my client would be forced to appeal and if this were the case my advice to him would be to seek a full award of costs against the planning authority.**

My client has advised me and would like me to point out that when he first purchased the training yard, he was willing to pay more than he is required for the repair of the disputed road. He subsequently learned that between my client and his elderly former neighbours, Mr Brisby, the objector, was making a profit. This led to a dispute, and my client willing to pay only what he is legally required to. Mr Brisby then approached my client last year advising him that he wished to sell his house, but that the current legal agreement was likely to cause a problem. My client believes that Mr Brisby is using the planning application, and the local planning authority, to try and resolve the legal complications associated with the sale of his house. It is completely unacceptable to abuse the planning process in this way.

My client has always tried to get on with his neighbours, and respected their wishes, and does not wish to be difficult. Whilst he is not practicably able to accept a restriction on the use of the road, which is a private road over which he has a legal right of way, he will consider additional planting suggested by Mr Brisby and Mr Drummond between the gable of the new stable and Grooms Cottage. It is presently tarmac but will do what he can. Can I suggest that this can be dealt with within the scope of wording of the landscaping condition?

In addition to the access to the site, my client would like me to address some of the other issues raised by his neighbours and the Parish Council, insofar as they relate to material planning considerations.

Levels and height of the stable building and proximity to objectors

It is correct that the site levels have caused problems in terms of implementing the proposed scheme. This isn't because they weren't, or aren't known. It is because, as is sometimes the case during a construction project, it became apparent that it wasn't a practical development for the successful and safe operation of the site. My client has been carrying out significant developments and improvements to the stable yard, as he must do in order to be competitive and continue in business. Unfortunately, my client wasn't aware that the changes he instigated would cause the concern that they have.

Groom's Cottage and Musley Bank Cottage both lie in close proximity to my client's training yard. Over the years, my client has sought to reduce the impact, where possible, of the operations on his neighbours. However, it remains to be said that the new stable building constructed is of tidy appearance, consistent with the appearance of a simple agricultural building typical of the area, in a position removed from the boundary of those properties. There are closer buildings than this one, and the fact that the new stable may be closer than approved, different, or even larger, does not make it unacceptable in planning terms.

Waste disposal

Waste is **not** being burned. Manure is removed from a screened and lawful compound some distance away, 2-3 times a week. By law all veterinary waste must be taken by the vet and disposed of and the type of syringes photographed in the fire by an objector and submitted with his letter are not used by my client (theirs are much larger syringes). Whilst waste has in the past been burned, this has never given rise to complaints until recently, and as a result the activity has now permanently ceased.

Waste within domestic areas is not directly relevant to the current proposals, however it is open to the LPA to impose conditions in relation to waste management, as they did do so on the 2008 planning permission, and my client is happy with such a condition.

Noise

Much of the activity is now directed to the south of the site. However, this is a working yard, and was always a working yard. The recent planning permission had been approved when Mr Drummond purchased his house. The yard cannot operate silently. The only vehicle that reverses in close proximity to Grooms Cottage is the Council's bin collection vehicle. The horse wagons enter and leave the site in a forward gear.

Other alleged breaches of planning control

These are not subject to this planning application and may be discussed and dealt with separate to it. It is open to the planning authority to make its own determination as to whether there is a breach of planning control and whether it is in fact expedient to enforce it.

Legal matters

There are several allegations of a legal nature, in particular within the letter from Mr Brisby. This letter contains photographs, some of which appear to have been taken from private property and for which no consent was given. I would therefore be very grateful if these photographs were removed from the public domain.

In conclusion, my client has done all he can in the way of mitigating the impact of his business on his neighbours. The allegations portray the site as being poorly operated and untidy. My own personal experience is very different and he runs a clean and respectable yard which in terms of its contribution both to the industry and the local economy is something which should be supported and protected. My client welcomes a visit by the Committee if Members would like to see the site for themselves. However, I hope that your recommendation will be accepted, along with the additional justification in this letter, and permission is granted.

Please advise your Committee clerk that I will be speaking at the meeting on behalf of the applicant.

Kind regards

Yours sincerely

A handwritten signature in black ink, appearing to be 'Maria Ferguson', with a long horizontal line extending to the right.

Maria Ferguson BA(Hons), DipTP, MRTPI

DIRECTOR
MARIA FERGUSON PLANNING

NOTES

Do not scale from this drawing or consider any dimensions to be accurate.

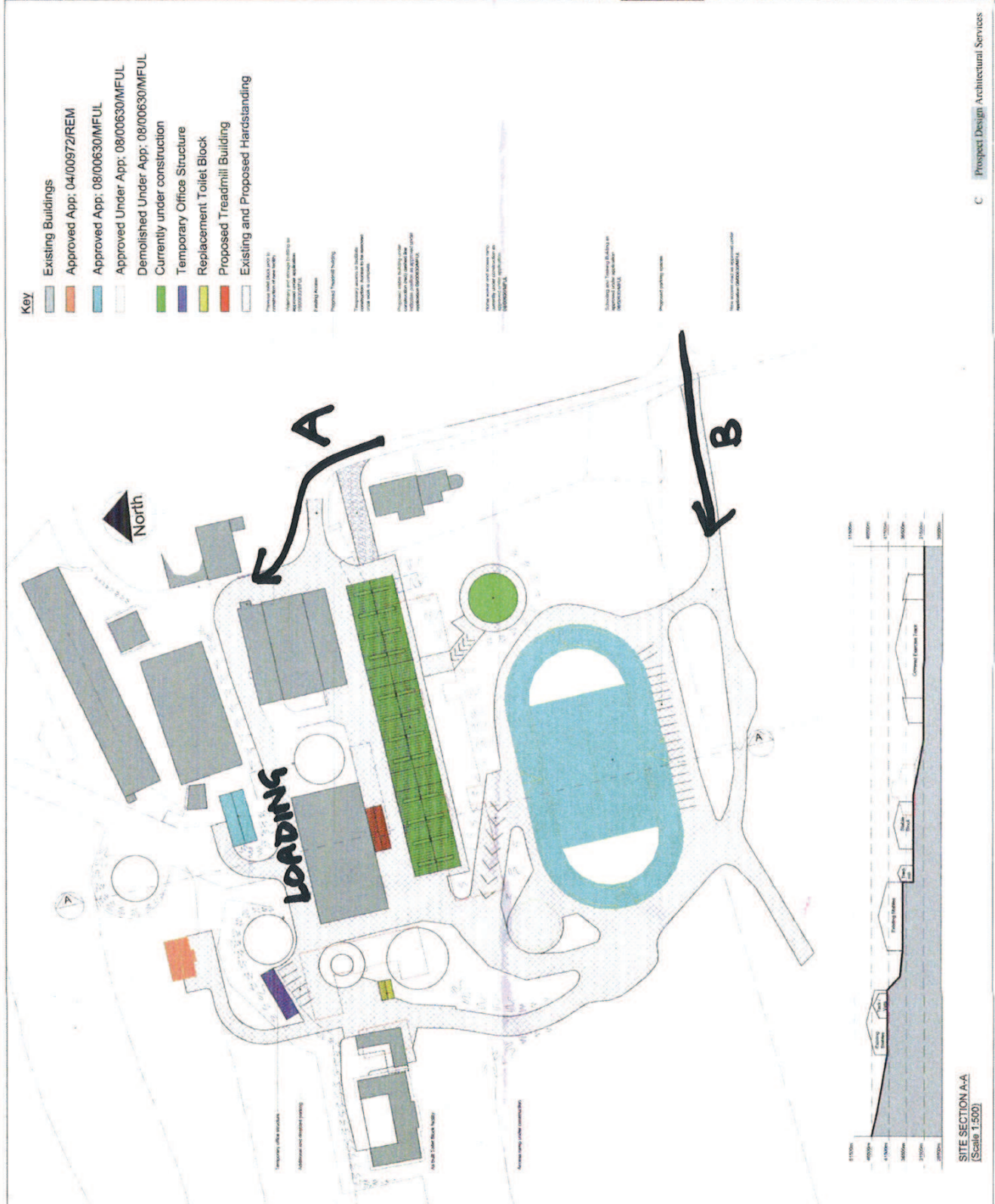
This drawing is based on drawings & information received from the client. In the event of any discrepancy being noted, these should be brought to the attention of the Project Design for further instruction.

This drawing is for Planning purposes only and is not to be considered a construction or setting out drawing.

North Point scheme approximations.

The proposed structure are subject to the following, although not exhaustive:

1. Structural Engineers Requirements.
2. Mechanical and Electrical Engineers Requirements.
3. Fire Engineers Requirements.
4. Planning Requirements.
5. Building Regulations approvals.



REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	07/05/2014

PROSPECT DESIGN
Architectural Services
6 Field View, Nelson, Malton, Yorks, YO17 9AG
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R. F. RACING LTD
MEWS HOUSE
MUSELY BANK, MALTON,
N. YORKS, YO17 6 TD

**PROPOSED DEVELOPMENT OF
RACEHORSE TRAINING CENTRE.**

Drawing Title: **SITE BLOCK PLAN**

Scale: 1:500 (60 A1) Drawn: R. W.
Date: 07/05/2014 Checked:

Drawing Number: **PD141-02**

C Prospect Design Architectural Services

AH
24.7.2014 TJC

Alan Hunter

From: Ian Brisby
Sent: 23 July 2014 18:05
To: Alan Hunter
Subject: R F Racing/Richard Fahey

WITHOUT PREDJUDICE Dear Alan

Following the consultation at Ryedale House today, John Drummond and myself would consider withdrawing our objections to the retrospective planning application-

14/00574/MFUL-RF RACING and any new application for a horse walker behind the Mews Cottage providing :

1. Re-instate the proposals made in the original design and access statement.

2.6 the site is self contained.

3.2 it is intended that this road [the new access road in the proposal] is used for deliveries and collections and so minimise ANY disturbance/ loss of privacy to the neighbouring

residential properties to the east of the yard.

5.1 A new link road is proposed for visitors, deliveries and collections. NB. there is no reservation or exception for Horse boxes.

5.2 This new access road WILL reduce potential disturbance to the residential property to the east of the yard.

5.5 Car parking WILL be centralised into two main locations.

a. in the centre of the proposed /existing stabling and storage buildings for staff and operational visitors.

b. In the courtyard adjacent to the admin block and owners suite for owners and visitors.

5.6 The bridle path is maintained. {it has been gated which deters and alarms walkers }

2. New Screening is put in place i.e.. the new horse walker -already erected and the new stables - fully erected and fully occupied , are substantially screened immediately with mature trees.

a five year term would be the minimum for full establishment to take place.

Screened from Musley Bank House driveway, Musley Bank House and the Groom's Cottage garden and house .

3. The upper drive will be accessed only by the residents of the Mews House and for their private activities i.e.. not the racing staff coming to work on site- already provided for elsewhere.

This would require a binding agreement signed by all parties and conditions attached to the planning consent for the future..

A further separate proposal from Mr and Mrs Brisby would be to exchange a significant part of the planting area for the piece of roadway that they own joining the new access into the yard.

On the basis R F Racing repair their section of the drive 100% and Mr and Mrs Brisby repair the upper drive to the residences 100%.

In conclusion:

We are all in no way against the continuing prosperity of the Racing Yard- Richard Fahey's original proposals were good.

We never asked for Planning Conditions because we had great faith in him and believed all the representations he made both personally to us and the deign and access statement

which we read and all the plans we were shown.

Our objective now is to completely separate the activities in the yard from the residential area.

Yours Sincerely

Ian Brisby 23 07 2014

M Mo
25/7/14

No objection subject to
conditions

Planning Application 14/00315/FUL

The following is an excerpt from the updated Survey Report (Wold Ecology May 2014):

Changes in grazing density and regime may lead to changes in species composition over time. If managed correctly, grazing can be used to maintain and enhance the floral diversity within the Application Site and enhance the SINC. The following management follows best practise for wildflower meadows and will ensure that a net gain in botanical species diversity of the site is enhanced:

- Cut hay once annually in late summer (mid-late July or early August) to allow meadow flowers to set seed
- Light grazing with sheep and cattle during autumn and spring keeps the sward low and helps create disturbance of the ground, creating spaces for new seeds to germinate.
- Maintaining an open sward and species diversity of in-field ditches through light grazing to ensure poaching of ditch edges.
- Removing stock between April and May allows the hay crop to grow and plants to flower and set seed
- Graze enough to achieve a sward height of about 3 cm through autumn and spring, this allows seeds to be frosted and provides light for new seedlings to emerge. **It is recommended that a grazing schedule and stocking density is produced.**
- Do not apply chemical fertiliser.
- Do not install new field drains or alter drainage. The meadow supports communities of swamp, water and damp-loving plants which could disappear if the field drainage was altered.
- Maintain current waterways to prevent rush and sedge encroachment and maintain species diversity.
- Enhance the botanical diversity of the meadow through the sowing of species rich seed or green manure from local herb-rich meadows.
- Wold Ecology concludes that sensitive grazing of the field will enhance the floral diversity of the site and improve the local ecosystem for insects and fauna. Thus complying with LPP SP14 which requires a net gain in biodiversity.
- 7.9.4 It is recommended that a botanical species list is produced 2 years and 5 years after the site is grazed to compare with current floral species on site.

There are some good ideas to offset the potential harm that could be caused by this development. A grazing regime designed to enhance the species diversity and sward structure of this part of the SINC would be very valuable to the greater SINC site. I would be prepared to remove my objection if there was some way to condition most of the elements above.

If the intention is not to intensify the use of the SINC field as a result of this development and there is certainly potential to enhance the biodiversity value I would have no objection to this development proposal.

Don Davies, Countryside Officer

NO OBJECTION

Glenys Yates

R May

From: Pickering Town Council [townclerk@pickering.gov.uk]
Sent: 22 July 2014 08:36
To: Development Management
Subject: Recent planning applications: Pickering

22 JUL 2014
DEVELOPMENT
MANAGEMENT

The council has no objections to the planning applications listed below:

- a) 14/00692/73A - variation of Condition 5 of approval 11/00749/73A dated 9 December 2011 as follows - replace "ground floor of the building(s)" by "ground floor of the building" and amend reason by replacing "in order to comply with PPS4" by "in order to comply with National Planning Policy Framework", Steam and Moorland Garden Centre, Malton Road;
- * b) 14/00695/FUL - installation of automatic doors to west elevation to replace existing manual doors at Ropery House, RDC Area Office, The Ropery;
- c) 14/00691/HOUSE - erection of part single storey/part two storey side and rear extensions to Brookfield, Eastgate;
- d) 14/00699/FUL - replacement of existing hardwood windows on south elevation of aluminium double glazed unit and replacement of UPVC windows in bay window with aluminium double glazed units together with installation of flat roof on bay window at Ryedale Swimming Pool, Mill Lane;
- e) 14/00735/FUL - erection of a general purpose agricultural/horticultural storage building at Rogers Garden Centre, Malton Road;
- f) 14/00724/LBC - retention of repaired and repointed stonework without the requirement to apply a limewash or mineral paint and replacement of the existing single glazed dormer windows with double glazed timber dormer windows of the same dimensions on the front (east) elevation, 19 Castlegate.
- g) 14/00748/GUL - erection of extension to existing livestock building at Leas Farm Cabin, Leas Lane.

Andrew Husband
Clerk to Pickering Town Council

no objection.

cc

Glenys Yates

From: Pickering Town Council [townclerk@pickering.gov.uk]
Sent: 22 July 2014 08:36
To: Development Management
Subject: Recent planning applications: Pickering

DM
22 JUL 2014
DEVELOPMENT
MANAGEMENT

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Andrew Husband
Clerk to Pickering Town Council

RYEDALE DISTRICT COUNCIL
PLANNING COMMITTEE – 30 JULY 2014

Report of the Development Manager

Con Owl Close, Helmsley

Purpose of the Report

To advise Members of an alleged breach of planning control and recommend an appropriate course of action.

1. SITE LOCATION

1.1 This enforcement report concerns two residential dwellings:

- No.3 Con Owl Close, Helmsley
- No.7 Con Owl Close Helmsley

1.2 The sites are located within a residential cul-de-sac consisting of 14 properties situated within the development limits of Helmsley. Both dwellings are semi-detached properties with modest amenity areas located to the rear.

2. ALLEGED BREACH OF PLANNING CONTROL

2.1 Change of use of the land & buildings from use as residential property to mixed residential and childminding business without planning permission.

3. WHEN ALLEGED BREACH FIRST OCCURRED

3.1 The complaint was first received by the Local Planning Authority on 15 November 2013.

3.2 North Yorkshire County Council have confirmed the date that each childminder became Ofsted registered:

- Childminder at No.3 Con Owl Close - 10.09.93
- Childminder at No.7 Con Owl Close - 30.08.11

3.3 The childminder located at No. 3 Con Owl Close may be exempt from planning control due to the length of time operating as a registered childminder. However, no formal application for a certificate of lawfulness has been submitted to the Council to demonstrate that the use has been operational from that property for all of that period and at what level. Therefore, at the present time it cannot be determined that the use and its extent is exempt from planning control.

4. HISTORY AND EVIDENCE OF BREACH

4.1 A site visit was undertaken on by the Council's Enforcement Officer on 2 December 2013 to investigate the potential breach and gather information regarding the on-site situation.

PLANNING COMMITTEE

30 JULY 2014

- 4.2 A letter was sent to each childminder on 3 December 2013 requesting details of the use of each site. It was requested that these details should describe the exact nature and scale of the use including such information as: the numbers of children; the dates and times of operation; transport arrangements; and details of which parts of the property are used for the use.
- 4.3 Throughout December 2013 responses were received from each of the childminders outlining the approximate numbers of children cared for at each property and a guideline on current operations.
- 4.4 On 19 February 2014, correspondence was sent to each childminder stating that on the basis of the information provided planning permission would be required for the use at both properties. Following this a further response was received from the owner of No. 7 Con Owl Close outlining in more detail the scale and operations of the childminding activities.
- 4.5 On 23 April 2014, following further discussions with the Council's Solicitor, a further letter was sent to both childminders which confirmed that in the view of the Local Planning Authority planning permission is required for the childminding businesses.
- 4.6 On 8 May 2014, a site meeting was held between the childminders and Council representatives. During the on-site discussions it was explained why the use required planning permission, and both were advised what the next steps were in the process. Both owners were invited to make planning applications if they sought to regularise the situation.
- 4.7 On 12 May 2014, the childminder of No. 3 Con Owl Close confirmed in writing that no planning application would be submitted.
- 4.8 On 19 May 2014, following a verbal request, further correspondence was sent to No. 7 Con Owl Close to explain in greater detail the reasons why planning permission is required. A further timescale of 14 days was given to submit a planning application.
- 4.9 On 27 May 2014, the childminder of No. 7 Con Owl Close requested a delay in presenting a report to Planning Committee due to personal reasons. On 19 June 2014 a response was received from No. 7 Con Owl Close which advised the Council that the childminder was unable to raise sufficient funds to submit a planning application for consideration.

5. REQUIRES PLANNING PERMISSION?

- 5.1 In determining the need for planning permission for this case, the Town and Country Planning Act 1990, the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are relevant.
- 5.2 Firstly, it is important to determine whether the use of the residential dwelling for child minding is a form of development. Development is defined by Section 55(1) of the Town and Country Planning Act:

'Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land.'

- 5.3 The second category (highlighted in bold) of the above definition is relevant to this case. This identifies that a material change of use of any land or buildings is a form of development therefore would require planning permission.
- 5.4 The question therefore is whether, in this case, a material change of use has occurred. The NPPG is relevant in determining a material change of use. It states:
- “A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of ‘material change of use’; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. **Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.**”*
- 5.5 It is important to note the text highlighted above which identifies that each case has to be determined on its own individual merits and that whether or not a material change of use has occurred is a matter of fact and degree to be assessed in the context of each planning unit.
- 5.6 There are two main tests for identifying the materiality of a change of use. First relates to the change in the character of the use itself including the land where it is located, and second the effects of the change upon neighbouring uses and the locality.
- 5.7 On the basis of the information provided by each childminder, the numbers of children cared for at each property at any one time has been identified as up to six at No. 3 Con Owl Close and up to four at No. 7 Con Owl Close. Members will note that the complainant has indicated that at times these numbers are exceeded. Notwithstanding this, Members will also note that the numbers of different children cared for at each property during the period of any one given day could give rise to levels of activity that may result in a material change of use.
- 5.8 In this case, given the small size of each dwelling, their location within a quiet residential cul-de-sac and the close knit nature of development including the limited rear amenity areas, the use of the dwellings for childminding at these levels is not considered to be incidental to the enjoyment of the dwellinghouse. The childminding operation therefore results in a change the character of the dwelling itself which also impacts on both the neighbouring residential properties and the locality.
- 5.9 Members will note that in some cases the character of the use may change because the purpose of the activity may affect its extent. For example, a home occupier using his garage for repairing his cars would usually be within the residential use, but if that individual repaired others people’s cars, particularly for payment, then this is likely to be a material change of use. This same rule is considered to be appropriate to this matter. The fact that childminding is occurring for payment is different in character to minding ones’ own children or friends children for no payment. The important question is whether or not a use is ancillary to the enjoyment of a dwellinghouse.
- 5.10 For the reasons outline above, it has been determined that the change in use is material and it requires planning permission. Members should however be aware that this decision is based on the current scale of operations of each childminder. It is possible that if the operations were reduced in scale that planning permission would not be required as a material change of use would have not occurred.

6. PLANNING POLICY CONTEXT

6.1 The relevant planning policy considerations are:

National Planning Policy Framework

6.2 One of the NPPF's core planning principles (Para. 17) states that planning should: "*always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.*"

Ryedale Local Plan Strategy

6.3 Policy SP20 (Generic Development Management Issues) ensures that in considering planning applications issues relating to the following will be taken into account:

- Character
- Design
- Amenity and Safety
- Access, Parking and Servicing

6.4 In addition to the above planning policy, Members are also made aware of the Children Act 2004. District Council's in England are required by Section 11 of the Children Act 2004 to make arrangements for ensuring that:

'their functions are discharged having regard to the need to safeguard and promote the welfare of children.'

6.5 This duty is relevant where planning enforcement would result in displacing children, such as requiring the removal of residential caravans from land. A decision needs to meet S11 to be accordance with the law for the purposes of Article 8(2), and the best interests or wellbeing of the child needed to be not just a consideration but a primary consideration. As with other duties, what matters is substance rather than form. For example in the Dale Farm litigation, Ouseley J considered that whilst there had not been explicit consideration of the duty, the crucial factors for children in the case where health and education and that those had been treated as primary considerations.

6.6 The further comments of the Council Solicitor are awaited with respect to the implications of the Children's Act 2004. Members will be updated verbally at the Planning Committee Meeting to the impact this legislation could have on this case.

7. CHILDCARE IN HELMSLEY

7.1 Members are made aware that North Yorkshire County Council has confirmed that there are in total two registered childminders in Helmsley, being No.3 and No.7, Con Owl Close. There is currently no other childcare in terms of a Nursery or Pre-school in Helmsley. The school has a nursery class however this is not classed as childcare.

8. APPRAISAL

- 8.1 The principle issue surrounding each breach of planning control relates to the impact of the development on the amenity of nearby residential properties. It is considered to be particularly acute in respect of the occupiers of No. 5 Con Owl Close which is located in between each childminder. With regards to residential amenity, Members are made aware of the requirements of Policy SP20 of the Ryedale Local Plan Strategy which states:

‘New development will not have a material adverse impact on the amenity of present or future occupiers, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence.’

- 8.2 The harm created by each breach of planning control, both independently and cumulatively, is caused by the combination of a number of different factors, including:

- Noise;
- Levels of Activity; and
- Vehicular Movements.

- 8.3 At this point, Members are reminded that if the scale and nature of each childminding operation was reduced, then it is possible that a material change to the character of the dwelling may not have occurred and planning permission may not be required. Further, if the operations were reduced in scale, it may result in a childminding operation that would not result in harm to residential amenity which would be contrary to the requirements of the development plan. As such, it may not expedient to seek to cease each use entirely.

- 8.4 In light of this, Members are referred to the National Planning Practise Guidance which provides guidance on ‘ensuring effective enforcement’ including advice on the role and consequences of enforcement notices. Under the heading ‘Is it possible to take enforcement action against only some parts of a breach of planning consent?’ the following guidance is provided:

A local planning authority may decide not to require action be taken to remedy the whole of a breach of planning control. This is known as “under enforcement”.

Where an enforcement notice identifies a breach of planning control which could have required any buildings or works to be removed, or an activity to stop, but has stipulated some lesser requirements, and all the requirements of the notice have been complied with, then planning permission is deemed to be granted for those remaining operations or use (Section 173(11) of the Town and Country Planning Act 1990).

- 8.5 The above guidance identifies that enforcement notices can require certain steps to be taken to a breach of planning control without necessarily ceasing the use entirely. Effectively planning permission would be granted subject to conditions to control the impact and the harm that is created by the current breach. Members are made aware of this as the concept of ‘under enforcement’ could provide a possible option in considering this case.

- 8.6 Members are referred to Appendix A of this report which relates to a Planning Inspectors decision to allow an appeal against enforcement notices served against the unauthorised operation of a childminding business located in a residential dwelling in Lincolnshire. In considering the harm that was created by that development, the Inspector identified what the planning system can safeguard against in such matters. Paragraph 12 of the decision states:

“Clearly, some children are less well behaved and noisier than others and all children are noisier at some time than others. Furthermore, people’s tolerance of this kind of noise varies and the impact will depend on the duration of the noise and the time of day which it is experienced. The planning system cannot safeguard against those who are unreasonably sensitive to noise, but I am satisfied that noise associated with significant numbers of children playing together can be intrusive if it goes on for too long. In planning terms, this is capable of having a materially detrimental impact on living conditions, even if it does not constitute a statutory nuisance.”

- 8.7 A key concern raised in relation to the development is the use of the rear garden areas and the impact that this has on neighbouring residential properties. It is possible that a restriction could be placed on the enforcement notice in relation to the use of the garden areas. However, in considering this matter, Members are once again referred to the comments of the Planning Inspector, who states in Paragraph 16 of the decision that:

“The appellant suggests that because, noise from children in the garden is the key concern, consideration should be given to imposing a condition limit the number of children using it to a maximum of 6 at any one time. I am not persuaded that such a restriction would be practical and it could be unduly restrictive, especially in very hot weather. It would be difficult to monitor and enforce particularly at times when the appellant’s own children and their friends are also on the premises. It would be better to rely on a restriction on the number of children on the premises as a whole at certain times.”

- 8.8 In light of the above comments, it would seem unreasonable to restrict the use of the garden areas. Further, given the comments of the Planning Inspector referred to in paragraph 8.4 above, the most appropriate method to mitigate the impact of the use is considered to be through a restriction in numbers of children located on the premises at any one time.
- 8.9 In this particular case, the overall impact of each breach of planning control is heightened by the activities that are taking place at the other property. Therefore, if Members were minded to agree to restrict the numbers of children cared for by each childminder, the limitations are potentially required to be more restrictive than if only a single dwelling was operating a childminding business.
- 8.10 In considering the level of restrictions which would be appropriate to each property, it is important to note that both No. 3 Con Owl Close and No. 7 Con Owl Close are relatively modest semi-detached residential dwellings with modest amenity areas located to the rear. They are also located in a quiet cul-de-sac which experiences no ‘through traffic’. Within each property it would not be unreasonable to expect that a dwelling could accommodate three children without materially changing the character and these could be accommodated without requiring planning permission. Therefore, in this case, it is considered that allowing a further child to be cared for at each property, restricting the total number to four, would be acceptable number to which to ‘under enforce’.

8.11 Finally, to reduce the levels of activity, and general comings and goings from each property, the number of children relating to the childminding business should not exceed 4 in total on any one given day.

9. WHY IS IT CONSIDERED EXPEDIENT TO SERVE A NOTICE?

9.1 The harm created by this development, and the reasons why it is considered expedient to serve an enforcement notice are outline below:

1. Policy SP20 of the Ryedale Local Plan Strategy states that *'New development will not have a material adverse impact on the amenity of present or future occupiers, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence.'*

Paragraph 17 of the NPPF states that planning should: *"always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings."*

The current operation and combined impact of the childminders at both No. 3 Con Owl Close and No. 7 Con Owl Close results in such an impact on the nearby residential properties that is considered to be materially harmful to residential amenity. The development is therefore contrary to the requirements of Policy SP20 of the Ryedale Local Plan Strategy and Paragraph 17 of the National Planning Policy Framework.

10. STEPS NECESSARY TO REMEDY THE BREACH

10.1 Whilst it is clear to officers that the two childminders do result in some harm to residential amenity; it is not considered reasonable to cease the activities entirely. This for two reasons:

1. Childminding operations of smaller scale would not necessarily require planning permission.
2. Childminding operations of a smaller scale may not result in harm to residential amenity.

In this case, it is considered that 'under enforcement' provides a suitable option. Therefore, the steps necessary to remedy this breach seek to restrict to use of each childminder compared to restricting the use entirely.

10.2 It is recommended that the following restrictions are applied to any enforcement notice that is issued:

- No childminding business shall operate before the 08:00 hours or after 18:00 hours on any weekday or at any time on a Saturday, Sunday or Bank Holiday.
- No more than 4 children related to the childminding business shall be on the premises at any one time, or exceed 4 children in total on any one given day.

- The childminding element of the mixed use shall be carried on only by The use shall cease once the applicant no longer resides at the property or the use is no longer required.

11. SUGGESTED PERIOD FOR COMPLIANCE WITH THE NOTICE

- 11.1 The compliance period recommended in respect to any enforcement notice will be provided at the Planning Committee Meeting following the advice that is given by the Council's Solicitor in respect to the Children Act 2004.

Recommendation

The Council Solicitor be authorised in consultation with the Head of Planning and Housing Services to issue an enforcement notice pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring the conformation with the requirements of the enforcement notices.



Appeal Decisions

Site visit made on 1 March 2011

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

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

Decision date: 31 March 2011

Appeal A: APP/N2535/C/10/2141442

11 Elm Avenue, Cherry Willingham, Lincoln, LN3 4AU

- 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 Mrs Louise Harrison against an enforcement notice issued by West Lindsey District Council.
- The Council's reference is 174407.
- The notice was issued on 2 November 2010.
- The breach of planning control as alleged in the notice is the change of use of the land from use as residential property to mixed residential and childminding business without planning permission.
- The requirements of the notice are to reduce the number of children being minded at the site to no more than:
 - i. 3 children under the age of 5 years old at any one time, excluding your own children
 - ii. 3 children over the age of 5 years old up to the age of 12 years old at any one time, excluding your own children
- The period for compliance with the requirements is 2 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/N2535/A/10/2140864

11 Elm Avenue, Cherry Willingham, Lincoln, LN3 4AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Louise Harrison against the decision of West Lindsey District Council.
- The application Ref 125569, dated 26 February 2010, was refused by notice dated 8 June 2010.
- The development proposed is a change of use for the operation of a mixed use comprising a child minders in addition to use as a private residence (ground floor only).

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mrs Louise Harrison against West Lindsey District Council. This application is the subject of a separate Decision.

Procedural matter

2. The description of the development in the notice differs slightly from that agreed between the parties in relation to the planning application. However, that difference is not material and, for the sake of consistency and to avoid any confusion, I shall adopt the description from the notice in relation to both appeals.

The appeal on ground (c) – Appeal A only

3. To succeed on this ground, the appellant must show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
4. The appellant states that for several years she operated her business from the appeal site minding no more than 6 children. However, she then expanded the business, took on an assistant and offered a 'before and after school club', providing a safe location for parents to leave and collect their children, when they cannot meet normal school hours. She ensures that the children are escorted safely to and from school. In her statement, the appellant said that, whilst she minds no more than 6 children for the majority of the time, the before and after school club aspect involves minding up to 14 children in total. Then in her final comments, she says that 12 children is the maximum number. The Council contends that there can be anything from 12 to 18 children on the site at any one time.
5. Whether something amounts to a material change of use is a question of fact and degree in each case, to be assessed in the context of the planning unit. In this case, I am satisfied that the planning unit is the unit of occupation, namely the house and its gardens. Some changes are on too small a scale for the law to take account of them. It is common ground between the parties that if the appellant were to mind no more than 6 children on the site at any one time, excluding her own, this would not involve a material change of use. Whilst I am not aware of any rule of law to that effect, I see no reason to take a different view in the particular circumstances of this case.
6. However, the frequent presence of up to 12 children on the site, let alone 14 to 18, is beyond what one would normally expect in a modest sized, ordinary family dwelling and garden on a modern estate development. The appellant's evidence is that, during the school term, the number of children on the premises is only that high before school hours, from 0730 and then after school up to 1730. However, the pattern is different during school holidays. Indeed the appellant's own evidence indicates that there were 12 children in the house between 1100 and 1200 on Monday 17 August 2009 and 11 children during the previous hour. This number of children and the potential for consequent noise may have an impact on the living conditions of neighbouring residents. It will make a significant difference to the character of the activities that one would reasonably expect to take place at a private dwelling on a daily basis. I take this view, even though the hours during which children are present in these numbers may be limited at most times during the year.
7. For the reasons given, I conclude on this ground that, as a matter of fact and degree, the matters alleged in the notice do constitute a breach of planning control and this ground of appeal fails.

The section 78 appeal/ground (a) enforcement appeal/deemed application – Appeals A and B

Main Issue

8. The main issue is the effect of the development on neighbours' living conditions in terms of noise and disturbance.

Reasons

9. The reasons for refusing the planning application and issuing the enforcement notice focus on the impact on neighbours of the use of the appeal property's rear garden by the numbers of children looked after by the appellant and the proximity to neighbouring gardens. In its statement, the Council also refers to disturbance caused by people picking up and dropping off their children, as well as the arrival of staff. However, given the proximity of the site to Cherry Willingham Primary School and the school safety zone parking restrictions on Lime Grove, it is unlikely that the comings and goings on Elm Avenue related to the appeal site use will have a material additional impact in the context of school related activity. In these circumstances, and given that the appeal property is a detached house, it is the use of the garden that gives rise to the most significant potential for noise related problems.
10. At the request of the Council's Environmental Protection Officer, the appellant commissioned a noise survey by an acoustic engineer. Noise was monitored from the rear garden of No 13 Elm Avenue and, in short, the survey report concluded that the noise impact from the appellant's business is such that the likelihood of complaints is just higher than 'marginal'. Notwithstanding concerns from the occupiers of No 13 regarding the cogency of the survey findings, on the basis of that report, the Council's Environmental Protection Officer accepts that the level of noise is tolerable and would not constitute a statutory nuisance.
11. However, the survey report acknowledges that there is no specific measurement standard or guidance suitable for a noise source such as this. The report explains that the BS4142 standard adopted for the purposes of the survey is not suitable because children's voices and play time activity are not generally perceived as an industrial noise. Nevertheless, the use has resulted in complaints regarding noise.
12. Clearly, some children are less well behaved and noisier than others and all children are noisier at some times than others. Furthermore, people's tolerance of this kind of noise varies and the impact will depend on the duration of the noise and the time of day at which it is experienced. The planning system cannot safeguard those who are unreasonably sensitive to noise, but I am satisfied that the noise associated with significant numbers of children playing together can be intrusive if it goes on for too long. In planning terms, this is capable of having a materially detrimental impact on living conditions, even if it does not constitute a statutory nuisance.
13. The appellant refers to the Council's decision (Ref 119963) to grant planning permission for a day nursery to the rear of 37 Church Lane, Cherry Willingham, where it concluded that the care of up to 15 children would not adversely affect neighbours' living conditions. However, having looked at that site, I am not persuaded that the decision in that case sets a precedent for this development. That facility is located within a much larger garden in a less densely developed

residential area. The separate nursery building is well away from the screened site boundaries and additional fencing within the site would appear to contain the main nursery play area well within the overall site. By contrast, children playing in the appeal property's back garden will be much closer to neighbouring dwellings in this more densely developed estate location.

14. The level of control and supervision over the children is clearly a very important factor. One or two poorly looked after children can create more disruption than a dozen well supervised individuals. Although relations between the appellant and some immediate neighbours have become strained, other local residents, as well as parents who use her services, are highly complimentary about those services, in circumstances where childminding places are in short supply.
15. Furthermore, I note that following a recent OFSTED inspection, the level of care provided by the appellant was judged to be "outstanding". She was one of only 5 out of 133 Registered Childminders in West Lindsey to achieve this. The appellant is also the trained Vacancy Co-ordinator for the Cherry Willingham and Reepham area childminding group and the Head Teacher of Cherry Willingham Primary School has written a letter of commendation for her. I take the concerns of immediate neighbours very seriously and I accept that OFSTED inspections will not focus on noise. Nevertheless, these factors give me confidence in the appellant's personal ability to exercise adequate control, provided the numbers of children and hours of operation are limited.
16. The appellant suggests that, because noise from children in the garden is the key concern, consideration could be given to imposing a condition limiting the number of children using it to a maximum of 6 at any one time. I am not persuaded that such a restriction would be practical and it could be unduly restrictive, especially in very hot weather. It would also be difficult to monitor and enforce, particularly at times when the appellant's own children and their friends are also on the premises. It would be better to rely on a restriction on the number of children on the premises as a whole at certain times.
17. The appellant has indicated that she normally minds no more than 6 children during the school day and, in her most recent comments, she says that no more than 12 are accommodated during the before and after school club. A suitable condition can be framed accordingly. I note that this may present problems for some parents who wish to use the appellant's services during school holidays. However, the potential noise generated by 6 to 12 children, possibly in addition to the appellant's own children, throughout the day for weeks on end is likely to be detrimental to neighbours' living conditions.
18. I have indicated the importance of the standard of control and supervision. This is one of those exceptional cases where the planning permission should be personal to the appellant because, notwithstanding the other conditions to be imposed, 12 children looked after at these premises in the early mornings and late afternoons from Monday to Friday could give rise to unacceptable levels of noise if supervision were inadequate. Subject to these controls¹, I conclude on the main issue that the development will not have an unduly detrimental effect on neighbours' living conditions in terms of noise and disturbance. It will therefore comply with saved Policy STRAT1 of the West Lindsey Local Plan First Review, adopted June 2006 which, among other things, seeks to safeguard the quality of life of residents and the amenities of neighbouring land.

¹ The views of the parties on my suggested conditions were sought and taken into account.

19. The Council's suggested condition limiting the number of children to 6 at any one time would negate the benefit of any permission, given the Council's acceptance that minding up to 6 children would not constitute a material change of use. Furthermore, the Council suggested a condition preventing the operation of the business before 08:30, but this would negate the benefit of the permission insofar as it is intended to facilitate a before school club. The Council's original suggested condition concerning the number of children on the premises also apportioned numbers between specific age groups. No reason was given and this element was deleted in the Council's final comments. I am not convinced that it served a planning purpose and this aspect is probably a matter for controls within the childminders' registration and inspection regime.
20. The parties' description of the development in relation to the planning application included the words "(ground floor only)" and the area for use in relation to the childminding business was identified as such on a submitted plan. However, neither party has suggested that a condition should be imposed to actually restrict the use in this way. There is no need for such a condition as the key is to limit the number of children on the premises as a whole and the main concern is the impact of the use of the garden.

Conclusion

21. Given my conclusion on the main issue and subject to the conditions referred to, I am satisfied that planning permission should be granted on the section 78 appeal and ground (a) enforcement appeal/deemed application and the enforcement notice should be quashed. It is not therefore necessary to consider the appeal against the enforcement notice on grounds (f) and (g).

Decisions

Appeal A: APP/N2535/C/10/2141442

22. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the land and buildings at 11 Elm Avenue, Cherry Willingham, Lincoln, LN3 4AU, as shown on the plan attached to the notice, from use as a residential property to mixed residential and childminding business, subject to the following conditions:

- 1) The childminding element of the mixed use hereby permitted shall be carried on only by Mrs Louise Harrison and any assistants engaged by and working with her.
- 2) The childminding element of the mixed use hereby permitted shall not operate outside the hours of 0730 - 1730 Monday to Friday.
- 3) Always subject to condition 2 above, the maximum number of children 'minded' on the site at any one time (excluding Mrs Louise Harrison's children) shall be as follows:

0900 - 1530	6 children
0730 - 0900	12 children
1530 - 1730	12 children

Appeal B: APP/N2535/A/10/2140864

23. I allow the appeal, and grant planning permission in the same terms and subject to the same conditions as per appeal A.

J A Murray

INSPECTOR



Costs Decisions

Site visit made on 1 March 2011

by **John Murray LLB, Dip.Plan.Env, DMS, Solicitor**

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

Decision date: 31 March 2011

Costs application in relation to Appeal Ref: APP/N2535/C/10/2141442 11 Elm Avenue, Cherry Willingham, Lincoln, LN3 4AU

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Louise Harrison for a full award of costs against West Lindsey District Council.
 - The appeal was against an enforcement notice alleging the change of use of the land from use as a residential property to mixed residential and childminding business.
-

Costs application in relation to Appeal Ref: APP/N2535/A/10/2140864 11 Elm Avenue, Cherry Willingham, Lincoln, LN3 4AU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Louise Harrison for a full award of costs against West Lindsey District Council.
 - The appeal was against the refusal of planning permission for the change of use of the land from use as a residential property to mixed residential and childminding business.
-

Decisions

1. I refuse both applications for an award of costs.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In seeking awards of costs the applicant has made specific reference to paragraphs A3, B4, B16, B20 – B23, B25 – B27, B29, B32 and B34 – B39 of the Circular and I have had regard to those provisions.
3. The appeal questionnaire and information should have been forwarded to the applicant by 6 December 2010. Though the applicant did not receive it until 19 December 2010, the questionnaire was dated 6 December 2010. It is not clear when the Council actually sent a copy to the applicant, but the Council points out that the postal service was severely disrupted by snow falls at that time. In those circumstances, I am not persuaded that the delay amounted to unreasonable behaviour and, in any event, the applicant does not identify any unnecessary or wasted expense arising from any delay.
4. The committee report paid proper regard to the acoustic engineer's report provided by the appellant and the advice of the Council's Environmental Protection Officer that the noise generated by the use was within "tolerable

levels". However, leaving aside the Council's contention that the number of children 'minded' at the appeal property increased after the acoustic report was produced, the committee report also advised that, in planning terms, a loss of amenity could arise notwithstanding the absence of a statutory noise nuisance. It was not unreasonable of the Council to refuse planning permission simply because of technical advice that the noise did not constitute a statutory nuisance.

5. The applicant claims that the Planning Officer dealing with this case never visited the site or saw the appeal property's rear garden. However, this is refuted by the Council and I am not in a position to resolve that factual dispute on the evidence before me. In any event, even if the applicant is correct, it does not follow that permission would have been granted, or enforcement action not taken, had the officer visited. Again, the applicant cannot therefore demonstrate that costs were wasted as a result of any failure to visit the site, even if it amounted to unreasonable behaviour.
6. The Council's appeal statement referred to noise and disturbance associated with people dropping off and collecting children. Concerns regarding disturbance arising from factors other than the use of the garden were not readily apparent from the reasons for refusing the planning application or issuing the enforcement notice. However, such matters had been raised by some neighbours and were a matter for proper comment. Accordingly, including 2 short paragraphs on this issue in her final comments did not involve the applicant in any significant wasted or unnecessary expense.
7. The committee report shows that the possibility of imposing conditions was considered. Having regard to advice in Circular 11/1995, the Council took the view that the condition suggested by the applicant restricting the number of children using the garden at any time was not reasonable or practical. I took the same view. The fact that I then suggested and ultimately imposed conditions different to those put forward by either party does not mean that the Council's failure to devise such conditions was unreasonable.
8. The failure to determine like cases in a like manner can constitute unreasonable behaviour. However, in my decisions on the substantive appeals, I concluded that the circumstances surrounding the grant of planning permission for a day nursery to the rear of 37 Church Lane, Cherry Willingham were materially different. It was not therefore unreasonable for the Council to reach a different conclusion in this case.
9. Although the applicant was willing to submit an amended planning application the Council believed there were amenity issues which justified enforcement action. I have concluded that neighbours' amenity can be safeguarded through the use of conditions, but Planning Policy Guidance Note 18 (Enforcing Planning Control) indicates that negotiations should not be allowed to hamper or delay whatever formal action may be required to make development acceptable on planning grounds or to compel it to stop. In the circumstances, the service of an enforcement notice was not unreasonable.
10. The applicant suggests that the Council could have 'under-enforced', requiring the number of children using the garden to be limited, rather than seeking the cessation of the use. The Council states that it did not require the use to cease. This is an arguable point, given that it did require the use to be reduced to a level at which, in the Council's view, it would not constitute development requiring planning permission. Nevertheless, I have already indicated that the

suggested limit on the number of children using the garden would not be practical and a failure to seek to impose such a limit cannot be considered unreasonable.

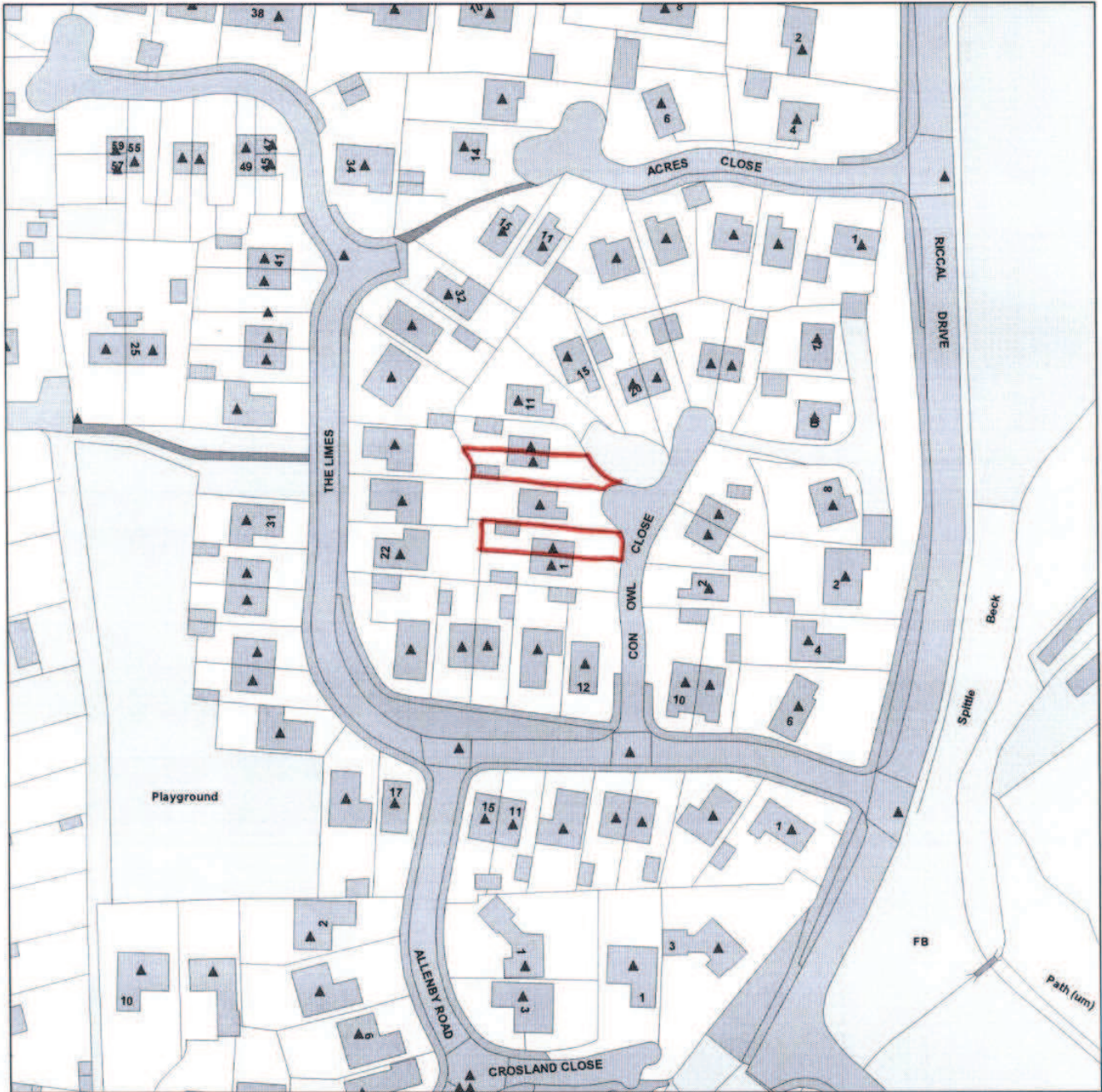
11. For the reasons given and having regard to all other matters raised, I conclude that the Council did not behave unreasonably in a manner which led to the applicant incurring unnecessary or wasted expense. Accordingly no order for costs is justified.

J A Murray

INSPECTOR



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Organisation	Not Set
Department	Not Set
Comments	
Date	23 July 2014
SLA Number	Not Set