



Appeal Decision

Site visit made on 21 July 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/W9500/C/19/3234575

Agricultural Barn and Land east of Whorlton House, Whorlton Lane, Whorlton, Swainby, Northallerton DL6 3HT

- 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 John Martin against an enforcement notice issued by North York Moors National Park Authority (the Authority).
- The enforcement notice was issued on 1 July 2019.
- The breach of planning control as alleged in the notice is Without planning permission; (i) the Material Change of Use of Agricultural Barn and the use of Land for Commercial Land Management and Maintenance Business; and (ii) the use of the Agricultural Barn for the accommodation of livestock in breach of the condition attached to the permission for the building under paragraph A2 of Part 6 of the Town and Country Planning General Permitted Development Order 1995 (The "GDPO 1995" then in force) in the following terms: *(a) where development is carried out within 400 metres of the curtilage of a protected building, any building, structure, excavation or works resulting from the development shall not be used for the accommodation of livestock except in the circumstances described in paragraph D.3 below or for the storage of slurry or sewage sludge [, for housing a biomass boiler or an anaerobic digestion system, for storage of fuel for or waste from that boiler or system, or for housing a hydro-turbine;.*
- The requirements of the notice are 5.1 Comply with the condition referred to in paragraph 3(ii) above by ceasing the use of the Agricultural Barn for accommodating livestock; 5.2 Remove all livestock accommodated in the Agricultural Barn; 5.3 Cease the use of Land and Agricultural Barn for the storage of vehicles, plant, skips, containers and materials and all uses associated with a commercial land management and maintenance business; 5.4 Remove from the Land all commercial vehicles, plant, skips trailers and waste used in connection with the commercial land management and maintenance business; 5.5 Remove all stored materials such as stone, gravel, sand and salt used in connection with commercial land management and maintenance business from the Land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended.

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

Preliminary matters

1. The breach of planning control specified in the notice refers to both a material change of use and breach of planning condition. Accordingly paragraph 1 of the notice should make reference to a breach of planning control within both paragraphs (a) and (b) of s171A(1) of the Act. This correction can be made without resulting in any injustice.

2. There is no dispute that at the time the notice was issued, the agricultural use of the site was continuing. In a mixed use case, the notice should refer to all the components of the mixed use. I am satisfied that the alleged breach of planning control can be corrected to include reference to agriculture, as part of a mixed use, without resulting in prejudice. This is because the notice does not require the principle of the agricultural use of the site to cease.
3. The Authority has made reference within the alleged breach of planning control to the condition within the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995) which it considers has been breached. At that time the wording of this condition did not include '*for housing a biomass boiler or an anaerobic digestion system, for storage of fuel for or waste from that boiler or system, or for housing a hydro-turbine*'. However, this is not material to the appeal case, and I am satisfied that the superfluous wording can be deleted, so as to correct the notice without resulting in injustice to the appellant.
4. There is no appeal made on ground (a), that is that planning permission should be granted. Accordingly the merits of the use of the site, including what may have been approved by the Authority on nearby sites, are not before me for consideration in this case.

Reasons

The appeal on ground (b)

5. The appeal on ground (b) is that the alleged breach of planning control has not occurred. The appellant's case in this regard is confined to the allegation that the site is being used as a commercial land management and maintenance business. The alleged use of the barn for the accommodation of livestock is not disputed.
6. For the appellant to succeed on this ground, they would be expected to demonstrate, on the balance of probability, that the appeal site was not being used on a commercial basis as a land management and maintenance business at the time when the notice was issued.
7. The appellant's statement says that there are no activities undertaken on the site outside agricultural parameters; that he is involved in landscape gardening work; aggregate is kept for use on the site; salt is also kept there to enable an access road to be maintained during bad weather and that despite his involvement with commercial gritting, this is operated from a separate site.
8. The Authority served a Planning Contravention Notice (PCN), which the appellant responded to on 24 April 2019. The appellant's responses include that he is involved in horticultural contracting work off site, in order to supplement his income, and that horticulture is included with the definition of agriculture. When specifically asked about the storage of plant, machinery and equipment not for agricultural purposes on the site, the storage of such items was not denied, the appellant responding that this is his place of work. The appellant also confirmed that some horticultural light equipment is kept on the site.
9. The Authority has submitted various photographs with its evidence, including some that would appear to have been taken by third parties. The photographs variously appear to show the presence of baled hay; tree guards and

associated wooden stakes; stockpiles of salt and rubble; various vehicles including grass cutting machines and trucks containing horticultural waste. There is no compelling reason that leads me to believe that these photographs do not relate to the appeal site.

10. From my visit it was evident that a significant amount of baled hay was present, with the wider site split into pens containing various animals, predominantly goats. It was apparent that one of two metal storage containers, situated adjacent to the barn, was being used to store animal feed. Despite the presence on the site of various miscellaneous materials and vehicles, the evidence from my visit alone would not lead me to the conclusion that the site was currently in use for purposes other than agriculture.
11. However, it is important to assess all of the evidence before me, as the key material date is the time when the enforcement notice was actually issued. The appellant confirms that part of his business includes horticultural work away from the site. Within the PCN response, he confirms that he keeps horticultural light equipment on the site and has not disputed that plant, machinery and equipment not associated with agriculture is being stored. Furthermore, in the absence of a detailed explanation to the contrary, the photographs showing what appear to be grass cutters and vehicles carrying horticultural waste appear to corroborate this.
12. I am also mindful that as part of a planning application submitted by the appellant, and currently under consideration by the Authority, it is undisputed that a significant proportion of the existing agricultural barn, on the site, would be devoted to land / grounds maintenance related use, as distinguished from farm workshop use. This must demonstrate at least an intention to use part of the site for purposes that are not necessarily connected with the agricultural use being undertaken there.
13. To my mind a horticultural business involving landscape gardening work would be encompassed by the description 'commercial land management and maintenance business' as set out in the enforcement notice. I accept that horticultural practices may be included within the definition of agriculture. However this does not mean that the parking or storage of vehicles, items and materials on the appeal site, associated with the operation of such a business away from the site, can be said to be part and parcel of the agricultural use of the site itself.
14. I accept that there may be some overlap in terms of on-site and off-site use of some of the items found to be stored on the appeal site. However, and despite the fact that storage of items for use in connection with an off-site business may have subsequently ceased or significantly diminished, from the evidence before me, I conclude on the balance of probability that the alleged breach of planning control occurred as a matter of fact. The ground (b) appeal therefore fails.

The appeal on ground (c)

15. The ground of appeal is that the matter alleged does not constitute a breach of planning control. I am mindful that the burden of proof falls on the appellant to make out his case on the balance of probability. The appellant's case in this regard is three-fold. Firstly, that horticulture is included within the definition of agriculture; agriculture is allowed to take place on the site and as such there

has not been a breach of planning control. Secondly, he claims that the storage of certain materials on the site are in connection with the agricultural use taking place there. Thirdly, he says that the accommodation of livestock within the agricultural barn, subject to the notice, does not constitute a breach of condition.

16. In terms of the first argument, Section 55(2)(e) of the Act states that the use of any land for the purposes of agriculture shall not be taken to involve development of the land. Horticultural practices may be included within the definition of agriculture. However, whilst I have concluded above that there has been storage of vehicles and materials associated with horticultural practices, such horticultural practices were taking place off site.
17. As such I conclude that this arrangement does not fall within the aforementioned exclusion in s55 of the Act. I have also concluded above that a horticultural business involving landscape gardening work would be encompassed by the description 'commercial land management and maintenance business'. Accordingly a material change of use to a mixed use of agriculture and commercial land management and maintenance business has occurred.
18. The appellant explains that the storage of sand, gravel and stone is for use in connection with the site, with salt being kept there to enable vehicular access to the site to be maintained during winter weather. He says that these materials are not being used in connection with an off-site business and although he has had some involvement with commercial gritting this is operated from a separate site. In the absence of any compelling evidence from the Authority or third parties to contradict this, this seems to be a plausible explanation. I am not persuaded, on the balance of probability, that these materials relate to the alleged commercial use breach of planning control. I return to this specific point in considering the ground (f) appeal.
19. With regard to the third contention, there is no dispute that the building in question, described as a general-purpose agricultural farm building, was authorised in June 1997 under Part 6 of the GPDO 1995.
20. As set out in the notice, paragraph A.2 of the GPDO 1995 contained the condition that where such a development was within 400 metres of a protected building, the development shall not be used for the accommodation of livestock, except in specific circumstances which included temporary emergency shelter. It set out that a protected building was a dwelling, though did not include a dwelling on a different agricultural unit used in connection with agriculture.
21. The Authority says that the building is sited within 400 metres of a protected building. Whilst it accepts that Whorlton House, situated opposite the site, may not constitute such a building, it identifies a dwelling some 250 metres away (Perish Crook) as a protected building by way of it not being part of an agricultural unit.
22. The appellant has provided no evidence to dispute this point, nor to indicate that any of the aforementioned exceptions should apply in this case. Although the GPDO 1995 condition was not expressly cited on the Authority's notification decision in June 1997, it did not need to be. This is because the GPDO 1995

expressly stated that development was not permitted where the terms of the condition therein were not met.

23. I therefore conclude that the use of the barn for the accommodation of livestock would, on the balance of probability, have resulted in a breach of the condition imposed by the GPDO 1995. Taking all of the above factors into account the ground (c) appeal must therefore fail.

The appeal on ground (d)

24. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the alleged use had commenced and the relevant condition had been breached at least 10 years before the notice was issued, that is by 1 July 2009, and that the alleged use and breach of condition had continued over a 10 year period. It must be shown that there has not been any significant interruption in the use or the breach, in order to demonstrate the necessary continuity.
25. There is no evidence before me to demonstrate the continued use of the site for the alleged business over such a time period (the appellant claims that he only purchased the site in 2017).
26. The appellant has referred to the building subject to the notice always accommodating livestock since its construction, and that it was designed for such use, incorporating close boarding for ventilation and gates to act as feeding barriers. However, even if livestock has been previously accommodated within the building, such that the condition was breached several years ago, no evidence, such as sworn statements, has been provided to support the proposition that the barn has been used continuously as alleged in breach of the condition, without any material break, for the required 10-year period. The ground (d) appeal therefore fails.

The appeal on ground (e)

27. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. However no evidence has been provided setting out how the Authority has failed to comply with this requirement. Accordingly this ground of appeal must fail.

The appeal on ground (f)

28. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. I have set out above that I am not persuaded that the storage of certain materials on the site relate to the alleged breach of planning control. In requiring their removal, the notice therefore goes beyond what is necessary to remedy the breach as described. Accordingly the notice needs to be corrected by deleting reference to these materials in paragraph 5.5, and the ground (f) appeal succeeds to this limited extent.

Other Matters

29. The appellant has referred to the action taken by the Authority resulting in an infringement of Human Rights and harm to wellbeing. However the appeal on grounds (b), (c), (d) and (e) are known as legal grounds, in relation to which

the Human Rights Act articles are not engaged. Whilst there has been an appeal on ground (f), I have concluded above that the requirements of the notice can be modified so as not to result in a disproportionate burden.

30. I acknowledge that, by nature, enforcement proceedings can be stressful. However I also need to bear in mind the government's policy position that effective enforcement is important to maintain public confidence in the planning system. I am satisfied that, subject to the notice being corrected, the Authority's actions have been proportionate in this case.
31. The appellant considers that the use of the site is compliant with the National Planning Policy Framework. However national planning policy is not relevant to the legal grounds of appeal in this case. The merits of any development are not before me for consideration and as set out previously, the requirements of the notice can be modified so as to be proportionate.
32. The appellant considers that he has received a poor standard of service from the Authority with regard to this matter. Whilst he is of course entitled to express such a view, this is not a matter that would have a bearing on my decision. Furthermore, any criticism of the validity of a previous appeal decision is not a matter for me to consider as part of this case.

Conclusion

33. For the reasons given above I conclude that the appeal on grounds (b), (c), (d) and (e) should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

34. It is directed that the enforcement notice be corrected by:
- (a) deleting the words 'paragraph (a)' and substituting them with the words 'paragraphs (a) and (b)' instead, in paragraph 1; and
 - (b) adding the words 'mixed use for agriculture and' after the words 'and the use of Land for' in paragraph 3 (i); and
 - (c) deleting the wording '*[, for housing a biomass boiler or an anaerobic digestion system, for storage of fuel for or waste from that boiler or system, or for housing a hydro-turbine;]*' in paragraph 3 (ii)(a); and
 - (d) deleting the words 'such as stone, gravel, sand and salt' in paragraph 5.5.
35. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR