

# Appeal Decision

Site visit made on 1 November 2016

**by Andrew Dale BA (Hons) MA MRTPI**

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

**Decision date: 2 December 2016**

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**Appeal Ref: APP/N2739/C/16/3145909**

**Land adjacent to Frog Hall, Hagg Lane, Hemingbrough, Selby**

- 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 Mr Nick Parkin against an enforcement notice issued by Selby District Council.
  - The enforcement notice was issued on 2 February 2016 under ref. ENF/2016/0003/ENF.
  - The breach of planning control as alleged in the notice is: "Without planning permission the unauthorised erection of two unauthorised pigeon lofts on the Land."
  - The requirements of the notice are set out as follows:
    - "Step 1 Permanently remove pigeon lofts 2 and loft 3 (sic) from the Land as shown on the attached plan.
    - Step 2 Permanently remove the materials arising from the removal of the pigeon lofts from the Land and remove all associated litter and waste from the Land."
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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## Decision

1. It is directed that the enforcement notice be corrected by:
    - (i) The omission of the text within paragraph 2 in its entirety and its replacement with the text "Land adjacent to Hull Road (A63) to the north of its junction with Hagg Lane, Hemingbrough, Selby shown edged red on the attached plan ("the Land")."
    - (ii) The handwritten heading to that attached plan being altered accordingly to reflect (i) above.
    - (iii) The deletion of the word "loft" from step 1 at paragraph 5.
  2. Subject to those corrections, the appeal is allowed on ground (a), the enforcement notice is quashed and 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 erection of two pigeon lofts on the land adjacent to Hull Road (A63) to the north of its junction with Hagg Lane, Hemingbrough, Selby referred to in the notice, subject to the two following conditions:
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- 1) The two pigeon lofts hereby permitted shall be for private use only and shall not be used for any commercial purposes.
- 2) Unless within one month of the date of this decision a scheme for the containment, storage and disposal of pigeon waste is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the two pigeon lofts by pigeons shall cease until such time as a scheme approved by the local planning authority is implemented. If no such scheme in accordance with this condition is approved within six months of the date of this decision, the use of the two pigeon lofts by pigeons shall cease until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme for the containment, storage and disposal of pigeon waste shall thereafter be maintained and retained as approved. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Application for costs**

3. An application for costs was made by Mr Nick Parkin against the Council. This application is the subject of a separate decision.

### **Background and procedural matters**

4. The appeal site relates to a small field on the edge of Hemingbrough. It has one frontage to Hull Road (A63) and another to Hagg Lane to the north-east of a detached house known as Frog Hall. As the site's frontage to Hull Road is longer than the one to Hagg Lane and contains the sole access to the site, it would be better if the land to which the enforcement notice relates was described with reference to Hull Road. Such a course of action would also remove the potential for Frog Hall to be associated with the use of the land. This is a separately owned dwelling. I can correct the enforcement notice and the plan attached to it in this regard without causing injustice to the parties.
5. The word "loft" in step 1 of paragraph 5 of the notice is superfluous. It can be omitted through a further correction to the notice.
6. The two pigeon lofts attacked by the enforcement notice stand in the north-western corner of the field. They are identified as lofts 2 and 3 in the notice and the plan attached to it. A smaller pigeon loft to the south of them has also been erected pursuant to a planning permission granted in January 2014 under ref. 2013/1191/FUL.
7. A retrospective application for the replacement of the smaller pigeon loft by new larger lofts was refused in June 2015 under ref. 2015/0075/FUL. There are inevitably some similarities between the plans considered then and the development as built that is the subject of the enforcement notice. There is one important difference; the development as built has not led to the demolition of the smaller pigeon loft, marked as existing loft A on the plans submitted with ref. 2015/0075/FUL. Those plans envisaged new loft C being

built over part of the ground occupied by loft A. The smaller pigeon loft benefits from planning permission, remains on the site and is not directly before me in this appeal.

8. The appellant's statement at Appendix B contains a separate 35-page report titled Environmental Noise and Odour Assessment (ENOA) March 2016 prepared by YES Consultancy based in York. The Planning Inspectorate alerted the third party occupiers of Frog Hall to the existence of the ENOA and gave them an opportunity to comment upon it. The letter dated 23 November 2016 from Mrs G Harrison has therefore been taken into account.

### **The appeal on ground (a) and the deemed planning application**

#### *Consideration of the main issue*

9. Reading the reasons given in the enforcement notice for its issue, I consider the main issue in deciding whether planning permission ought to be granted to be the effect of the pigeon lofts upon the residential amenities of the occupants of Frog Hall with particular reference to their size, scale and location and the number of birds they contain and the potential for odour, vermin and noise and general disturbance.
10. The development plan includes the Selby District Core Strategy (CS) October 2013 and the saved policies of the Selby District Local Plan (LP) February 2005. The enforcement notice refers to Policy ENV1 of the LP, a general policy concerning the control of development. It says that proposals for development will be permitted provided a good quality of development would be achieved. In considering proposals the District Council will take account of, amongst other things, the effect upon the amenity of adjoining occupiers. This is consistent with a core planning principle in the National Planning Policy Framework (the Framework) 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.
11. Frog Hall is a two-storey dwelling which stands in very close proximity to the eastern boundary of the appeal field. Its principal elevation faces Hagg Lane and most of the land associated with the dwelling runs parallel to Hagg Lane towards the A63. There are two first floor windows in the west-facing wall of Frog Hall which directly overlook the field. Views from the ground floor windows in the same elevation would be dominated by the substantial boundary fence only a short distance away.
12. The appellant has shown a degree of care in selecting the location for the pigeon lofts. He has erected the pigeon lofts in the north-west corner of the field, the corner of the field that is furthest from Frog Hall. The separation distance between the house at Frog Hall and the nearest pigeon loft is approximately 40 m. The pigeon lofts are single storey in form. The Council accepts that the buildings have no adverse physical impact on the amenities of the occupiers of Frog Hall in terms of overlooking, overshadowing or visual dominance. From my site inspection, I found no reason to disagree and nothing untoward about the size, scale or location of the pigeon lofts in physical terms. No additional landscaping is therefore required in this regard.

13. At my site visit, I stood next to the boundary with Frog Hall for some time and entered both of the pigeon lofts which were well stocked with pigeons. They have a combined capacity to house up to 200 pigeons. I have studied the characteristics of the use as explained in paragraphs 3.4 to 3.11 of the appellant's statement, none of which has been disputed by the Council. Clearly, Mr Parkin takes his hobby of pigeon racing seriously and may be involved in up to 17 pigeon racing events during the racing season which is generally between April and October. Whilst the buildings, the use and the number of birds would be difficult to accommodate in many back gardens, I saw nothing to suggest that the operation overall is out of scale with the host field. There is no evidence of a commercial use as such.
14. The enforcement notice refers to the matters of odour, vermin, noise and general disturbance being associated with the development. However, the evidence presented falls short of demonstrating that there has been a significant adverse impact on the amenities of the occupiers of Frog Hall. No clear records of regular incidents relating to those specific matters have been submitted to build up a clear picture of a significant adverse impact.
15. All these matters broadly fall within the ambit of environmental health. The Council's lead officer for environmental health (LOEH) has not submitted anything directly in response to this appeal. It is worth recording the comments of the LOEH on application ref. 2015/0075/FUL which were:

"I am aware that concerns from neighbours have been raised with regard to this application including the potential for a detrimental impact on residential amenity due to odour from waste. The applicant has attempted to address those particular concerns in the planning statement which states: "... *that bird waste, a valuable biodegradable fertiliser will be composted in heaps and used to improve the soil of the vegetable growing area.*" The applicant has not specified where the composting will take place, the location of the vegetable growing area where the compost is to be spread or whether or not composting will take place in suitable containers.

In view of the above I would recommend that any planning consent is subject to the following condition:

Before the use hereby permitted begins, a written scheme for the containment and storage of pigeon waste, shall be submitted and approved in writing by the local planning authority. Such a scheme shall be implemented and maintained in accordance with the approval and not altered without the written permission of the local planning authority.

**Reason:** *To protect the residential amenity of the locality and in order to comply with Selby District Council's Policy SP19."*

16. The LOEH therefore provided no commentary on noise and general disturbance or on vermin and indicated that any odour arising from waste could be dealt with through a suitable planning condition.
17. The ENOA prepared by YES Consultancy seems to me to be a fairly robust overall assessment with the site having been visited on Saturday 27 February 2016 when the development was substantially complete and the two lofts were fully occupied. I have assumed the attended noise survey was also carried out

on that day as indicated in Tables 7.2 and 7.3 of the ENOA, rather than on Saturday 27 March 2016 (there was no such day) as stated in paragraph 7.1 of the ENOA. None of the ENOA's content has been directly disputed by the Council or its LOEH. Whilst I accept that stock levels may vary throughout the year and that no burning of waste was recorded as taking place on the survey date, I find no reason to disagree with the ENOA's odour, vermin and noise assessments or with its overall findings that the proposed operations would be unlikely to result in loss of amenity for the occupiers of Frog Hall and that planning permission should not be withheld on the grounds of odour, vermin or noise. I find it important that the YES Consultancy also agreed that a suitably worded condition to control the storage of pigeon compost waste should be imposed to control odour.

18. The Council points out that condition 3 (relating to a scheme for the disposal of waste) imposed on planning permission ref. 2013/1191/FUL has not been complied with. This will be an understandable frustration to the occupiers of Frog Hall who say several letters to the Council reminding it about this matter (and other matters) remain unanswered as of 12 April 2016. The Council seems to have had ample opportunity to have taken formal action against the breach of the condition. Non-compliance with that condition does not automatically mean that a similar condition should not be imposed again. I consider that the condition should also include an agreed means of disposing of the waste. The burning of pigeon waste on the site and the open storage of piles of pigeon waste on the site, as appear to be depicted in the photographs supplied by the occupiers of Frog Hall, should cease as they are matters of bad practice. Any agreed scheme for the containment, storage and disposal of pigeon waste should cover these points.
19. Having reviewed all of the evidence from all the parties, including the third party occupiers of Frog Hall, and having noted the planning officer's recommendation of approval for application ref. 2015/0075/FUL, I find in favour of the appellant on the main issue and can see no material conflict with Policy ENV1 of the LP or the Framework.

#### *Other key matters*

20. The Council considers that the development is acceptable in principle in broad locational terms, but it expresses the concern that the pigeon lofts detract from the character and form of the open countryside. However, they have a low profile and stand together in a corner of the field that is well separated from the boundaries of the site with the A63 and Hagg Lane. Both those boundaries and parts of the northern and western field boundaries contain mature vegetation of various types. The pigeon lofts can only be glimpsed in views from the two roads and they are not prominent features in the wider landscape. Whilst they have been constructed in various materials – including wood, tiles, plastic sheets, felt, wire mesh and metal – they are easily recognisable as typical pigeon lofts in any views that are available and are not inappropriate in design terms. There is sporadic development on the northern side of the A63 where it passes through Hemingbrough. I find that the development is not out of keeping with the character and form of this open countryside site; it accords with CS Policy SP19, LP Policy ENV1 and the Framework in this respect.

21. Judging from the photographs taken by the occupiers of Frog Hall, it is apparent that vehicles associated with this development park within the site or on the wide grass verge along the A63 which is classed as part of the highway. There is also a footway within that grass verge. The local highway authority as landowner may be able to exercise control over persistent parking within highway limits in general terms. In highway safety terms, I saw that a vehicle parked on the grass verge between the footway and the hedge does not actually interfere with users of the footway or obstruct the visibility sight lines for drivers of vehicles waiting on Hagg Lane to emerge on to the A63.

*Suggested conditions*

22. The Council has suggested four conditions in the event that the appeal on ground (a) succeeds and planning permission is granted. These appear to resemble those that were recommended by the planning officer when application ref. 2015/0075/FUL was considered. Consequently, the first and fourth suggested conditions which refer to the plans submitted with that application cannot be imposed. The development is different to those plans and is acceptable as built.
23. I see the need for a condition to ensure that the pigeon lofts remain related to private (hobby) use and do not relate to any commercial enterprise. This condition is imposed in the interests of residential amenity.
24. For similar reasons and to protect the water environment, a condition is required to secure the implementation and retention of an agreed scheme for the containment, storage and disposal of pigeon waste. The condition imposed includes certain time limits for action and consequences for failure to act, given that development has already taken place and that this particular matter needs to be put right.

*Conclusion*

25. Having regard to all other matters raised, my findings lead me to conclude that the appeal on ground (a) and the deemed planning application should succeed. Conditional planning permission will be granted. The enforcement notice has been quashed as a result of the success of the appeal on ground (a). Therefore, ground (g) no longer falls to be formally considered.

*Andrew Dale*

INSPECTOR