



Appeal Decisions

Site visit made on 4 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal A: APP/B2355/C/18/3213797

Appeal B: APP/B2355/C/18/3213798

Land at Top O Th Bank Cottage, Tunstead, Bacup OL13 8NL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Ms Deborah Fisher (Appeal A) and Mr Norman Hill (Appeal B) against an enforcement notice issued by Rossendale Borough Council.
- The enforcement notice was issued on 7 September 2018.
- 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 from agriculture to use as a livery business and storage purposes; including the erection of two rows of timber stables in connection with the livery business, a hard surfaced access track, storage of three container units and an additional insulated container storage unit, storage of a JCB digger and plant equipment, storage of scrap metal, metal fencing, wooden fence posts and miscellaneous stone and hardcore material.
- The requirements of the notice are a. Cease the use of the Land as a livery business; b. Cease the use of the Land for storage; c. In an appropriate manner, permanently remove from the Land the following: i. Hard surfaced access track shown shaded in green within the Land edged red on the attached plan; ii. Timber stables and associated hard surfaces; iii. Storage container units and insulated container storage unit; iv. JCB digger and plant equipment; v. All scrap metal, metal fencing, wooden fence posts and miscellaneous stone and hardcore material from the Land; and d. Topsoil and seed the land to grass to match the adjacent field.
- The period for compliance with the requirements is six months.
- Appeal A is made on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is made on the grounds set out in section 174(2) (a), (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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

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

Applications for costs

1. An application for costs was made by Rossendale Borough Council against Ms Deborah Fisher and Mr Norman Hill (the appellants). An application for costs was also made by the appellants against Rossendale Borough Council. These applications are the subject of separate Decisions.

Preliminary Matters

2. The enforcement notice seeks to address the material change of use of the site and is directed at a mixed use of the land. The concept of a mixed use is two or more primary uses existing within the same planning unit or unit of occupation. In a mixed use case, the notice should refer to all the components of the mixed use.
3. The Council takes the view, following consultation, that the residential use, identified within the appeal site boundary would constitute a separate planning unit. It considers the enforcement notice plan should be amended to exclude the dwelling and that the description of the breach should be amended to refer to a mixed use of agriculture, livery and storage. Notwithstanding the appellant's objection, I am satisfied that by reducing the area of the site subject to the notice, it can be corrected accordingly without resulting in injustice to the parties.
4. The appellants state that the livery is not a commercial operation, with the stables on the site being for private use. I therefore take this element to be an appeal on ground (b), that is that the breach of control alleged in the enforcement notice has not occurred. I have dealt with this accordingly in my decision below.

The appeals on ground (b)

5. In order to succeed on this ground it would need to be demonstrated that the mixed use as alleged, had not occurred at the site. The agricultural and storage uses are undisputed. There are six stables on the site, three of which are for use by the appellants' own horses or for sheltering livestock during winter, with the remaining three in use by a third party. It is understood that the appellants receive a nominal rental payment regarding the stables in question. Accordingly I conclude, irrespective of scale, that a livery business is nevertheless in operation. The appeals on ground (b) therefore fail.

The appeals on ground (c)

6. The appeals on ground (c) are that there has not been a breach of planning control. The appellants' case in this regard specifically relates to various loose materials and the JCB vehicle and plant equipment stored on the site. In this respect they seek to rely on the permitted development rights granted under Schedule 2 Part 4 Class A of the The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
7. Class A is headed "Temporary buildings and structures" and the permitted development is "The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land".
8. The appellants claim that the miscellaneous stone and hardcore material is required in connection with ongoing drainage improvement and flood prevention works in the vicinity of the dwelling; that the fencing materials are connected to the continual repairs required to field boundaries and the JCB digger is necessitated by the need to maintain and clear the access track leading to the site and relating to the inspection of flood alleviation works.

9. From the information before me I have no reason to doubt that the appellants' residential property has previously experienced flooding and that there has been significant time and effort invested in measures designed to improve drainage and resist future flooding. However, I am not persuaded that Part 4 Class A makes specific provision for the temporary storage of materials on site.
10. Furthermore, Part 4 Class A specifically permits buildings, structures and plant required temporarily, subject to various conditions and provisos. It seems to me that the keeping of scrap metal, fencing related materials and, notwithstanding its use in connection with ongoing drainage improvements, the JCB digger on the site for use, as and when required, for continual fencing and road repairs, suggests that they could endure there for a very long time or indefinitely. In addition it is envisaged by the appellant that surplus stone may be used for a replacement building should this be granted planning permission in the future. It also seems from the information before me that the timescale for drainage improvements and use of associated hardcore material is somewhat open-ended. These considerations would not meet with the pre-requisite of the related projects being temporary in nature.
11. The storage of the aforementioned various items are not exempt from planning control and consequently the appeals on ground (c) fail.

The appeals on ground (d)

12. The appeals on ground (d) specifically relate to the livery stables, storage containers and access track and are that at the date when the notice was issued, no enforcement action could be taken against these developments due to the passage of time. S 171B of the Act sets out the time periods within which planning permission must be taken. These are four years in relation to operational development and ten years in relation to changes of use other than a building to dwellinghouse.
13. The appellants have set out that the various developments are visible in an aerial photograph dated 29 October 2014 and also that the stables are referred to within a previous delegated officer report dating from 18 December 2014. The parties dispute whether the 4-year or 10-year immunity time period is applicable in this case, and I am mindful that where operational development has taken place that is integral to and solely for the purpose of facilitating the change of use of land, a notice may require removal even if such works would be immune from enforcement in their own right.
14. However notwithstanding this, even if the 4-year period were to be applied, there remains a gap of almost two months between the beginning of the immunity period and the date of the aerial photograph referred to. This is a relatively lengthy period, within which the relevant developments could have been implemented. I am not therefore persuaded that the information before me demonstrates, on the balance of probability, that the various developments have been in place for the requisite length of time, prior to the enforcement notice being issued. In any event it seems to me that the aerial photograph lacks sufficient clarity to conclude, on the balance of probability, that it shows the developments in question. Consequently the ground (d) appeals fail.

Appeal A on ground (a)

Main Issue

15. The appeal on ground (a) is that planning permission should be granted. The main issue is the effect of the development on the character and appearance of the surrounding countryside.

Reasons

16. The appeal site is set within an elevated and open countryside location, characterised by sporadic farm related developments, with land sloping steeply southwards towards a valley, before rising to the fell beyond. The site is prominently located in relation to the public right of way network, with a footpath running along the northern boundary.
17. The storage containers are relatively large, and despite some being coloured green, stand out as industrial / urban features that appear harsh and incongruous with the rural character of their surroundings. Similarly, from the Council's photographic evidence, the loose materials appear somewhat randomly placed, disorderly and unsightly. Furthermore, except for the JCB digger for the reason set out below (and any plant required temporarily in accordance with Schedule 2 Part 4 Class A of the GPDO), I see no justification for the long-term storage of general plant equipment on the land. I conclude that these elements of storage result in harm to the character and appearance of the surrounding landscape.
18. This harm would not be outweighed by any social or economic need or benefit to the local community. Whilst I do not under-estimate the urgency and importance of completing drainage and flood protection works, in relation to the appellants' dwelling, I have not been made aware of any compelling reason why associated material could not be brought to the site as required. The storage of the loose material, in particular, would therefore also not outweigh the harm identified. Accordingly, there is conflict with Policies 1, 18, 21 and 23 of the Rossendale Borough Council Core Strategy 2011 and the National Planning Policy Framework insofar as they seek to protect the character of the surrounding landscape.
19. The stables, by contrast, are relatively small in scale. They are constructed in dark painted timber and sited at a lower level in comparison to the public right of way. Accordingly they have a more recessive appearance in the surrounding landscape. The gravelled track facilitates access to the stables and does not appear out of place in this context. The JCB vehicle, though very visible due to its colouring, is not of significant size and would not be an uncommon sight in an agricultural setting. I conclude that these features are not in conflict with the aforementioned policies.
20. The use of the livery for business purposes is very limited in scale, with three of the stables being retained for the appellants' personal use. When considering the relatively low-key commercial use of the site and the policy support for the diversification of the rural economy, I am not persuaded that this element of the alleged use would result in any significant harm. However if the livery service were to be offered to additional clients, I am sympathetic to the view that this would potentially attract additional vehicle movements to and from the site which may result in undue disturbance to neighbouring residents

and further wear and tear on the relatively inferior access track. In this regard I note that the appellant would be amenable to the imposition of a planning condition, limiting the scope of commercial use of the livery.

21. For the above reasons I consider that the proposed mixed use is acceptable in principle, but that various supporting elements, including the storage containers and loosely stored materials, are not.
22. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission.

Conditions

23. I have considered the use of appropriate planning conditions. A condition restricting the livery business to accommodating the horses of a single client is required in the interest of protecting the living conditions of residents and vehicular access to the site.

The appeals on ground (f)

24. The ground of appeal is that the steps required by the notice to be taken are excessive. The objective of the notice is to discontinue the unauthorised livery and storage uses and return the land to its condition before the breach of planning control took place. It follows that the purpose of the notice is to remedy the breach. Given that I propose to allow the livery business subject to a condition, along with the associated stables and access track, and the storage use insofar as it relates to the JCB digger, I need not consider the ground (f) appeal in as much as it relates to those aspects of development.
25. With regard to the residual elements of development, given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by ceasing the harmful elements of the storage use and removing the related items and materials. To require that does not, therefore, exceed what is necessary and the appeals on this ground must fail.

The appeals on ground (g)

26. The ground of appeal is that the time allowed to comply with the requirements of the enforcement notice is too short. I have taken into consideration that my decision to allow the development in part, means that the amount of material needing to be removed from the site is reduced accordingly.
27. Furthermore it appeared from my visit that a significant quantity of loosely stored material has now been removed from the site (as amended). It therefore seems to me that the six-month time period allowed in the notice would be proportionate to the residual requirements. The ground (g) appeals therefore fail.

Conclusion

28. For the reasons given above I conclude that Appeal A 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 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 s180 of the Act.

Formal Decisions

Appeal A

29. It is directed that the enforcement notice be corrected as follows:-

by substituting the plan annexed to the notice with the plan annexed to this decision instead; and

by substituting the wording in paragraph 2 of the notice with the following wording instead:

"Land at Top O Th Bank Cottage, Tunstead, Bacup, OL13 8NL ("the Land") as outlined by the red and blue lines, but excluding the triangular area of land enclosing the cottage immediately to the north of the blue line, on the plan attached to the decision notice"; and

by substituting the wording in paragraph 3 of the notice with the following wording instead:

"Without the benefit of planning permission, the material change of use of the Land from agriculture to a mixed use comprising agriculture, use as a livery for business and for storage purposes; including the erection of two rows of timber stables in connection with the livery business, a hard surfaced access track, siting of an insulated container storage unit, siting of three container units, storage of a JCB digger and plant equipment, storage of scrap metal, metal fencing, wooden fence posts and miscellaneous stone and hardcore material"; and

by deleting the words ",i.e. on or before the 10 April 2019" in paragraph 6 of the notice.

30. The appeal is allowed insofar as it relates to the land identified in paragraph 2 of the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for a mixed use comprising agriculture, use as a livery for business including the erection of two rows of timber stables and a hard surfaced access track and for the storage of a JCB digger at Land at Top O Th Bank Cottage, Tunstead, Bacup OL13 8NL subject to the following condition:

1) The livery business hereby approved shall be limited to accommodating the horses of a single client at any one time.

31. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to the land identified in paragraph 2 of the notice and, subject to paragraph 30 above, planning permission is refused in respect of use for storage purposes including the siting of an insulated container storage unit, the siting of three container units, the storage of plant equipment, scrap metal, metal fencing, wooden fence posts and miscellaneous stone and hardcore material, on the application deemed to have been made under section 177(5) of the 1990 Act as amended at Land at Top O Th Bank Cottage, Tunstead, Bacup OL13 8NL.

Appeal B

32. The appeal is dismissed.

Roy Merrett

INSPECTOR



Plan

This is the plan referred to in my decision dated: 10 July 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

Land at Top O Th Bank Cottage, Tunstead, Bacup OL13 8NL

References: APP/B2355/C/18/3213797 and APP/B2355/C/18/3213798

Scale: Not to Scale

