
Appeal Decisions

Site visit made on 8 July 2015

by Martin Joyce DipTP MRTPI

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

Decision date: 5 August 2015

Appeals A & B: APP/Y2736/C/14/2219255 & 2219256 Land to the north of York Lane, Flaxton, York, North Yorkshire

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr A J G and Mrs F J Brooks against an enforcement notice (Notice 1) issued by the Ryedale District Council.
- The Council's reference is 13/00126/UD.
- The notice was issued on 17 April 2014.
- The breach of planning control as alleged in the notice is, without planning permission, carrying out the following operational development:
 - (i) The erection of two 72m² timber stable blocks;
 - (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
 - (iii) Excavation and formation of hardstanding areas; and,
 - (iv) Laying of concrete slabs.
- The requirements of the notice are to:
 - (i) Dismantle and remove the materials comprising the two 72m² timber stable blocks from the land;
 - (ii) Remove any hardcore and surface material from the manege area on the land;
 - (iii) Excavate and remove the hardstanding materials from the land filling excavated areas with topsoil;
 - (iv) Remove from the land all building materials and rubble arising from compliance with requirements (i) above (*sic*);
 - (v) Restore the land to its condition before the breach took place by levelling the ground with topsoil and re-seeding it with grass; and,
 - (vi) Restore the land to its former condition as agricultural land.
- The period for compliance with the requirements is 90 days.
- The appeals are proceeding on the grounds set out in Section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed planning applications also fall to be considered.

Summary of Decision: The appeals are allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeals C & D: APP/Y2736/C/14/2219257 & 2219258 Land to the north of York Lane, Flaxton, York, North Yorkshire

- The appeals are made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr A J G and Mrs F J Brooks against an enforcement notice (Notice 2) issued by the Ryedale District Council.
- The Council's reference is 12/00014/CU.
- The notice was issued on 17 April 2014.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from agriculture to a mixed use for agriculture

and the keeping of horses for recreational purposes with siting of two horse shelters, storage of associated equipment used to keep horses, motor vehicles, trailers and horse boxes together with the following operations to facilitate that use:

- (i) The erection of two 72m² timber stable blocks;
 - (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
 - (iii) Excavation and formation of hardstanding areas; and,
 - (iv) Laying of concrete slabs.
- The requirements of the notice are to:
 - (i) Discontinue the use of the land for any purpose other than agricultural use or a temporary use permitted by permitted development rights under Part 4 of the General Permitted Development Order 1995 as amended or any Order replacing the 1995 Order;
 - (ii) Discontinue the use of the land for keeping horses for recreational purposes, manege and the parking of horse boxes and trailers, motor vehicles;
 - (iii) Remove the horses from the land;
 - (iv) Remove all trailers/horse boxes from the land;
 - (v) Remove from the land all vehicles and equipment brought on to the land for the purposes of that use. You may keep on the land any vehicles or equipment which you use solely for the purposes of agriculture on the land;
 - (vi) Dismantle and remove paddock fencing from the land; and,
 - (vii) Dismantle and remove the horse shelters from the land.
 - The period for compliance with the requirements is 90 days.
 - The appeals are proceeding on the grounds set out in Section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed planning applications also fall to be considered.

Summary of Decision: The appeals are allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Matters Concerning the Notices

1. The appellant has questioned the validity of Notice 2 and I have a number of concerns about the wording of both notices. I shall deal with these matters before considering the main grounds of appeal.
2. With regard to the question of validity, the appellants contend that both notices are invalid because the reasons for expediency of their issue are unclear, as they do not state what harm is being caused by the developments. This makes them invalid and incapable of correction. They are also invalid because they are confusing, with one notice relating to operational development and the other a material change of use yet with much overlap between the two and both notices containing references to the same elements of the alleged breach. The notices therefore fail to comply with Section 173(1) of the Town and Country Planning Act 1990 (TCPA) as they do not allow the recipient to know what he or she has done wrong, and they should be quashed as invalid.
3. Section 173 of the TCPA sets out what an enforcement notice shall contain. It includes requirements that the notice shall state the matters which appear to the Local Planning Authority to constitute the breach of planning control¹. It then states that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are². It does not, as a matter of fact, require that the notice sets out the reasons for the issue of the notice, including the alleged harm caused, but this matter is

¹ Section 173(1)(a).

² Section 173(2).

covered by a subsequent Regulation³, as provided for in Section 173(10). The overall aim of these statutory requirements is to enable a recipient of a Notice to know what he or she has done wrong, and why the Local Planning Authority considers it expedient to issue the Notice.

4. In this case, I am satisfied that the notices meet the statutory requirements. Both state the alleged breach of planning control; Notice 1 is aimed at alleged unauthorised operational development, whilst Notice 2 concerns an alleged material change of use, together with operational development that facilitates such use. Both notices also set out the reasons for issue, mentioning proximity to a Conservation Area, harm to the character and appearance of the surrounding area, failure to improve the character of the area and to enhance the local environment, and a lack of survey information to show no adverse impact on protected species. They also set out, in some detail, the Development Plan policies that are thereby contravened. I accept that Section 4(iii) of the notice appears to be more abstract in saying that "Unauthorised development results in harm to the character and appearance of the surrounding area ...", but this could simply be a typing error, with the preceding word "The" omitted by mistake. However, I consider that there can be little doubt as to why the notices were issued, and the reasons for the Council taking such action. Neither notice is, therefore, a nullity or invalid, as claimed by the appellants.
5. Notwithstanding my conclusions above, I consider that the notices are confusing, particularly through the reference in Notice 2 to the operational development that facilitates the alleged unauthorised material change of use, as set out in Notice 1. In this context, I am of the view that the appellants have misinterpreted the wording of Notice 2, in their reference to "incidental" operational development, and that they have not appreciated the relevance of the word "facilitates". It is quite permissible for a material change of use notice to require facilitating operational development to be removed, having regard to pertinent case law (*Somak Travel*⁴ and *Murfitt*⁵) which found that not only could such development be required to be removed, but that even matters that would not normally constitute development may also be required to be removed, such as an internal staircase (*Somak Travel*). Notice 2 does not, however, as a matter of fact, require the stated operational development to be removed, only other elements associated with the material change of use, including the horses, trailers/horse boxes, vehicles and equipment, paddock fencing and horse shelters. This could have had unwanted consequences for the Council, having regard to Section 173(11) of the TCPA were it not for the fact that the removal of such development is required by Notice 1, as compliance with the remainder of the notice could have granted planning permission for those works under Section 73A.
6. Having regard to all of the above points, I am of the view that, whilst the notices are not invalid or a nullity, they would benefit considerably from correction with a view to greater clarity. In this context I am mindful of the duty of an Inspector to get a notice in order if it is possible to do so⁶. I

³ Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI 2002 No 2682).

⁴ *Somak Travel v Secretary of State for the Environment and London Borough of Brent Council* [1987] JPL 630.

⁵ *Murfitt v Secretary of State for the Environment* [1980] JPL 598.

⁶ *Hammersmith London Borough Council v Secretary of State for the Environment and Sandral* [1975] 30 P and CR19.

consider that this would be possible through combining the two notices into one, so as to create a composite notice which alleges both a material change of use of the land, to a mixed use of agriculture and the keeping of horses, and operational development that has facilitated that material change of use, including the elements which might not, by themselves, require a specific grant of planning permission. I consider that this can be done, using the powers available to me under Section 176(1) of the TCPA, without causing injustice or prejudice to either the appellants or the Council.

7. Turning to other matters concerning the wording of the notices, I am uncertain as to the legitimacy of requirement (vi) of Notice 1, as it seems to duplicate, to some extent, that of requirement (v), albeit with a reference to restoring the land to its condition *as agricultural land (my emphasis)*. This implies a requirement to return the land to agricultural use but, if that was what was intended, it would not be legitimate, having regard to the judgement in *Lipson*⁷. In such circumstances, it is sufficient to require restoration of the land to its condition before the breach took place. This would thereby also meet the requirements of Section 173(4)(a) of the TCPA.
8. With regard to Notice 2, I find a number of matters relating to the requirements to be of concern. Firstly, requirement (i) appears to be seeking to restrict the future use of the land, by limiting such use to either agriculture or any temporary use that may be permitted under Part 4 of the General Permitted Development Order 2015 (GPDO)⁸. Whilst this may also be taken to be attempting to comply with the *Mansi* principles⁹, such a requirement, if upheld, would prohibit other uses that would not require a grant of planning permission, such as forestry use. Section 173(4)(a) of the TCPA sets out the purposes of a notice as including the discontinuance of the use of the land and that is all that can be required in this instance.
9. On a second point, requirement (ii) does, as a matter of fact, require the discontinuance of the use of the land for the keeping of horses, but this step becomes confusing in that it goes on to include "manege and the parking of horse boxes and trailers, motor vehicles". The manege has been identified as an element of operational development thus it should not be included as a use of land. Moreover, the allegation refers not only to a use for the keeping of horses, but also to the "storage of associated equipment used to keep horses, motor vehicles, trailers and horse boxes". There is no explicit reference to the cessation of such storage, although the requirements to remove all trailers/horse boxes (Step (iv)), and all vehicles and equipment brought on to the land for the purposes of that use (Step (v)), could be taken to require such cessation.
10. Drawing all of these matters together, I conclude that the notices should be combined into a single composite notice, alleging both a material change of use, and the associated or facilitating operational development that has taken place, with the requirements corrected to provide greater clarity as indicated above. This is necessary not only in the event of the notices being upheld, but also to clarify the terms of the deemed planning applications that will be the subject of the appeals under ground (a). This will mean that Notice 1 will be

⁷ *Lipson v Secretary of State for the Environment* [1976] 33 P and CR 95.

⁸ The notice refers to the General Permitted Development Order 1995 (GPDO) as amended or any Order replacing the 1995 Order. Since the date of issue of the notice, the 2015 Order has come into effect.

⁹ *Mansi v Elstree Rural District Council* [1964] 16 P and CR 154.

corrected to include both the material change of use and the associated operational development, and Notice 2 will be quashed.

THE APPEALS ON GROUND (b)

11. The appeals on ground (b) relate to a contention that the horse shelters referred to in Notice 2 are in fact buildings constructed on the site, and that the reference to their siting is incorrect. The Council, however, state that they are moveable buildings albeit that if, following the site inspection, it is found that they are buildings they could be added to the items of operational development listed in Notice 1.
12. The legitimacy of such amendment is debatable as it could be seen to make a notice more onerous than if no appeal had been made. However, at my site inspection I saw no such shelters on the land, only the two main stable blocks, and some smaller wooden buildings at the western end of the site used in connection with the keeping of pigs on the land, albeit that there were no pigs there at that time. I have seen photographs of the shelters in question, but they did not appear to be on the site when I inspected it, which tends to add weight to the claim that they were moveable structures. In all of these circumstances I can, therefore, reach no firm conclusion on the question of whether the horse shelters referred to in Notice 2 are buildings or moveable structures. As the burden of proof lies, in legal grounds such as this, with the appellants¹⁰, I can only conclude that the appeals on ground (b) must fail.

THE APPEALS ON GROUND (c)

13. The appeals on this ground relate to the erection of the paddock fencing, required to be removed under Notice 2. The appellants claim that, if it is operational development it should have been included in Notice 1 but, in any event, it is permitted development as it is less than 2m in height.
14. I have largely dealt with this matter in my considerations on the wording and form of the notices. The appellants are correct in that such fencing would normally be permitted development under Part 2 of Schedule 2 to the GPDO, but insofar as it facilitates the material change of use to the keeping of horses that has taken place, it is legitimate for Notice 2 to require its removal. However, I saw that the south-western end of the site is fenced so as to provide nine enclosures for the keeping of pigs, together with four pig arks thus, as this represents part of the agricultural element of the alleged mixed use, the notice cannot lawfully require the fencing in this area to be removed. The appeals on ground (c) succeed to this extent and Notice 2 will be corrected accordingly.

THE APPEALS ON GROUND (a)

Main Issues

15. The main issues in these appeals are:
 - a) the effect of the use and development on the character and appearance of the surrounding area including the setting of the Flaxton Conservation Area;
 - and,

¹⁰ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

- b) the effect of the use and development on interests of nature conservation, including protected species.

Reasoning

Effect on Character and Appearance

16. The appeal site comprises a flat roughly rectangular-shaped area of land on the northern side of York Lane. Access is gained close to the south-eastern corner, across a strip of land that is classified as common land. The site lies within open countryside to the west of the village of Flaxton, a largely linear settlement and Conservation Area, with many of the buildings on the eastern side of the main road through the village, albeit that, south of the junction with York Lane, there is development on both sides including opposite the entrance to the appeal site.
17. The character of the surrounding area is largely rural, with flat open agricultural land to the west of a village that comprises mainly two-storey buildings in a variety of styles and materials. In terms of appearance, the large fields are mostly bounded by thick mature deciduous hedgerows with hedgerow trees. One slightly discordant element, however, is the village hall, sited to the west of the Village Green, immediately north of the appeal site, as its materials and style do not reflect the high quality architecture of much of the remainder of the village. It is not, however, unduly prominent because of screening vegetation and its location set back from the main road.
18. The appeal development comprises areas of hardstanding, inside the entrance gates, and then two timber buildings each containing five stables, of about 4m in width and 19m in length, built parallel to one other. Beyond is a fenced manege, surfaced with sandy material, and a series of paddocks, including a row of smaller enclosures at the south-western end used for the breeding of pigs. I saw four horses in the paddocks, with a further horse and foal in one of the stables. Three of the stalls were being used for storage, and two were locked, presumably because they contained more valuable equipment and materials.
19. The Council's planning policy for this area is set out in the Ryedale Local Plan Strategy (LPS), which was adopted in September 2013. A number of policies are pertinent, to varying degrees, in these appeals. Policy SP1 relates to the general location of development and settlement hierarchy, and states that, in the open countryside, development will be restricted to that which is necessary to support a sustainable, vibrant and healthy rural community. Policy SP9 concerns the land-based and rural economy, and states that it will be sustained and diversified with support for a number of elements, including new buildings that are necessary to support land-based activity and a working countryside, including for farming, forestry and equine purposes, and appropriate new uses for land. Policy SP12 relates to Heritage and seeks to protect the District's historic assets and features, including through sensitive expansion, growth and land use changes in and around villages, safeguarding elements of historic character and value, including Visually Important Undeveloped Areas (VIUA). Policy SP13 concerns Landscape Character and aims at the protection and enhancement of the quality, character and value of Ryedale's diverse landscapes. Finally, Policy SP20 deals with generic development management issues, and requires that new development respect the character and context of the immediate locality and the wider landscape/townscape character in

terms of physical features and the type and variety of existing uses. The appeal site does not lie within a VIUA, or the Flaxton Conservation Area, but its north-eastern boundary abuts both areas, as defined in Inset 31 of the Ryedale Local Plan 2002.

20. The LPS accords largely with the policies set out in the National Planning Policy Framework (The Framework). I am particularly mindful of Section 3 of the latter which is entitled "Supporting a prosperous rural economy" and states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. This includes the promotion of the development and diversification of agricultural and other land-based rural businesses. Section 12 is also relevant, dealing with the conservation and enhancement of the historic environment, in relation to the effect on the setting of a Conservation Area.
21. The use, including the associated operational development that has taken place has a very limited visual impact, albeit that the buildings would be more visible from York Lane in winter months when the deciduous vegetation has less screening effect. Nevertheless, even in more open winter views, all that would be seen are a pair of unexceptional and functional stable buildings, of neat and tidy design in appropriate materials, together with paddock fencing and small areas of hardstanding where associated vehicles may be parked. These elements are not prominent, and can only be seen to any extent from upper floors of buildings some distance to the east and south. The use of land such as this is for the keeping of horses is not at all unusual in locations close to settlements, and is clearly provided for in Policy SP9 of the LPS as a viable alternative to traditional agricultural uses.
22. The appellants do not claim that they are running a business, although they had intended to breed pigs. The horses are kept for private recreational purposes, and they do not intend to use the stables for livery purposes, as alleged by some third parties. This could be covered by an appropriate condition on any grant of planning permission.
23. It is clear that considerable visual disruption, as well as noise and general disturbance, took place during the construction of the stables and hardstanding areas, but I can only consider the impact of the final development as it is not, as a matter of law, illegal to undertake development without first obtaining planning permission, albeit that it may result in enforcement action being taken, as in this instance. It follows, in conclusion on this issue, that I do not consider that the development has resulted in any material harm to either the character and appearance of the surrounding area or the setting of the Flaxton Conservation Area. The use and development thereby complies with relevant policies in the LPS and The Framework.

Nature Conservation

24. There is a pond immediately east of the south-eastern corner of the appeal site which is a habitat and breeding ground for great crested newts, a protected species under the Wildlife and Countryside Act 1981. The Council contend that it has not been shown that the use of this land for the keeping of horses, if approved, would safeguard this species, as no survey information has been provided, and also that harm may have occurred during the construction phase of the development. In this context, Policy SP14 of the LPS, concerning Biodiversity, states that proposals which would have an adverse effect on any

site or species protected under international legislation will be considered in the context of the statutory protection which is afforded to them. Paragraph 109 of The Framework is also pertinent; this states, amongst other things, that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity.

25. The appellants draw attention to the fact that no action, by any relevant authority, such as Natural England, has been taken in respect of impact on protected species, indicating a lack of concern on their part, and that removal of hardstandings and buildings, as required by the notices, would also be likely to cause harm if the Council's arguments are accepted, thus it is a more reasonable approach to allow the use to continue.
26. It is clear that there is no survey information available to me about the likely presence or otherwise of great crested newts on the appeal site and I consider that such work would have been of benefit before any development took place. However, the pond does not, as a matter of fact, lie within the appeal site, neither does it have any specific designation or protection. It is not, for example, a Site of Special Scientific Interest (SSSI) or local Site of Nature Conservation Interest (SNCI). I understand that it is one of three ponds around the village that contains great crested newts and it follows that migration between these sites is possible, including across land which may be part of the appeal site. Nevertheless, Natural England has not been consulted on this development and this suggests that the impact on the species is likely to be somewhat less than suggested by opponents of the development.
27. I am mindful of the fact that the highest risk of harm to great crested newts would have occurred during the construction phase of the development, but this has now passed, and it appears that no formal action of any sort was taken by relevant authorities in respect of curtailment of such work on the basis of the need to protect the species. Now that the development is effectively complete, the risk of harm is significantly lessened, and migration pathways across the land are likely to have been resumed. In all these circumstances, therefore, I conclude on this issue that the continuation of the use would not materially harm protected species and the aims of Policy SP14 and Paragraph 109 of The Framework would thereby be met.
28. It follows from my conclusions on the main issues that the appeals on ground (a) succeed, thus planning permission will be granted. In these circumstances, the appeals on grounds (f) and (g) do not need to be considered.

Conditions

29. The Council has not suggested any conditions in the event of the appeals being allowed and planning permission granted. In such circumstances, I consider that only one is required, which would prevent the use of the site for livery purposes without the further approval of the Local Planning Authority, as such a use could have significant traffic implications which have not otherwise been considered. The appellants have specifically stated that they do not intend to use the site in this way, only for private recreational purposes, thus this condition would not be unduly onerous.

Other Matters

30. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main issues and the grounds of appeal.

Conclusions

31. It is clear from my deliberations above that the notices require correction. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notices, in those respects, in order to clarify the terms of the deemed applications under Section 177(5) of the 1990 Act as amended.
32. For the reasons given above, however, I conclude that the appeals should succeed on ground (a) and I will grant planning permission in accordance with the applications deemed to have been made under Section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

FORMAL DECISIONS

Appeals A & B: APP/Y2736/C/14/2219255 & 2219256

33. The enforcement notice (Notice 1) is corrected by:

- a) The deletion of Section 3 in its entirety and the substitution therefor of the following allegation:

"3. THE ALLEGED BREACHES OF PLANNING CONTROL

1. Without planning permission, the material change of use of the Land from agriculture to a mixed use for agriculture and for the keeping of horses for recreational purposes, including the siting of two horse shelters, the storage of associated equipment used for the keeping of the horses, and the parking of motor vehicles, trailers and horse boxes; and,
 2. Without planning permission, the carrying out of the following operational development:
 - (i) The erection of two 72m² timber stable blocks;
 - (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
 - (iii) Excavation and formation of hardstanding areas; and
 - (iv) The laying of concrete slabs.
- b) The deletion of Section 5 in its entirety and the substitution therefore of the following requirements:
- (i) Discontinue the use of the land for the keeping of horses for recreational purposes, including the siting of two horse shelters, the storage of associated equipment used for the keeping of the horses, and the parking of motor vehicles, trailers and horse boxes;
 - (ii) Remove all horses, trailers, horse boxes and motor vehicles associated with the keeping of horses from the land;

- (iii) Remove all equipment brought onto the land for the purpose of the keeping of horses;
- (iv) Dismantle and remove paddock fencing from the land, other than that which is required for agricultural purposes;
- (v) Dismantle and remove the horse shelters from the land;
- (vi) Dismantle and remove the materials comprising the two 72m² timber stable blocks from the land;
- (vii) Remove any hardcore and surface material from the manege area on the land;
- (viii) Excavate and remove the hardstanding materials from the land, filling excavated areas with topsoil;
- (ix) Remove from the land all building materials and rubble arising from compliance with the above requirements; and,
- (x) Restore the land to its condition before the breach took place, by levelling the ground with topsoil and re-seeding it with grass."

34. Subject to these corrections, the appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of the Land from agriculture to a mixed use for agriculture and for the keeping of horses for recreational purposes, including the siting of two horse shelters, the storage of associated equipment used for the keeping of the horses, and the parking of motor vehicles, trailers and horse boxes; and, the carrying out of the following operational development:

- (i) The erection of two 72m² timber stable blocks;
- (ii) Engineering work to create a large excavated area for an all-weather riding area manege;
- (iii) Excavation and formation of hardstanding areas; and,
- (iv) The laying of concrete slabs.

on land north of York Lane, Flaxton, North Yorkshire, subject to the following condition:

- 1) The use and buildings hereby permitted shall not be used for livery purposes except with the prior written approval of the Local Planning Authority.

Appeals C & D: APP/Y2736/C/14/2219257 & 2219258

35. The enforcement notice (Notice 2) is quashed.

Martin Joyce

INSPECTOR