



Appeal Decision

Site visit made on 25 November 2016

by **Susan Wraith DipURP MRTPI**

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

Decision date: 6 January 2017

Appeal Ref: APP/Y2736/C/16/3146548

Land at Partings Farm, Eberston, Scarborough, North Yorkshire, YO13 9PA

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Albert Craggs against an enforcement notice issued by Ryedale District Council.
 - The notice was issued on 11 February 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land known as Partings Farm, to a mixed use for purposes of agriculture and motorcycle riding, including trials of skill, motorcycle racing, including trials of speed, and practising for such activities, together with the construction of a permanent track and car park including the formation of jumps, man-made hollows, berms, corner banking, all to facilitate some or all of those activities.
 - The requirements of the notice are:
 - i. Cease the use of the Land for the riding of motorcycles or motor sports activities;
 - ii. Permanently remove from the Land the track, including the jumps, man made hollows, berms, corner banking and obstacles created by mounds of soil within the track, reinstating the ground to its original ground levels;
 - iii. Permanently remove from the Land all items that are supporting or associated with the unauthorised motor sports including the lengths of fencing, individual timber posts, lengths or rope between timber posts, sign boards, banner signs and staging/pallets.
 - iv. Permanently remove the stonechips/hardcore access track and car park on the part of the Land shown hatched on the attached plan;
 - v. On completion of steps i-iv, grade the Land so that the contours of the Land are restored to their former natural levels, and cultivate the Land leaving it in a condition suitable for agricultural use;
 - vi. Remove the static caravan from the Land.
 - The period for compliance with the requirements is 30 days.
 - The appeal is proceeding on the grounds set out in s174(2)(b) and (f) of the Act.
-

Decision

1. It is directed that the enforcement notice be corrected by:
 - (a) In paragraph 2., deletion of "edged red" and substitution of "hatched red";
 - (b) In paragraph 3., deletion of "the land known as Partings Farm" and substitution of "the Land";
 - (c) In paragraph 3., deletion of "car park" and addition of "and the formation of a parking area" at the end of the sentence;
 - (d) In paragraph 5.i., deletion of "or" and substitution of "and"; and
-

- (e) In paragraph 5.iii., deletion of "lengths or rope" and substitution of "lengths of rope".

It is directed that the enforcement notice (as corrected) be varied, in paragraph 5., by:

- (a) Deletion of steps iv. and vi.;
- (b) Re-numbering of step "v." to "iv."; and
- (c) Within re-numbered step iv., deletion of "steps i-iv" and substitution of "steps i.-iii.".

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. Interested parties have commented on (amongst other things) noise, visual effects and highway safety. However, there is no appeal made on ground (a)¹ and, thus, no deemed planning application arises. These matters, which concern the planning merits of the development, are not ones which I can take into account in my consideration of the grounds of appeal that are before me.

Matters concerning the enforcement notice

3. Before proceeding to consider the appeal under grounds (b) and (f) and the merits of the arguments I must, first of all, be sure that the notice is in good order. The allegation is framed as a "mixed use". In mixed use cases the allegation should refer to all the components of a mixed use. At my site visit I saw that there was a farmhouse and a second caravan within the land edged red on the enforcement notice plan. It appears that "residential use" should also have been a component of the mixed use, together with agriculture and the motorcycle sport use referred to in the notice.
4. I have considered correcting the notice to add "residential use". However, I cannot be sure (from the evidence before me) of the lawful status of such use and both parties may have wished to develop further arguments had the notice been framed in that way. I would not be able to make the notice more onerous by adding additional requirements. I am also mindful of the provisions of s173(11)² of the Act which would result in any component not enforced against gaining deemed planning permission. I have concluded, therefore, that I would not be able to correct the notice in this way without causing injustice to both the appellant and the Council.
5. Another way in which I can consider correcting the notice is to limit its effect to the area hatched red, that being a smaller area within the wider land and being the land on which the motorcycle activities actually took place. In identifying the wider area the Council may have wished to guard against the spread of the unauthorised activity. However, it would not be precluded from taking further

¹ An appeal brought under s174(2)(a) of the Act is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

² S173(11) of the Act provides that where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed, or an activity to cease, but has stipulated some lesser requirement, (under enforcement), which has been complied with, then, so far as the notice did not so require, planning permission shall be deemed to be granted under s73A for that operation or use.

enforcement action in that eventuality. The corrected notice, albeit covering a smaller area, would still serve a useful purpose.

6. As the unauthorised use was seasonal and undertaken at weekends (albeit its physical changes remained throughout), and the land was within an existing working farm, I cannot rule out the possibility of some agricultural use also taking place on the hatched land at other times. I shall, therefore, leave the allegation framed as a mixed use with "agriculture" as a component together with the motorcycle sports activities.
7. There is a further matter at paragraph 5.i. of the notice. To make clear that the notice requires cessation of both the riding of motorcycles and motor sports activities (rather than requiring one or the other) I shall delete "or" and substitute "and". When reading the notice as a whole a recipient would understand that this is what was intended. The correction will add clarity.
8. Additionally there is a typographical error at paragraph 5.iii. in that there is an erroneous "or" in the phrase that should read "lengths of rope".
9. I shall correct all the abovementioned errors under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will arise to either party in me so doing.

The appeal on ground (b)

10. An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact. My consideration of the appeal on ground (b) is made taking into account the corrections which I have identified in the above paragraphs.
11. Ground (b) is argued only in respect of the alleged "car park" and "stonechips/hardcore access track". An appeal on ground (b) is mainly concerned with the wording of the allegation. The access track is not expressly included within the allegation at paragraph 3. of the notice although its removal is required under paragraph 5.. This is a matter more appropriately considered under ground (f).
12. With regard to the "car park", the allegation (when read literally) suggests that a car park has been "constructed" on the land as an integral part of the material change of use. The appellant disputes that any such car park has been constructed.
13. The main parking area (within a field to the rear of the farm buildings) was pointed out to me at my visit. However, there is no suggestion in the evidence, or within the notice itself, that specific works had been carried out to that area to construct a car park. It appears that vehicles simply parked on the field. This area has now been returned to agricultural use. It cannot be deduced that the small amount of hardcore which I saw at my visit, sparsely spread around the entrance to the field (as is typically seen elsewhere on the farm) amounts to works for the construction of a car park.
14. The Council's "car park" evidence focuses upon a relatively level area to the front and side of the caravan (positioned towards the northern boundary of the hatched land) which, the appellant says, was pre-existing and has not been altered. However, undated photographs supplied by the Council (said to have been taken

at an initial site visit) show deposited material (possibly soil) around the banking of the area and a scattering of hardcore across parts of its surface. The photographs show a van and a couple of other vehicles parked within this area together with picnic tables to the front of the caravan and a portable toilet to the side.

15. I note that the caravan was used as an office, shop, tuck shop and first aid room in connection with the motorcycle use. It is likely the minor works, which appear to be evidenced in the photographs, were undertaken to facilitate the use of this area for parking and other activities associated with this use of the caravan. However, to describe the works as the construction of a car park is (from the evidence) to overstate the extent of works which were carried out. These relatively limited works, to bring into use for parking this existing level area, can be more appropriately described as works for the formation of a parking area.
16. I shall deal with this matter as a correction to paragraph 3 of the notice which I can make under the available powers without injustice to either party.
17. There is no dispute that the change of use alleged at paragraph 3 of the notice has occurred as a matter of fact. It is agreed that the works to facilitate the use, which are listed in the allegation, took place. That is with the exception of the alleged car park, a matter which I intend to deal with as a correction to the notice. The appeal on ground (b) succeeds only to that limited extent.

The appeal on ground (f)

18. I shall consider the appeal on ground (f) as though the notice now includes all of the intended corrections.
19. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach³. The words "as the case may be" indicate that the main purpose of the notice should fall within one or the other category.
20. Unlike an appeal on ground (a), where the full planning merits of a development can be considered, an appeal on ground (f) is constrained by the Council's purpose in issuing the notice. In this case, the notice requires cessation of the use and complete removal of the works which facilitated it and restoration of the land to its former condition. The purpose of the notice is to "remedy the breach". The appeal is limited to the consideration of the steps necessary to achieve that purpose.
21. Ground (f) is argued only in respect of steps iv. and vi. which I shall consider in turn.
22. Step iv. concerns, firstly, the removal of the stonechip/hardcore access track. However, there is no apparent "access track" within the land covered by the notice. There is a farm track bordering the eastern boundary but this track was pre-existing and is outside of the land covered by the notice in any event. The motorcycle track, which is within the land covered by the notice, is not an "access" track and its removal is already covered by steps ii. and v.. The requirements of

³ These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out s173(4).

an enforcement notice should derive from the allegation but there is no reference to an "access track" within the allegation.

23. Step iv., secondly, requires removal of the car park although is unclear because it does not specify the works to achieve the removal of the car park. However, I have found that the formation of the parking area comprised only minor works to pre-existing relatively level ground. I consider step v., which requires the grading and cultivation of the land, would sufficiently deal with the works necessary to restore the land affected by the formation of the parking area to its former condition.
24. I therefore find that the requirements in step iv., to remove the access track and the car park, as well as lacking clarity, are excessive. I shall vary the notice by deleting step iv..
25. With regard to the requirement at step vi. (removal of the static caravan) the appellant has argued that the static caravan was brought to the land in or around 2011⁴ and was in use for human habitation during 2012 and 2013⁵. It was later used as a shop, office and first aid room in connection with the motorcycle use. However, a requirement for its removal (it is argued) is excessive as it was not brought onto the land for the purpose of the enforcement use.
26. The Council do not dispute that a caravan was once on the land but say that, in October 2013 (according to the Council Tax records) notification had been given that the caravan had been removed. The appellant says that he was not aware of such notification although comments that the previous occupiers would have liaised with the Council on Council Tax matters. According to the appellant the caravan remained on the land.
27. The appellant is well placed to know at first hand the history of the caravan. There is no evidence from the Council that it had visited the site to verify its removal. Neither is there any documentary evidence in the appeal submissions which throws doubt upon the appellant's version of events. On the balance of the evidence I consider it more likely than not that the caravan remained on the land and was already in situ at the time of the change of use, the subject of this appeal.
28. Under s173⁶ of the Act, in remedying the breach, an enforcement notice may specify steps to restore the land to its condition before the breach took place. However, the land before the breach took place included the pre-existing caravan. Additionally, there is no reference to the siting of a caravan in the allegation at paragraph 3 of the notice from which a requirement for its removal could derive.
29. Step 5.i. is sufficient to cover the cessation of use of the caravan as a shop, office and first aid room as it requires cessation in the use of the Land as a whole for the riding of motorcycles and motor sports activities and would cover all other incidental activities. The Council would not be precluded, outside of this appeal, from pursuing matters concerning the legitimacy of the caravan as it sees fit. However, its removal cannot be required through this enforcement notice.

⁴ There is an invoice for electrical connection dated 9/10/2011.

⁵ A Council Tax invoice indicates that the caravan was occupied between June 2012 and March 2013.

⁶ S173(4)(a) states that, where the purpose of a notice is to remedy the breach, steps shall be specified to achieve that purpose "by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place".

30. For all these reasons I conclude that the requirement for the removal of the caravan is excessive. I shall, therefore, delete requirement vi..
31. As a result of the deleted steps some re-numbering within paragraph 5. of the notice will be necessary.
32. There is no dispute about the remaining steps of the notice including the requirements to cease the use, remove the track and to restore the land. The appeal on ground (f) succeeds only to the limited extent of the deletion of steps iv. and vi..

Conclusion

33. Except to the limited extent identified under grounds (b) and (f), I conclude that the appeal should not succeed. I shall correct the notice and vary its requirements prior to upholding it.

Susan Wraith

Inspector