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# Appeal Decision

Site visit made on 31 May 2018

**by Jean Russell MA MRTPI**

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

**Decision date: 01 October 2018**

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## **Appeal Ref: APP/B2355/C/17/3179082**

### **Land at Farm Hill Farm, to the east of Edgeside Lane and to the north, east and west of Farm Hill Farm House, Edgeside, Waterfoot, Rossendale, BB4 9TZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (TCPA90) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Angela Clark against an enforcement notice issued by Rossendale Borough Council.
- The enforcement notice was issued on 26 May 2017.
- The breach of planning control as alleged in the notice is: without the benefit of planning permission the material change of use of the Land and buildings from agriculture and domestic stables to a mixed use as a livery and the storage of a mobile home, facilitated by: 1) Engineering operations comprising the construction of an access track, a riding arena and associated hard surfacing; 2) Operational development comprising the construction of a row of timber stables and the erection of floodlighting; 3) The change of use and extension of an agricultural building to form stables and an office; and 4) The siting of storage containers used for the storage of items for equestrian activities.
- The requirements of the notice are to: 1) Cease the use of the Land as a livery; 2) Cease the use of the Land for the storage of a mobile home and remove the mobile home, its base and all materials and paraphernalia associated with it from the Land; 3) Dig up that part of the access track shown in green [on the plan attached to the notice] within the Land edged red; 4) Remove the riding arena, its surface and associated fencing and floodlighting; 5) Demolish the row of timber stables and remove the associated hard surfaces; 6) Cease the use of the agricultural building as a livery and office and remove those fixtures, fittings and partitions from inside the building associated with those uses; 7) Demolish the extensions to the agricultural building and remove all associated hardstanding; 8) Remove all materials resulting from compliance with requirements 1-7 (inclusive) from the Land; 9) Remove the containers from the Land; and 10) Seed all the Land to grass to match the adjacent fields.
- The period for compliance with the requirements is 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e) (f) and (g) of the TCPA90. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: the appeal is dismissed and the enforcement notice is upheld as corrected and varied in the Formal Decision below.**

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## **PRELIMINARY MATTERS**

1. I wrote to the parties on 6 June 2018, without prejudice to my appeal decision, regarding matters concerning the enforcement notice, as set out below. The Council did not respond, and the appellant had no comments. I wrote to the parties again on 26 July 2018, giving them an opportunity to comment on any implications for this appeal of the publication of the revised National Planning Policy Framework (NPPF). No representations were received on this matter.

### ***Site and Planning History***

2. The appeal site forms part of Farm Hill Farm. It mainly encompasses fields within open upland countryside, but on the edge of the village of Edgeside and close to local centre of Waterfoot. The lawful use of the land is agriculture; the farmhouse and its domestic curtilage are excluded and accessed separately from the site.
3. The appellant and her husband own most of the site, but a portion is also held by Mr McVay. The area in the appellant's title – acquired by her in 2011 – includes the row of stables, riding arena, storage containers, mobile home and extended agricultural building mentioned in the notice. These structures are laid out around a yard/parking area at the end of an extended track leading from Edgeside Lane.
4. The agricultural building on the site, although not the extensions to it, was built with the benefit of planning permission (ref: 2000/0091). A block of six stables with a feed and tack room, which stands outside of the site within the curtilage of the farmhouse was also built with permission (ref: 2000/0089) in 2002.
5. Planning applications were made in 2013 (ref: 2013/0367) and 2014 (refs: 2014/0039 and 2014/0217) by an occupier of the site for livery stables and various associated uses and developments. The applications were made on a retrospective basis but withdrawn, refused and withdrawn respectively.
6. The Council served an enforcement notice in respect of development at Farm Hill Farm on 16 May 2017, but this 'first notice' contained an error. It was withdrawn and the appealed notice was issued on 26 May 2017 as noted above.

### ***The Enforcement Notice***

7. Under s176(1) of the TCPA90, an Inspector may correct any error or defect in an enforcement notice provided that there would be no injustice to the Council or appellant. From my letter of 6 June 2018 and the lack of comments in response, the following corrections can be made without causing injustice.
8. The notice alleges that there has been a change of use from agriculture and 'domestic stables' – that is, stabling incidental to a residential use. An incidental use must take place within the same planning unit as the use it is subservient to, but the farmhouse and indeed domestic stables are excluded from the notice. I shall delete the text which says what the change of use was from.
9. I shall also correct what the alleged change of use was to, in order to show that the mixed use includes agriculture. The appellant rents out land on the site to a local farmer for the seasonal grazing of sheep and cattle. The requirements of the notice will not change; the lawful agricultural use would not need to cease.
10. Any material change of use of land or buildings can be facilitated by engineering and/or building operations – but not by a separate change of use as the notice suggests. The livery use will include stabling activity by definition, while the creation of physical stables should be treated as building works. An office use carried out to serve the livery would properly be described as incidental.
11. The ground (c) appeal was made partly on the basis that the alleged containers are not 'development' which requires planning permission. However, the siting of containers for storage purposes is normally deemed to give rise to a storage use of land. The notice infers and the appellant does not dispute that the containers were placed on the land and are used to store items. I shall clarify the allegation to show that the use of the containers is again incidental to the livery use.

12. The notice does not require cessation of the stable, office or container storage uses, but the livery use has to cease, and that requirement would cover activities that are integral or incidental to the livery.
13. The appellant objected on ground (e) that the plan attached to the notice does not identify the land subject to enforcement action clearly. I find the red edge plain, and observe that an enforcement notice does not need to relate to the whole of a property, agricultural unit or planning unit. The appellant also objects that the plan does not include a detailed site layout or identify the component parts of the alleged development, but it is only necessary for the notice to specify the precise boundaries of the land to which it relates<sup>1</sup>.

### **THE APPEAL ON GROUND (E)**

14. An appeal on ground (e) is that copies of the enforcement notice were not served as required by s172 of the TCPA90 on the owner and the occupier of the land, and any other person having an interest in the land that is materially affected by the notice. In grounds (e), (b), (c) and (d), the onus is on the appellant to make her case on the balance of probability.
15. From her own knowledge and Land Registry searches, the appellant claims that two areas of the site are outside of her ownership, and there must be one or two other landowners who were not served with a copy of the notice. An ownership plan shows the land held by the appellant and Mr McVay – who was served. Land with no named owner seems to include a field in the south eastern part of the site, although the appellant's statement does not confirm if this reading is correct.
16. The Council states that it served the notice on all those identified as landowners in its Land Registry search. The appellant has not said what other investigation the Council ought to have carried out – and that is not surprising because a Land Registry address is proper service if no other address is given to the planning authority. It appears that both parties have carried out title searches, and neither can say who the other landowner(s) might be.
17. S329(2) of the TCPA90 provides that where a notice is required to be served on a person having an interest in the premises, and their name cannot be ascertained after reasonable inquiry, the notice shall be taken as duly served if it is delivered to other person on the premises, or affixed conspicuously to some object there. The Council has confirmed that it placed a copy of the notice on site.
18. S176(5) provides that where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required to be served was not, this may be disregarded if neither the appellant nor that person has been substantially prejudiced. The appellant does not know the landowner(s) not served, she has not explained how she or they might be prejudiced, and the field outside of her title on the ownership plan holds no structures associated with the livery use.
19. I conclude that the appellant has not demonstrated on the balance of probabilities that the notice was not properly served, or that she or other(s) with an interest in the land have been substantially prejudiced. The appeal on ground (e) fails.

### **THE APPEAL ON GROUND (B)**

20. The appeal on ground (b) is that the matters stated in the notice 'have not occurred'. The appellant submits that there is no office on the site as alleged, but

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<sup>1</sup> S173 of the TCPA90; *Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002*

she has provided little supporting evidence. I saw no office facilities but the question is whether the use had occurred by the date of issue of the notice.

21. The Council states that an office was shown on the floor plans subject to the 2013 and/or 2014 applications; I note that an office was included in the description of development for the refused 2014 planning application. The appellant has not shown that there has been no office use – and I have already noted that the requirement to cease the livery use would cover incidental uses.
22. The evidence that there is continued agricultural use of the site will lead to correction of the notice, but does not show that the matters have not occurred. The appellant argues that some hardstanding has planning permission, but this matter falls to be considered on ground (c). The appeal on ground (b) fails.

### **THE APPEAL ON GROUND (C)**

23. Ground (c) is that the matters stated in the notice do not constitute a breach of planning control. An appeal is made on ground (c) where it is argued that planning permission is not required or is already granted for the development.
24. To pick up from ground (b), I understand that hardstanding by the agricultural building was laid under the terms of the relevant permission, but additional hardstanding has been laid on the site. The appellant has not shown that the later works did not take place to facilitate the unauthorised change of use, meaning that the notice should not be quashed and the allegation should not be corrected in relation to the hardstanding. However, the lawfulness of existing development is relevant to the requirements of the notice and ground (f).
25. The appellant suggests that planning permission is granted for the stationing and use of the alleged mobile home by Article 3 and Schedule 2, Part 5 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015) – which, in short, permits the temporary use of certain land as a caravan site. I do not dispute that the mobile home meets the legal definition of a caravan, and has been moved within the site.
26. However, Part 5 of the GPDO 2015 is not relevant to this appeal, because it only permits the stationing of a caravan for the purposes of human habitation and the allegation is that the mobile home is being stored. The evidence of third parties and the 2013 and 2014 applications suggest that the caravan was lived in once, but not that it was stationed for residential use on the date of the notice.
27. There is no evidence that the mobile home is not being stored, or that this use already has or does not require planning permission. I am unclear from the evidence as to whether the storage of the caravan is a primary component of the alleged mixed use, as the notice suggests, or whether it is incidental to the livery use, but I do not need to speculate further because this can make no difference to ground (c) or, crucially, the substantive requirements of the notice.
28. Thus, the appellant has not shown that the matters do not constitute a breach of planning control on the balance of probabilities. The appeal on ground (c) fails.

### **THE APPEAL ON GROUND (D)**

29. The appeal on ground (d) is that, at the date that the enforcement notice was issued, it was too late to take enforcement action. Under s171B(3), where there has been a breach of planning control consisting in a material change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The alleged change of use would need to

have occurred by no later than **16 May 2007** – and the alleged mixed use would need to have taken place without substantial interruption for ten years – in order to be immune from enforcement action<sup>2</sup>.

30. The appellant states that the permitted domestic stables on adjacent land were in use by 2002, and the site has been used since for the keeping of horses as well as agriculture. A letter written on 28 April 2000 by Lancashire County Council's Land Agency Manager in support of the agricultural building application noted that part of the land would be used to provide grazing for the then applicant's horses; a proportion of hay produced would be used to feed the horses; and the building would have 'a dual use...for agriculture and horse-related storage'.
31. However, the appellant has not shown that the original 'equestrian use' amounted to a livery use as a matter of fact and degree. Horses may be grazed on farmland without there being any material change of use from agriculture – and where the 'keeping of horses' is a separate use, it still does not necessarily involve livery stabling. The April 2000 letter does not suggest that the agricultural building would be divided into stables as it now is.
32. I have read statutory declarations which show that Mr McVay and his partner started to rent land from the appellant in February 2012 – some three months after she acquired the holding. They constructed the manege, floodlighting, new block of stables, additional hardstanding and partitions to the agricultural building, and these structures were completed in September 2012<sup>3</sup>.
33. Screenshots of photographs posted on Facebook by Mr McVay's partner, if not also aerial photographs, show the "top" stable block and manege in place in April 2012 and July 2013. The appellant's evidence is also that the mobile home and storage containers were placed on the land after February 2012. The same appears to be true of the 'two lean to stable buildings that...adjoin the existing [agricultural] building...to [utilise] existing hardstanding and services'.
34. The appellant has not shown that the site has been put to a livery use for any ten year period on the balance of probabilities. By contrast, her evidence is that, even if horses were grazed or kept on the site before, the only stables that existed before 16 May 2007 were those related to the farmhouse. Substantial built development was constructed on the site for livery use after that date.
35. The appellant argues that it was too late to enforce against the stables, manege, floodlighting and hardstanding, since s171B(1) provides that no enforcement action may be taken against engineering and building operations after the end of the four year period beginning with the date of substantial completion.
36. However, the notice alleges that these structures were built to facilitate the alleged change of use – not in breach of planning control in their own right. The appellant has not shown that claim to be incorrect. In line with the judgments referred to me<sup>4</sup>, the notice could require that the manege, floodlighting, stable, hardstanding and indeed partitions are removed, whether or not they are cited in the allegation, so as to remedy the breach by ensuring that the land is restored to its condition before the change of use took place.

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<sup>2</sup> S171B(4) of the TCPA90 provides that a local planning authority may take further enforcement action in respect of any breach of planning control if, during the four years ending with that action being taken, they have 'taken or purported to take enforcement action in respect of that breach'. The appealed notice was issued under the 'second bite' provisions of s171B(4) and the Council first purported to take enforcement action on 16 May 2017.

<sup>3</sup> The statutory declarations refer to carrying out the works listed 'in section 2.6 of the Enforcement Statement'. I shall take the declarations on their face, but signed copies of the statement ought to have been appended.

<sup>4</sup> *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598; *Newbury DC v SSE & Mallaburn* [1994] JPL B79

37. The access originally ran for some 150m from Edgeside Lane to Fairview Barn, a dwelling by the northern boundary of the site. The track was extended so that it now forks before Fairview Barn and leads to the livery yard; it is about 400m long overall. Aerial photographs from the appellant and the Council indicate that the track was extended by April 2011, but in its original form in 2007 and 2009 – if any of the photographs were in fact taken in those years.
38. The appellant has stated expressly that the access was extended before she purchased her land, and that is consistent with the statutory declarations of Mr McVay and his partner, who only claimed to have carried out the other operations listed in paragraph 2.6 of the statement of case. However, it does not follow that the track extension was not laid to facilitate the alleged change of use.
39. I consider it highly likely that a track leading to where the yard is now – if not also the yard itself – would have been needed on the ground for Mr McVay and his partner to begin constructing the new stable block and manege in February 2012. The withdrawn and refused 2013 and 2014 applications sought permission for 'formation of access road', implying that this development was linked to the livery use. There is insufficient evidence for me to find otherwise.
40. I conclude that the appellant has not shown that, on the balance of probabilities, was too late for the Council to take enforcement action on the date that it first purported to take enforcement action, or indeed on the date that the appealed enforcement notice was issued. The appeal on ground (d) fails.

## **THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION**

### ***Main Issues***

41. The main planning issues in this case are:
  - The effect of the alleged use of the land as a livery on highway safety, with regard to the suitability of the site access for traffic associated with the use;
  - The effect of the alleged development on the character and appearance of the surrounding rural area;
  - The suitability of surface water drainage arrangements on the site; and
  - Considerations in favour of the appeal.

### ***Planning Policy and Guidance***

42. I have been referred to *Rossendale Core Strategy Development Plan Document* (CS) Policies AVP3, 1, 14, 17, 18, 19, 21, 23 and 24, but I shall only address those policies which appear relevant to this appeal. Since it is necessary to make my decision on the basis of current planning policy, all references to the NPPF shall be to the revised version dated July 2018.
43. The appellant has mentioned the *Rossendale Supplementary Planning Document: Conversion and Re-use of Buildings in the Countryside*, but I shall not refer to this document again; I am not aware of whether it relates to the re-use of building for livery stabling, there is only one 'converted' building on the site, and it does not contain any decisive or materially different guidance to the CS or NPPF.

### ***Reasons***

#### ***Highway Safety***

44. The original track provides access to domestic garages serving 248-252 Edgeside Lane and then a telecommunications mast before Fairview Barn. It leads from

Edgeside Lane at an angle and on a steep gradient, like the land that it is cut into, while the track extension is formed over more gently sloping land. The route on the whole is narrow and roughly surfaced. It curves or bends by the garages, the mast, the fork and the twice after that – once in an 'S' shape – before the yard.

45. The Council objects that use of the track by the livery causes an unacceptable loss of highway safety, due to the volume of traffic associated with the use and substandard visibility splays at the junction with Edgeside Lane. To be clear, the question is whether the track provides safe and suitable access not just for the existing dwellings, mast and agricultural use, but the livery as well.
46. There are 23 stables on the site: ten in the new block, seven in the agricultural building and six in the alleged extensions to that. The appellant has five horses herself, but she owns the six stables which stand beside the farmhouse, were built with planning permission and are accessed separately from the livery.
47. The appellant helpfully accepts that measures would be required to ensure that the livery can be accessed without any loss of highway safety, but I could not approve the use subject to a condition that the number of customers is limited to five. Doing so would negate the benefit of granting permission for a livery with 23 stables, and place an unjustifiable burden on the appellant. The condition would not be 'reasonable' as the NPPF expects, and it could well be ineffective, given that the appellant would not limit the number of horses owned by each customer.
48. The appellant suggests that another condition could require the removal of any stable(s) not used for more than a 12 month period over ten years. This would not serve to limit the scale of the development for the purposes of this appeal, because there can be no guarantee that any stable would ever be unoccupied. I also consider that the condition would be unduly difficult to enforce.
49. I accept that livery customers tend to help each so that, for example, one might tend to another's horse(s) with their own in the morning and this is reciprocated in the evening. However, it could still be expected that the use would lead to several customers coming and going from the site at the start and end of each day to feed and check the bedding for their animals. They would visit to exercise their horses on the site, and take their horses out for riding or show elsewhere.
50. With the access being some 400m long and steep in places, customers, vets and delivery drivers would normally drive to and from the site. Even if there would be no more than one vehicle entering or leaving every five minutes during peak hours, the livery would still be likely to generate, overall, a significant increase in the number of movements on the access. It is likely that some livery users would drive medium-sized or large vehicles such as horse boxes and trailers to the site.
51. I am aware of local concerns about speeding, but Edgeside Lane is subject to a 30mph speed limit. *Manual for Streets* (MFS) suggests that drivers waiting to exit from the site onto this road would need to have visibility splays of 43m in each direction when 2.4m back from the kerbside, in order that they can see and be seen by oncoming drivers in time to avoid unacceptable risk of collision.
52. The site access has a left or south splay of 2.4m x 38m when measured to the kerb, but the appellant notes that traffic coming from that direction is on the far side of Edgeside Lane, and not driven next to the pavement. It can be appropriate in some cases to measure the splay into the carriageway, but I saw that left side drivers tend to zigzag when approaching the site, moving towards or away from the centre line depending on whether cars are parked on street. Drivers seeking to exit the site do not have reliably clear or safe views of traffic from the south.

53. The Council accepts that drivers can see 45m to the right or north of the access, in accordance with MFS, but I observed that visibility can be more constrained in reality because, as noted above, the track is narrow, steep and set at an angle to Edgeside Lane. I agree with the Highways Authority that there is a lack of space to manoeuvre medium-sized and large vehicles at the junction. Some drivers would have difficulties turning at the end of the track in order to see north clearly.
54. The appellant's transport consultant concedes that the angle of the access better facilitates left (south) turns out and right turns in. It is said that signage could be erected to reinforce that behaviour, but visibility splays fall short to the south. Moreover, I could not impose a condition to require the installation of a sign which might require advertisement consent under separate regulations.
55. Regular livery visitors might be aware of the track and road conditions, but the same could not be assumed of new customers, vets, delivery drivers or passers-by. The appellant owns the track and land to its south but has not proposed works to improve sightlines. There have been no recorded accidents on Edgeside Lane in the past five years, but nonetheless the livery would generate sufficient use of a substandard junction as to cause an unacceptable loss of highway safety.
56. I also share concerns of local residents that the track is poorly constructed along its length, given the levels and types of traffic likely to be generated by the livery, and the topography of the land. Within the site, livery users would drive at risk of collision with each other and with those accessing nearby properties, particularly after dark or in adverse weather conditions.
57. The appellant is willing to create an additional passing place, widen the 'S' bend, re-surface the track generally and maintain it in the future – but a condition would need to be imposed to require the submission and approval of full details of the scheme. I have insufficient information at present to be satisfied that safety could be ensured on the route, and also consider that upgrading this 400m track as proposed would again be an unreasonable imposition on this business.
58. I conclude that permitting the livery use would result in an unacceptable loss of highway safety which could not be overcome by conditions. The use conflicts with CS Policies 1 and 23, which seek to minimise negative impacts upon existing infrastructure and reflects MFS<sup>5</sup>. It conflicts with the NPPF which requires that safe and suitable access can be achieved for all users of development.

#### *Character and Appearance*

59. The Council does not object that new stable block, manege and agricultural building extensions cause unacceptable visual or landscape harm. They are similar in their scale, design and materials to the existing structures on the site and many other farm or equestrian buildings. The cluster of development around the yard is too far and high up to look obtrusive from Edgeside Lane. It does not appear unacceptably incongruous from nearby public footpaths.
60. However, I share the Council's concerns regarding the lighting required to sustain the use of the land as a livery. The appellant has reduced illumination, but there are still two floodlights by the manege: one by the stables and one on the eastern or public footpath side. The manege is on relatively flat, high and exposed land, meaning that the floodlights – designed to be intensely bright – will cause extensive lighting where one would otherwise expect to find dark skies at night.

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<sup>5</sup> I have been told that CS Policies 8 and 9 concern transport and accessibility, but not what the policies state.



61. With security lights also installed on the row of stables, I consider that the livery use is liable to cause highly intrusive light pollution. The appellant would accept a condition requiring that external illumination is switched off at 20.00 hours, but that would be too late during the winter months to prevent unacceptable harm to the character and appearance of the countryside. More restrictive lighting times would make it impossible for customers to tend to their horses all year round.
62. I share the Council's concerns that the mobile home stored on the site detracts from the pastoral character of the landscape, even if it is not widely visible. The appellant has said that, if permitted, the caravan would not be lived in but used for purposes ancillary to the livery. However, the deemed planning application is made for the alleged storage of the mobile home, and I am not persuaded in any event that running the livery would require the incidental use of this structure.
63. I conclude that the external lighting required for the livery and the stored mobile home cause unacceptable harm to the character and appearance of this rural area in conflict with CS Policies 1, 14, 18, 19, 23 and 24, which require development to enhance and protect the countryside; have no unacceptable impact on landscape character or visual quality, including through light pollution; respond to the local context; and maintain the relationship between urban areas and the countryside. There is conflict with the NPPF, which expects development to be sympathetic to its local character including landscape setting.

#### *Drainage*

64. The use for the care and stabling of horses, and of course rainfall, will lead to water on the surface of the site. The buildings and hardstanding which facilitate the livery use were constructed in part over grass, reducing the absorbency of the land. There are soakaways but I find that the use and associated development will lead to an increase in surface water particularly on the livery yard – and the site access effectively forms a channel from the yard to Edgeside Lane.
65. The Council suggests that the site is inadequately drained to serve the livery use, and debris as well as surface water run down the track and wash onto the street. Local residents have described this occurring, so as to add to highway safety concerns and cause localised flooding. The appellant may be right that some objections are unsubstantiated, but overall they are serious and plausible.
66. The appellant proposes to instruct a contractor to install perforated land drains which would take water from the track and yard to new ditches leading to existing watercourses. It is common practice to permit developments subject to conditions requiring drainage improvements, but there is little evidence that a livery of this scale and design could be suitably drained in this location or, again, that the potentially significant operations could be reasonably required.
67. I find that the livery will cause unacceptably harmful surface water run-off which could not likely be redressed, contrary to CS Policies 1, 19 and 24, which expect development to take a precautionary approach to flood risk and maintain or enhance drainage capacity. The use conflicts with the NPPF requirement for development to incorporate sustainable drainage and not increase flood risk.

#### *Considerations in Favour of the Appeal*

68. The continued agricultural use of the site is carried out separately by a tenant farmer, so the livery use is not agricultural diversification as the appellant suggests. However, CS Policy 21 supports sustainable tourism developments including recreation and leisure appropriate to a countryside location, such as horse-related activities. CS Policy AVP3 sets out a vision for the Waterfoot area

which includes promoting sites which encourage access to the outdoors and leisure opportunities, and improve access to the countryside. With regard also to the NPPF, I have no objection to the use of the site as livery in principle.

69. The appellant argues that farming alone cannot provide a sustainable income in this upland location. Her use of the site allows grazing to continue, and this protects the landscape, while the livery contributes significantly to her and the holding's income. She states that the use not only promotes outdoor recreation but also provides jobs. I accept that the livery is likely to boost the rural economy, and this is a consideration in favour of the appeal.
70. However, the appellant has not provided any business or other information which would allow me to quantify, and thus attribute significant weight to the benefits of the use. She has not shown that the personal and/or wider advantages are such as to warrant a grant of permission for the use. In my view, the harm caused by the livery, particularly to the rural community through loss of highway safety, is not justified or outweighed by the factors in favour of the use.
71. Nearby occupiers who use the site access have no right to improve it themselves – but the appellant's proposals to resurface the track and improve drainage could not be described as net benefits of the livery use. The schemes were put forward to remedy harmful impacts of the livery, and not any pre-existing problems. The livery causes no unacceptable harm to the living conditions of nearby residents, but this is not a positive consideration in favour of the development.

### **Conclusion**

72. I conclude that the alleged development causes unacceptable harm in relation to highway safety, character and appearance and drainage. The benefits of the uses do not alter or outweigh my objections. I conclude that the appeal on ground (a) should fail and the deemed planning application should be dismissed.

### **THE APPEAL ON GROUND (F)**

73. The appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control. I have accepted that some of the hardstanding around the agricultural building was constructed with the benefit of planning permission. I shall vary step 7 to clarify that the lawful operational development does not need to be removed.
74. The appellant objects that step 10 requires that all land is seeded to grass. Since steps 1-9 do not require the removal of the original track, the telecommunications mast or the permitted agricultural building, it stands to reason that those parts of the site are excluded from step 10. However, I shall vary the notice to make this clearer and the appeal on ground (f) succeeds to that extent.

### **THE APPEAL ON GROUND (G)**

75. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. The notice gives eight months to comply with all steps. The appellant argues that this would be insufficient time to seed the land to grass, given third party and tenancy restrictions affecting, for example, the mast.
76. I have stated that step 10 will be varied to clarify that it relates only to land that is required to be cleared of livery and caravan-related development. The appellant has not shown that re-seeding those parts of the site could not be done within eight months. I conclude that the period for compliance is reasonable and the

appeal on ground (g) must fail. That said, I will delete the reference to the date when eight months would have lapsed had the appeal not been made.

## **CONCLUSION**

77. For the reasons given and with regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **FORMAL DECISION**

78. It is directed that the enforcement notice is corrected and varied by:

- Deleting the text of paragraph 3 in its entirety and substituting: *"Without planning permission, the material change of use of the land and buildings to a mixed use for agriculture, the storage of a static caravan, and use as a livery with incidental storage and office uses, associated engineering operations comprising the construction of an access track, a riding arena and associated hard surfacing, and associated building operations comprising the construction of a row of timber stables, the installation of stables in an existing agricultural building, and the erection of floodlighting";*
- Adding *"except that hardstanding granted planning permission under ref: 2000/0091"* to paragraph 5, step 7);
- Inserting *"cleared through compliance with steps 1) to 9)"* between the words *"Land"* and *"to"* in paragraph 5, step 10); and
- Deleting *"i.e. on or before 2 March 2018"* from paragraph 6.

79. Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

*Jean Russell*

INSPECTOR