



Appeal Decisions

Site visit made on 10 January 2016

by Wendy McKay LLB Solicitor (Non-practising)

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

Decision date: 27 March 2017

Appeal A Ref: APP/E2001/C/16/3153480

2 Ferry Lane, Woodmansey, Beverley, HU17 0SE

- 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 R Harold against an enforcement notice issued by the East Riding of Yorkshire Council.
- The enforcement notice was issued on 26 May 2016.
- The breach of planning control as alleged in the notice is: without planning permission: Material Change of Use - Material change of use of agricultural/former horticultural/paddock land to a mixed use of the land, namely: 1. Use for purposes in association with and incidental to the use of the dwelling house known as 2 Ferry Lane, Woodmansey; and; 2. Use for storage of domestic chattels; and; 3. Use for functions and events including organised functions and events for third parties; and; 4. Use for the storage of goods and chattels and equipment associated with business use(s) elsewhere. Operational Development - 1. The erection of a large wooden outbuilding on a concrete base on agricultural/paddock land beyond the domestic curtilage of the dwelling (**see note below**); and 2. Formation of a gravel hardstanding and wooden retaining structures in connection with the unauthorised uses of the land described above. **NOTE** For the purposes of the notice the wooden outbuilding in breach of planning control and required to be removed, is the building shown in the photograph attached to the notice. A separate older outbuilding is shown shaded blue on the plan attached to the notice. The notice does not require the removal of the blue shaded outbuilding. However, the blue shaded outbuilding is situated within the area of land on which the unauthorised uses are occurring. For the avoidance of doubt, the requirements of the notice as to cessation of the unauthorised uses apply also to the blue shaded outbuilding.
- The requirements of the notice are: Material Change of Use: 1. Cease the use of the land outside of the green hatched area for any purposes other than the lawful agricultural use; and; 2. Cease the use of any part of the land within the red-line for any purposes for functions and events including third party functions and events and for any purposes in association with business uses elsewhere; and; 3. Remove from the land outside of the green hatched area all goods, chattels, equipment and vehicles (meaning all furniture, barbecue equipment, lighting and heating installations and equipment, vehicles, boats, planters, play and sports equipment, hot tub, storage units and any other items whatsoever used or stored in association with or incidental to the use of the dwelling-house or for any other domestic purposes; and; 4. Remove from any part of the land within the red-line any goods, chattels, furniture, plant, equipment, vehicles, materials, pallets, cable reels, stock and any other items whatsoever used or stored in association with functions and events including third party functions and events and/or used or stored in connection with business use(s) elsewhere; and; 5. Disconnect and remove all mains water and power and any temporary or portable water and power pipes and cables and any other service utilities from the land outside of the green hatched area, save as to those which serve the blue shaded outbuilding. Operational Development: 1. Dismantle and remove the wooden outbuilding and its concrete base from the land; and; 2. Remove the gravel hardstanding and wooden

retaining structures from the land outside of the green hatched area; and; 3. Remove from the land all materials and debris resulting from compliance with 1 and 2 above; and; 4. Seed or turf to grass the land from which the building, base and gravel hardstanding have been removed.

- The periods for compliance with the requirements are: 1. Cessation of the unauthorised uses and removal of items as described at Section 5 of the notice – One month from the date stated at Section 7 of the notice; 2. Removal of the operational development and disconnection and removal of services – Two months from the date stated at Section 7 of the notice; 3. Seeding/Turfing – Three months from the date stated at Section 7 of the notice.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Decision.

Appeal B Ref: APP/E2001/C/16/3153481

2 Ferry Lane, Woodmansey, Beverley, HU17 0SE

- 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 K Harold against an enforcement notice issued by the East Riding of Yorkshire Council.
- The details of the enforcement notice are as set out above in relation to Appeal A.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Applications for costs

1. Applications for costs were made by Mr and Mrs Harold against the East Riding of Yorkshire Council. These applications are the subject of separate Decisions.

Preliminary Matters – Appeals A and B

2. The Appellants submit that the land edged red on the notice plan contains two planning units even though both areas fall within the same unit of occupation, namely, a dwelling house and residential curtilage and land used for horticulture and turf growing. They contend that, if the land within the red line does form a single planning unit, the description of the alleged breach of planning control is incorrect, as there is no reference to the dwelling house use as part of the mixed use of the land.
3. The Council states that whilst the enforcement notice plan shows a single red line around No 2 Ferry Lane and the paddock land to the south-east, this denotes the Appellants' land ownership and does not designate the entire site as a single planning unit. Although the notice plan shows the dwelling and its lawful curtilage hatched in green, the notice does not allege any breach of planning control in respect of this part of the site. The Council, in section 11 of its appeal statement, invites me to vary the notice requirements so as to further distinguish the green hatched area from the remainder of the land within the red line.

4. The Appellants question whether the changes suggested by the Council could lawfully be made or whether it would be beyond my powers and better to quash the notice and let the Council serve a new amended notice. The Appellants submit that, if the notice were to be amended in this way, then it would be better to have a new plan simply outlining in red the land to which it relates, thereby removing the dwelling and its curtilage from the notice.
5. It is commonly understood that the planning unit concept provides a means of determining the most appropriate physical area against which to assess the materiality of change where a change in use of land is alleged. In this case, the Council acknowledges that the notice does not allege any material change of use of that part of the land affected shown hatched green. There is no allegation of a change of use to a mixed use that includes the single dwelling house use. Although various different uses may take place within the same single unit of occupation, in this case the mixed use alleged to be a breach of planning control falls outside the area shown hatched green on the notice plan.
6. Since the alleged breach of planning control has not taken place on part of the land affected by the notice, and does not fall within the same planning unit, the notice plan should be corrected to reflect this. The Council proposes that this should be achieved by drafting the requirements so that they do not apply to green hatched area. It seems to me that the most appropriate way to achieve this would be by reducing the extent of the land affected by excluding the dwelling house and its curtilage from the red line area of the notice plan.
7. S.176(1) of the 1990 Act empowers the Secretary of State on appeal to correct any defect, error or misdescription in the enforcement notice provided no injustice would be caused. Since the area of the land affected, and therefore the scope of the notice, would be reduced, I am satisfied that there would be no injustice caused to any party by correcting the notice plan in this way and I shall do so.

The appeal on ground (b) – Appeals A and B

8. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof for this and the other legal grounds of appeal is on the Appellants and the appropriate test is the '*balance of probabilities*'. The relevant date for the purposes of assessing an appeal on this ground is the date of issue of the notice.
9. This ground of appeal is primarily directed at part 4 of the material change of use allegation which alleges: "*use for the storage of goods and chattels and equipment associated with business use(s) elsewhere*". The Appellants assert that, as a matter of fact, no business storage use has taken place. They point to the fact that no Planning Contravention Notice was served prior to the issue of the enforcement notice that would have enabled the Council to ascertain the actual activity on the site.
10. The Council states that it appeared that there were elements of storage of goods and equipment on the land that related to the Appellants' business activities. It was also suggested that events/functions were being held on a commercial basis with sales of food and drink and tickets required for entry.

11. The Appellants acknowledge that at the time of their purchase of the property they enquired about erecting a commercial building but having been advised that it was unlikely that permission would be obtained for such a structure, they acquired premises elsewhere. They explain that two large cable drums on the site were bought on E-Bay with the intention of converting them to tables in connection with the residential activities. The Appellants deny that the presence of the cable drums on the site is for a business purpose. The Council's own photographic evidence¹ actually shows the cable drums in use as tables.
12. The Appellants have provided further details of the events which have taken place on the land. They explain that the Council's photographs show a gathering of their friends and family. They confirm that neither alcohol nor food was sold nor was admission charged for that event. There was a raffle and people made donations of prizes and donated generally. The event raised some £2,300 for a cancer-related charity.
13. The Appellants do not deny that items such as cable drums have been stored on the land or that events have taken place including, for example, a Beverley Round Table bonfire party. However, there is little evidence to support the Council's claim that there has been any business purpose to those activities. The Appellants have provided a plausible explanation for the presence of the cable drums on the land and details of the way in which the events have been run. The Council has not provided evidence to contradict or otherwise make less than probable the explanations given. In my view, the Appellants have provided sufficient evidence on this topic to rebut the burden of proof that is upon them in such matters in relation to the business use allegation. I conclude, on the balance of probabilities, that the alleged: "*use for the storage of goods and chattels and equipment associated with business use(s) elsewhere*" has not taken place as a matter of fact. I am satisfied that the notice can be corrected by deleting this aspect of the alleged breach of planning control without causing any injustice to the parties.
14. The other issue which the Appellants raise under this ground relates to the inclusion of the dwelling and its curtilage within the red line site area. This has already been considered under the 'Preliminary Matters' section of this decision and the notice plan will be amended to reflect this. I consider that the revised site area accurately reflects the land and planning unit upon which the mixed use alleged has taken place and no further revision to identify separate areas within the land affected by the notice is required. The appeal on ground (b) succeeds to the limited extent identified above.

The appeal on ground (c) – Appeals A and B

15. By letter dated 15 February 2017, the main parties were invited to submit, in relation to the appeals on ground (c), a copy of the notice plan marking the area which they consider reflects the extent of the respective curtilages, if any, of the wooden outbuilding and the building shown shaded blue on the notice plan together with any reasons in support of their views as to the extent of the curtilages of those buildings. The submissions of the parties made in response to that letter have been taken into account in relation to the appeals on ground (c).

¹ See photographs at Appendix 4 to the Council's Statement

16. The appeal on ground (c) is a partial ground which applies to that part of the notice which alleges: *"use for functions and events including organised functions and events for third parties."*
17. The Appellants state that the use of land within the curtilage of a dwelling house for any purposes incidental to the enjoyment of the dwelling house as such would not involve development². They submit that such incidental activity would include family parties and celebrations and could even include charitable events, provided they were not so frequent, or disruptive, as to constitute a material change of use. As indicated above, I consider that the land within the original red line consists of two planning units and the notice will be corrected to exclude the dwelling house and curtilage from its scope.
18. In relation to the remainder of the site, it is not argued that any such activity could be regarded as being incidental to the dwelling house use. However, the Appellants submit that the land outside the green hatching shown on the notice plan enjoys permitted development rights under Class B, Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)³ to allow temporary changes of use of land for not more than 28 days in total in any calendar year of which not more than 14 days may be for the purpose of (a) holding of a market; (b) motor car and motorcycle racing including trials of speed and practising for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use. The Appellants contend that there have not been more than three or four events per year and certainly not as many as 28 so that these permitted development rights apply.
19. The Council's position is that the site does not benefit from permitted development rights as there have been numerous breaches of planning control. However, it has provided little evidence to support this assertion or to contradict the Appellants' evidence on this point. In my view, the Appellants have provided sufficient evidence on this topic to rebut the burden of proof that is upon them in such matters. The balance of the evidence supports the conclusion that the number of events held has not exceeded the limitation on the number of days on which the land can be used for another purpose.
20. The Council also points out that development is not permitted by Class B if the land in question is, or is within, the curtilage of a building. Although the land outside the green hatched area is for the most part open land, the Appellants have without planning permission erected a new wooden building on that land. The lawful structure shaded blue on the notice plan also falls within this area outside the green hatching.
21. The Council in its appeal statement accepts that the land outside the green hatched area is open land but asserts that as the land which provides access onto the site forms part of the curtilage of No 2 Ferry Lane, the appeal site cannot benefit from permitted development rights under Class B, Part 4 of the GPDO.
22. In response to the letter from the Planning Inspectorate dated 15 February 2017, the Council also submits that the building shaded blue on the notice plan

² See s55(2)(d) of the 1990 Act

³ See also the predecessor to the current GPDO – The Town and Country Planning (General Permitted Development) Order 1995

would have a limited curtilage extending to the area of concrete hardstanding that it has acknowledged to be lawful and the access from the road. This area is shown highlighted in yellow on the latest copy of the notice plan submitted by the Council. It also contends that the unauthorised wooden outbuilding would not have any defined curtilage.

23. In their response to the Planning Inspectorate letter, the Appellants contend that, if the building coloured blue did have a curtilage, it was either that identified by the Council or it was everything that did not fall within the residential curtilage. They submit that, if the new wooden outbuilding has a curtilage, then that would be limited to the hard surfaced area around it. The remainder of the field would not fall within its curtilage and would benefit from Part 4 permitted development rights regardless of whether people travelled across other land to get to it or used other land in conjunction with those rights.
24. Since I have already concluded that the original red line area will be amended to exclude the dwelling house curtilage as identified by the green hatched area, the use of part of that land to access the field is not a matter that falls to be considered under this ground of appeal. Whether the use of the access in this way amounts to a material change of the single dwelling house use of that adjacent planning unit is not a matter that is before me in this case.
25. As the Appellants point out the term "*curtilage*" is not defined in planning legislation or the GPDO. However, it has previously been identified as "*connoting a small area forming part or parcel with the house or building which it contained or to which it was attached.*" On the other hand, a curtilage need not always be small depending on the facts of a particular case.
26. The Council has not put forward any reasons to support its view as to the appropriate area of curtilage for either the blue shaded building or the new wooden outbuilding, save for its reference to the unauthorised status of the latter. The new wooden outbuilding is shown on the latest plan submitted by the Appellants⁴. They suggest that the outer edge of the curtilage of this building is as shown by a red line on that plan. My observations at the time of my site visit confirmed their evidence that the interface between this area and the open grassland is easy to identify as a result of the placing of telegraph poles on the ground. The Appellants submit that the Council's stance in relation to the unauthorised building not having a curtilage is unreasonable as an unauthorised building can, as a matter of physical fact, have a curtilage. They contend that the wooden outbuilding has a curtilage in physical terms and it is as identified on the latest plan submitted by them.
27. To fall within the curtilage of a building, it is enough that land serves the purpose of a building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. Although not physically enclosed, I consider that the area of hardstanding adjacent to the new wooden outbuilding, as identified by the Appellants, forms part and parcel with that structure and represents the extent of its curtilage. It has the necessary intimate association with the building to achieve that status. For similar reasons, I also believe that prior to the unauthorised development taking place, the curtilage of the blue shaded outbuilding would have extended to the lawful concrete hardstanding, as identified on the Council's plan. The

⁴ See page 10 of the Appellants' response to the Planning Inspectorate letter dated 15 February 2017

combined area of the curtilages of both these buildings would not benefit from the GPDO temporary use rights. That does not apply to the remainder of the field which can be distinguished from these areas of curtilage. I therefore concur with the Appellants that the remainder of the field outside these hardsurfaced areas retains the benefit of Class B, Part 4, permitted development rights.

28. Since the use of the remainder of the field for the holding of functions and events has taken place pursuant to permitted development rights, it does not amount to a breach of planning control. The appeal on ground (c) succeeds to this extent and the notice will be corrected by amending the allegation so that that part of the site is excluded from this aspect of the alleged breach with a corresponding variation to the requirement. That does not, of course, preclude the Council from taking further enforcement action in respect of this land should activities and any associated storage cease to be of a temporary nature in the future.

The appeal on ground (d) – Appeals A and B

29. The appeal on ground (d) is a partial ground of appeal and relates to that aspect of the notice which alleges: *“formation of a gravel hardstanding and wooden retaining structures in connection with the unauthorised uses of the land as described above.”*
30. S.171B of the 1990 Act provides that, for operational development such as this, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. It is therefore for the Appellants to demonstrate, on the balance of probabilities, that the operational development alleged in the notice was substantially completed more than four years prior to the date of issue of the notice.
31. The Appellants purchased the property in February 2013. They state that the gravel hardstanding was in place when they initially viewed the property. They contend that resurfacing what was already a hardened area does not require planning permission. They acknowledge that their personal knowledge of the site does not, in itself, show that the gravel has been in place for more than four years. However, they have provided a sequence of Googleearth photographs in support of their contention that the gravel area is likely to be more than four years old. They claim that when the wooden outbuilding was built there was a hard surface underneath. There is also third party evidence to the effect that a hardstanding has been there for many years.
32. The Council has reviewed the information supplied by the Appellants and further information obtained by it. The Council agrees that an area of concrete hardstanding would appear to have been in situ for a number of years and is likely to be immune from enforcement action. This area is denoted by a blue line and hatched area on the Ordnance Survey map and photographs at appendix 5 to its appeal statement. However, the Council contends that the area on which the wooden outbuilding has been erected and a large area in front of the building have recently been laid with a concrete base and gravel hardstanding which is not lawful. It submits that the additional gravel hardstanding and concrete base were not present in 2013 when an officer visited the site and that these were only added in early 2015 when the

unauthorised development first commenced. The Council has submitted photographic evidence in support of its stance.

33. In my view, the Council's photographs provide overwhelming and indisputable evidence as to the extent of the lawful hardstanding. Those attached at appendix 6 to the Council's statement dated 2013 show the condition of the land at that time and can be looked at in conjunction with those obtained at the time of the officer's visit to the site in early 2015. Whilst the Appellant's evidence indicates that there may have been some form of hard surface in earlier years over a wider area of land, the photographs clearly reveal the condition of the site in 2015 and the extent of the works then being carried out. I find, as a matter of fact and degree, that the works undertaken did not merely amount to the resurfacing of a pre-existing surface but resulted in the creation of a new area of hardstanding outside the area of lawful hardstanding. These works were not substantially complete until 2015. The presence of some hard material underneath the gravel in places, which I observed at the time of my site visit, does not dissuade me from that view.
34. I conclude that only that part of the hardstanding identified in the Council's plan at appendix 5 of its appeal statement was in existence more than four years prior to the date of issue of the notice. This aspect of the alleged breach must therefore be regarded as immune from enforcement action and, as such, it does not warrant further consideration under the other grounds of appeal. The appeal on ground (d) succeeds to this extent, and the notice will be corrected by deleting those successful aspects from the alleged breach and varied by amending the corresponding requirements.

The appeal on ground (a) and the deemed application for planning permission – Appeal A

The deemed application

35. The deemed planning application is for the operational development or change of use the subject of the notice which has already been carried out. It derives its terms directly from the words of the allegation, namely, the matters stated in the notice as constituting a breach of planning control⁵. However, planning permission may be granted only for those matters, as corrected or varied on appeal. The deemed application is therefore changed from the original allegation in the light of the Appellant's partial success on legal grounds as set out above and the consequential amendments that will be made to the notice allegation.
36. The Appellant has set out in tabular form, at paragraph 5.3.6 of his grounds of appeal, those elements of the deemed planning application for which permission is sought. Those elements that will remain following the correction and variation of the notice will now be considered.

The Development Plan and other policies

37. The Development Plan for the area includes the East Riding Local Plan – Strategy Document (2016) (ERLP SD) and the East Riding Local Plan – Policies Map (2016). Relevant ERLP SD policies are ENV1 – Integrating high quality design, ENV2 – Promoting a high quality landscape and S4 – Supporting development in villages and the countryside.

⁵ See s.177(5) of the 1990 Act

38. Turning to national policy, the Government issued the National Planning Policy Framework, "*the Framework*", in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.⁶ The core principles of the Framework require a high standard of design and state that planning should recognise the intrinsic character and beauty of the countryside and always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. I find the relevant Development Plan policies in this case to be consistent with the Framework, and full weight in accordance with their statutory status should be afforded to them.

The Main Issues

39. The main issues are first, the effect on the character and appearance of the site and surroundings having regard to local and national planning policies designed to safeguard countryside locations outside designated development limits, and secondly, the implications that the development would have for the living conditions of neighbours with particular regard to noise and disturbance.

Reasons

40. On the first issue, ERLP SD Policy S4 indicates that outside a development limit, land will be regarded as the countryside. It sets out the forms of development that will be supported in such locations, where proposals respect the intrinsic character of their surroundings. The Council acknowledges that a small part of the site in the north-western corner falls within the development limit for Woodmansey as shown on the Policies Map. The remainder of the land falls outside that area. The Council submits that the unauthorised development represents an unacceptable encroachment into previously undeveloped countryside in this location as the development is not for the purposes of agriculture, horticulture or an established rural business.
41. In relation to the use for purposes in association with and incidental to the use of the dwelling house, the Appellant only seeks permission for the area which is currently being used or such other area as might be considered to be acceptable. He also seeks permission for operational development in the form of the wooden outbuilding on a concrete base and the gravel hardstanding. The Appellant does not seek permission for any business use of the land, nor for the use for functions and events as a use in its own right.
42. The Appellant points out the scope for imposing planning conditions to withdraw permitted development rights for the erection of new buildings; to require fencing and landscaping and to limit the size of the approved area. He questions whether use of part of the land outside the green hatching on the original notice plan as an extension to the residential curtilage would be harmful to the countryside or residential amenity.
43. When I visited the site I saw that, although it is in close proximity to residential properties and gardens, for the most part there remains a clear distinction between that residential land and the open undeveloped character of the amended site area. The Appellant asserts that, the "*plethora of domestic paraphernalia including seating, hot tub, vehicles, play equipment...*", to which

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

the Council refers are only in the north-western part of the site and have not changed the character of the area. I disagree with that conclusion. I consider that the encroachment of the unauthorised development with associated domestic paraphernalia, even if limited to a small proportion of the land, has an urbanising impact that materially detracts from its overall rural character and appearance.

44. The new wooden outbuilding has been positioned length-ways on with its rear wall adjacent to the common boundary with the rear gardens of residential properties fronting Ferry Lane. The building is about the size of a triple garage and is of timber construction. The Appellant contends that the wooden building it is not dissimilar in appearance to stables and the materials and design are appropriate for a rural area. Nevertheless, it is clear that the activities in and around the building have been different in character to those that would normally be expected to be associated with a rural stable or agricultural building. The presence of the structure has supported the carrying out of unauthorised activities in close proximity to neighbouring residential properties. Likewise, the hardstanding has been used to accommodate domestic items and the unauthorised activities. The poles on the ground act as a boundary between the gravel and the grass and form part and parcel with the hard surfaced area.
45. Neither the unauthorised uses nor the operational development which has taken place fall within the forms of development in the countryside that are supported by Policy S4. This type of unjustified sporadic development within an open area of land detracts from the intrinsic qualities of the landscape setting to the edge of the developed area contrary to Policy ENV2.
46. I do not believe that these fundamental objections could be satisfactorily overcome by the imposition of planning conditions. The use and operational development of that part of the site which falls outside the development limits would not be in accordance with ERLP SD Policies S4, ENV1 and ENV2.
47. The only exception to this conclusion relates to that small part of the site that falls within the development limit but outside the original green hatched area which includes the site of the older outbuilding shown shaded blue on the notice plan. The Council acknowledges that outbuilding to be immune from enforcement action insofar as it comprises operational development. That very limited area of land affords a much greater sense of enclosure and enjoys a closer relationship with the dwelling at No 2 Ferry Lane and adjoining residential gardens. This different spatial relationship is recognised by its inclusion within the development limits on the Policies Map. Subject to the imposition of appropriate planning conditions, I do not consider that the use of this part of the land for purposes in association with and incidental to the use of the dwelling house at No 2 Ferry Lane would detract from the character and appearance of the village. The development of that part of the site which falls within the development limits would be in accordance with ERLP SD Policies S4, ENV1 and ENV2.
48. On the second issue, the Council raises concerns that unacceptable harm would be caused to residential amenity due to the noise and disturbance generated by the activities on the land. It submits that the use of the building and hardstanding for domestic activities and the holding of events and functions would give rise to the potential for noise and disturbance to be experienced by

neighbouring residents who could otherwise reasonably expect peace and tranquillity.

49. The Council's Environmental Control Team has received a number of complaints between 2013 and 2016 from residents about the activities on the site including noise emanating from the building. The occupant of No 4 Ferry Lane complains of noise and disturbance and confirms that the building has been used in connection with parties, functions and events. Having regard to the Council's evidence and that of people living nearby on this topic, I consider that the continuation of the unauthorised activities would inevitably give rise to unacceptable levels of noise and disturbance being experienced by neighbours. The operational development has supported the carrying out of such activities in close proximity to neighbouring residential properties. The unauthorised development does not have regard to the amenity of occupants of existing properties and would not be in accordance with Policy ENV1.
50. The only exception to this conclusion again relates to that small part of the site that falls within the development limit but outside the original green hatched area which includes the site of the older outbuilding shown shaded blue on the notice. As indicated above, the relationship of this part of the site with neighbouring residential properties is different and I do not consider that the use of this part of the land for purposes in association with and incidental to the use of the dwelling house at No 2 Ferry Lane would materially affect the amenities of neighbours, subject to the imposition of appropriate planning conditions.
51. The appeal succeeds in part on ground (a) and planning permission will be granted for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part.

Planning conditions

52. The planning conditions imposed will reflect the advice set out in the Framework, paragraph 206. As discussed above, the conditions relating to the removal of permitted development rights and for the approval and implementation of landscaping are necessary to safeguard the character and appearance of the site and surroundings and the amenity of neighbouring residents.
53. The landscaping condition imposed will reflect the fact that the development has already taken place and will secure the cessation of the use in the event of the terms of the condition not being complied with. An additional condition will also secure the cessation of the use in the event that no landscaping scheme is approved. The provision for the cessation of the use reflects the essential nature of the landscape works and the time limits set out in the conditions will allow a reasonable period within which to achieve them.

The appeal on ground (f)

54. On ground (f), it is necessary to first establish what it is the Council is seeking to achieve by the notice. The reasons for issuing the notice include reference to Development Plan policy. It is clear from considering what is said in paragraphs 3, 4 and 5 of the corrected notice, read as a whole, that the remedial requirements follow from sub-paragraph (a) of s.173(4) of the 1990

- Act. The notice is directed at remedying the breach of planning control and what must be considered is whether the requirements exceed what is necessary to achieve that objective.
55. The Appellants submit that a number of the steps required by the notice are excessive. For the change of use, they criticise the first step in that the notice would require the land outside the green hatched area to only be used for agriculture. That would preclude the potentially lawful use for forestry. They contend that the notice should only require the cessation of the unauthorised use. As regards the second requirement, the Appellants submit that this is draconian in its effect.
56. The Council accepts that the first requirement is more onerous than necessary and concedes that a requirement to cease the unauthorised uses would be sufficient to remedy the breach of planning control. The Council also accepts that the second requirement would be excessive, as regards the impact on the lawful use of the dwelling and its curtilage.
57. The Council requests that these requirements be varied pursuant to the powers granted by s.176 of the 1990 Act. It provides a revised draft of the first requirement, and other requirements, at paragraph 11.8 of its statement. The Council has drafted its suggested requirement to require the cessation of the mixed use of the land outside the green hatched area. As indicated above, the notice will be corrected to exclude the green hatched area from the land affected. In addition, given the partial success on legal grounds, the allegation will be corrected to reflect this and only certain elements of the material change of use will remain the subject of the notice. The first requirement will therefore be varied to require the cessation of these activities and the second requirement will be deleted.
58. As regards the third and fourth requirements of the material change of use part of the notice, the Appellants accept that, if the appeals fail, then these would be reasonable requirements. The third requirement remains appropriate, notwithstanding the partial success on ground (a), given the effect of s.180 of the 1990 Act. Given the partial success on legal grounds, the fourth requirement will be amended as I have concluded that storage in connection with a business use elsewhere has not taken place and that the use of that part of the site outside the curtilages of the buildings for the holding of functions and events has taken place pursuant to permitted development rights. Those items which have been used for incidental residential purposes or other domestic purposes will be covered by the third requirement.
59. On the fifth material change of use requirement, the Appellants submit that this is unreasonable as such items as exist cause no harm. They submit that, if the land was to be used for horticulture, as before, or agriculture then there would be a need for water and power and it would be reasonable for these items to be retained. The Council consider that this requirement is reasonable and necessary to remedy the breach of planning control since the works are integral to the unauthorised use of the land.
60. Since the purpose of the notice is to remedy the breach, that provides the appropriate test for assessing the reasonableness of the requirement rather than the absence of any injury to amenity. A notice alleging a material change of use may include requirements to remove works which have been carried out solely to facilitate the unauthorised development. The balance of the evidence

indicates that those works, apart from those which serve the blue shaded building, were undertaken as part of the material change of use and not for the purpose of the horticultural use. I consider that it would be proportionate to require their removal. The requirement is not excessive or unreasonable in this respect.

61. Turning to the operational development, the Appellants accept that the first requirement to dismantle and remove the wooden outbuilding and its concrete base from the land would be reasonable. They also accept that, if their appeals fail, then requirement 3 would be a reasonable requirement.
62. On the second requirement, the lawfulness of the hard surface has been considered under the appeal on ground (d) and the requirement will be varied to reflect my findings under that ground.
63. As regards requirement 4, the Appellants submit that the notice should only require the land to be reinstated to the condition it was in before the unauthorised development took place. They point to evidence that there was a hard surface in 2003 and probably before. The Council accepts that the requirement should be re-worded to require reinstatement to the land's former condition but does not accept that this would permit retention of the hardstanding. The Council's suggested revised wording for this requirement is agreed by the Appellants should their appeal fail in all other respects. I agree that the requirement should be varied in this way.
64. I conclude that certain requirements are excessive and will be varied as indicated above. I am satisfied that these variations can be made without causing any injustice to the parties. The remaining requirements do no more than seek to remedy the breach of planning control and, therefore, are not excessive. It would not be disproportionate to require the Appellants to carry out the steps required by the notice, as corrected and varied. The appeals on ground (f) succeed to the extent indicated above.

The appeals on ground (g) – Appeals A and B

65. On ground (g), the Appellants accept that the first and second periods for compliance are reasonable. However, they contend that the third period which relates to the seeding/turfing would be unreasonable and they propose a period of six months for compliance with that requirement. They claim that it would not be feasible to carry out that requirement within three months based on gardening advice from the internet.
66. Notwithstanding its proposed variation of the restoration requirement, the Council still anticipates that the land where the base and hardstanding are to be removed will require seeding/turfing with grass. Taking into account potential variations in weather conditions, it accepts that six months could be permitted for the restoration of the land to its former condition. I concur that that would represent a reasonable period of compliance with the restoration requirement. The notice will be varied to reflect this and the appeal on ground (g) succeeds to this limited extent.

Formal Conclusions

Appeal A

67. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s.180 of the 1990 Act.

Appeal B

68. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

Formal Decisions

Appeal A Ref: APP/E2001/C/16/3153480

69. The enforcement notice is corrected:

- by substituting the plan attached to this decision for the plan attached to the notice;
- by inserting in paragraph 3 'Material Change of Use' sub-paragraph 3 after the word "parties" the words "of that part of the land shown shaded blue and pink and hatched and cross-hatched blue on the attached plan";
- by deleting paragraph 3 'Material Change of Use' sub-paragraph 4 in its entirety; and
- by inserting at the end of paragraph 3 'Operational Development' sub-paragraph 2 the words "on land outside the area shown shaded blue and pink and hatched blue on the attached plan".

70. The appeal is allowed insofar as it relates to the land shown shaded blue and pink on the plan annexed to this decision 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 use for purposes in association with and incidental to the use of the dwelling house known as 2 Ferry Lane, Woodmansey, subject to the following conditions:

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure shall be erected on the site other than those expressly authorised by this permission.
- 2) Unless within three months of the date of this decision a scheme for both hard and soft landscape works including details of means of enclosure and boundary treatments has been submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within six months of the local planning authority's written approval, the use of the land hereby permitted shall cease until such time

as a scheme is approved and implemented. The hard and soft landscape works shall be carried out in accordance with the approved details

- 3) If no scheme in accordance with condition 2 above is approved within 11 months of the date of this decision, the use hereby permitted shall cease until such time as a scheme approved by the local planning authority or by the Secretary of State on appeal is implemented.

71. The enforcement notice is varied:

- by deleting sub-paragraphs 1 and 2 of paragraph 5 'Material Change of Use' in their entirety and substituting therefor the words and figure "1. Cease the unauthorised mixed use of the land for use for purposes in association with and incidental to the use of the dwelling house known as 2 Ferry Lane, Woodmansey and use for storage of domestic chattels and the use of that part of the land shown shaded blue and pink and hatched and cross-hatched blue for functions and events including organised functions and events for third parties.";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 3 the words "outside of the green hatched area";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 3 the figure "3" and substituting therefor the figure "2";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 4 the words "red-line" and substituting therefor the words "areas shaded blue and pink and hatched and cross-hatched blue";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 4 the words "and/or used or stored in connection with business use(s) elsewhere";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 4 the figure "4" and substituting therefor the figure "3";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 5 the words "outside of the green hatched area";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 5 the figure "5" and substituting therefor the figure "4";
- by deleting from paragraph 5 'Operational Development' sub-paragraph 2 the words "green hatched area" and substituting therefor the words "areas shown shaded pink and blue and hatched blue";
- by deleting paragraph 5 'Operational Development' sub-paragraph 4 in its entirety and substituting therefor the words: "Restore the land from which the building base and gravel hardstanding have been removed to its former condition before the unauthorised development the subject of this notice took place";
- by deleting paragraph 6 sub-paragraph 3 in its entirety and substituting therefor the words: "Restoration of the land to its former condition – six months from the date stated at Section 7 below."

72. The appeal is dismissed and the enforcement notice is upheld as corrected and varied, except insofar as it relates to the use of the land shown shaded blue

and pink on the plan annexed to this decision for the use for purposes in association with and incidental to the use of the dwellinghouse known as 2 Ferry Lane, Woodmansey, and planning permission is refused in respect of the land outside the area shown shaded blue and pink on the said plan, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/E2001/C/16/3153481

73. The enforcement notice is corrected:

- by substituting the plan attached to this decision for the plan attached to the notice;
- by inserting in paragraph 3 'Material Change of Use' sub-paragraph 3 after the word "parties" the words "of that part of the land shown shaded blue and pink and hatched and cross-hatched blue on the attached plan";
- by deleting paragraph 3 'Material Change of Use' sub-paragraph 4 in its entirety;
- by inserting at the end of paragraph 3 'operational development' sub-paragraph 2 the words "on land outside the area shown shaded blue and pink and hatched blue on the attached plan".

74. The enforcement notice is varied:

- by deleting sub-paragraphs 1 and 2 of paragraph 5 'Material Change of Use' in their entirety and substituting therefor the words and figure "1. Cease the unauthorised mixed use of the land for use for purposes in association with and incidental to the use of the dwelling house known as 2 Ferry Lane, Woodmansey; and use for storage of domestic chattels; and the use of that part of the land shown shaded blue and pink and hatched and cross-hatched blue for functions and events including organised functions and events for third parties.";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 3 the words "outside of the green hatched area";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 3 the figure "3" and substituting therefor the figure "2";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 4 the words "red-line" and substituting therefor the words "areas shaded blue and pink and hatched and cross-hatched blue";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 4 the words "and/or used or stored in connection with business use(s) elsewhere";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 4 the figure "4" and substituting therefor the figure "3";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 5 the words "outside of the green hatched area";
- by deleting from paragraph 5 'Material Change of Use' sub-paragraph 5 the figure "5" and substituting therefor the figure "4";

- by deleting from paragraph 5 'Operational Development' sub-paragraph 2 the words "green hatched area" and substituting therefor the words "areas shown shaded pink and blue and hatched blue";
- by deleting paragraph 5 'Operational Development' sub-paragraph 4 in its entirety and substituting therefor the words: "Restore the land from which the building base and gravel hardstanding have been removed to its former condition before the unauthorised development the subject of this notice took place";
- by deleting paragraph 6 sub-paragraph 3 in its entirety and substituting therefor the words: "Restoration of the land to its former condition – six months from the date stated at Section 7 below."

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

Wendy McKay
INSPECTOR

Plan

This is the plan referred to in my decision dated: 27 March 2017

by Wendy McKay LLB Solicitor (Non-practising)

Land at: 2 Ferry Lane, Woodmansey, Beverley, HU17 0SE

Reference: APP/E2001/C/16/3153480-81

Scale: 1:844

