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## Appeal Decisions

Site visit made on 21 July 2020

**by D H Brier BA MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 August 2020**

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### **Bagby Airfield, Bagby, Thirsk, North Yorkshire, YO7 2PH**

- 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 Mr M Scott against 2 enforcement notices issued by Hambleton District Council.
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### **Appeal A Ref: APP/G2713/C/20/3246912**

- The enforcement notice was issued on 15 January 2020.
- The breach of planning control as alleged in the notice is the erection of two hangars.
- The requirements of the notice are:
  - (i) Remove the hangars.
  - (ii) Remove all materials associated with removal of the hangars.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the deemed application.**

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### **Appeal B Ref: APP/G2713/C/20/3245980**

- The enforcement notice was issued on 19 December 2019.
- The breach of planning control as alleged in the notice is the formation of a vehicular access.
- The requirements of the notice are:
  - (i) Remove all hardstanding.
  - (ii) Close the access by reinstating a hedgerow.
  - (iii) Reinstatement the land with topsoil and reseed with grass.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed on ground (g) and the notice is upheld with a variation.**

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### **Applications for Costs**

1. Applications for costs have been made by Mr M Scott against Hambleton District Council. These applications are the subject of separate Decisions.

## **The Appeals Site and Background**

2. Appeal A concerns land within an existing airfield to the south of Bagby. Planning permission for the redevelopment of the airfield was granted in July 2019 (ref.16/02240/FUL). Amongst the various items included in the description of the approved scheme was the erection of a new hangar close to the site's south-eastern boundary; at the time of my site inspection, this structure was under construction. The 2 hangars in dispute are sited next to each other on land to the south-west of the new hangar, just beyond another hangar building.
3. Appeal B concerns a vehicular access at the junction of Bagby Lane and a track leading into the northern part of the airfield.

## **Appeal on Ground (b) – Appeal A**

4. In order for the appeal to succeed on this ground, it has to be shown that the matters alleged in the notice have not occurred as a matter of fact.
5. The nub of the appeal is not so much that 2 hangars have not been erected, but rather that the breach of planning control has not occurred in the location indicated on the plan attached to the enforcement notice; the plan is incorrect.
6. The Council accept that the position of the hangars as indicated is incorrect. Indeed, this is readily apparent from the Council's drawing purporting to indicate the correct position of the 2 hangars relative to what is shown on the enforcement notice plan appended to their statement of case. That said, I am mindful that the allegation refers to the hangars being positioned "approximately". Furthermore, as the enforcement notice plan is at a scale of 1:4000, it seems to me that it is reasonable to allow for a margin of error. I consider it is reasonable to regard the 'discrepancy' as falling within this margin.
7. Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires that an enforcement notice shall specify the precise boundaries of the land to which the notice relates. No issue is taken in this respect, and I note the hangars are shown lying within the boundaries of the land identified on the enforcement notice plan. Moreover, Regulation 4 is silent insofar as particular items such as individual buildings within site boundaries are concerned.
8. A further factor, which perhaps transcends the dispute, is that despite the apparent inaccuracy in the enforcement notice plan, it does not appear to have misled or disadvantaged the appellant. In particular, it has not prevented him from exercising his right of appeal against the notice and mounting an argument that planning permission should be granted for the 2 hangars in question. I regard this as another weighty consideration.
9. In the light of the foregoing, I am not satisfied that it has been demonstrated that the development in question has not occurred as a matter of fact. Accordingly, therefore, the appeal on ground (b) fails. Having regard to my conclusions in this respect, I see no need to correct the notice by substituting the enforcement notice plan with one that shows the position of the buildings more accurately.

### **Appeal on Ground (a) and the Deemed Application – Appeal A**

10. I consider the main issue is whether the character and amenity of the area would be adversely affected.
11. The airfield and the buildings within its bounds, including the 2 hangars in question, lie beyond the built confines of Bagby and form part of the surrounding countryside. In essence, the Council's concern focuses on 2 matters: the size of the hangars and the consequences that may stem from this; and the use to which they may be put.
12. The Council's concerns are underpinned by a number of policies in their Core Strategy and Development Management Policy which apply strict controls upon development outside the development limits of settlements. Pointing out that these policies pre-date the National Planning Policy Framework (The Framework), the appellant contends they are out of date and refers in particular to Policy EG7 of the Council's emerging Local Plan.
13. Having been submitted for examination, the Local Plan is at an advanced stage in its progress towards adoption. However, I note that 4 objections have been made to Policy EG7. It may be that these objections are capable of being resolved 'relatively easily', as the appellant submits, but this is not necessarily a foregone conclusion. As a result, while Policy EG7 is clearly a weighty consideration, I am reluctant to afford full weight to it.
14. I do though attach a good deal of weight to the 2019 planning permission which, it is reasonable to assume, was also determined against the backdrop of the relevant development plan policies. Seen in this context, the hangars in question are not isolated entities in the countryside. On the contrary, my impression was that they appear as part of the group of buildings associated with the airfield and do not seriously impinge upon the rural character of the site's surrounds. In this respect, they accord with criterion (d) of Policy EG7 of the emerging Local Plan.
15. Over and above all this is that I am mindful the structures in question are intended to be a temporary interim measure, associated with the implementation of the works approved in 2019. I regard this as a very weighty factor.
16. Pointing out that there are 7 hangars at the airfield, the Council contend that there is no need for the 2 additional hangars. However, having been acquainted with what the approved scheme entails in the way of works, it seems to me that the potential for disruption is such that the provision of a temporary facility functionally related to the operation of the airfield whilst the works are in progress is not unreasonable.
17. Scepticism has also been expressed about the claimed temporary nature of the structures. I accept that the metal framework (which is covered in fabric) used to support both hangars is fixed to concrete strips, but this appears to have been done to provide a degree of stability. I am not satisfied that this is indicative of longevity, intended or otherwise. From what I saw, the generally elementary nature of construction of the hangars is such that it is unlikely that their removal, together with the matting that has been placed within them, would take very long. I therefore see no reason to regard them as anything other than temporary buildings.

18. Pointing to the net increase of storage space that the buildings provide - 237m<sup>2</sup> according to the Council - it is contended that this could lead to more aircraft being stored at the airfield, which in turn could result in an increase in the number of flights. However, as there is no evidence to show or even suggest that either of these possibilities has actually occurred, this is not a matter to which I am inclined to attach a great deal of weight.
19. Indicating that there is no control over the use of the hangars, further concern is expressed that they could be used for maintenance or any other purpose. As no sound insulation appeared to have been installed, it is not inconceivable that the use of power equipment and suchlike could prove disturbing to residents in the vicinity. However, again there is no evidence that shows that the hangars have been used for anything other than storage. And, while I appreciate that portable tools could be used to carry out maintenance work, I saw no items, for example workbenches and the like, which would normally be expected to be found in a maintenance facility, inside the buildings. They appeared to me to be being used solely for storage, as the appellant indicates. Nor was there anything to indicate that they had been used, as the Council put it, for any other purpose. And, the concern that there is no control over this could be overcome by a condition.
20. Although the policies directed at development in the countryside in the emerging Local Plan have a generally positive tenor and Policy EG7 is expressly directed at rural businesses outside defined settlements, the Council's analysis identifies a number of areas of conflict with the provisions of the current development plan. As I see it however, the particular considerations involved in this instance, in particular the temporary nature of the disputed hangars, are such that they outweigh these provisions. I am not satisfied that there would be adverse consequences for the character and amenity of the area.
21. As regards conditions, the appellant has indicated a willingness to accept conditions making the permission temporary and for the use of the hangars to be limited to storage. Both measures are also suggested by the Council, and I find them reasonable in the circumstances. I shall therefore attach conditions on these lines.
22. Although the development concerns buildings, the Planning Practice Guidance on the use of conditions advises that a temporary permission would be appropriate in circumstances such as this. But, as the 26 December date referred to by the Council is a Bank Holiday, I consider the end of the month would be more appropriate.
23. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.
24. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

## **Appeal B**

25. The appellant accepts that the works required by step (i) could be undertaken within a month, but contends that due to unsuitable ground conditions at the time, the compliance period was too short to allow the works required by steps (ii) and (ii) to be carried out.

26. Mindful that the Council's submission regarding the appropriate planting season has not been called into question, I do not consider the compliance period as set out in the notice when it was issued was unreasonably short. However, as my decision is likely to be issued outside the planting season, it seems to me that a pragmatic solution, and one which would allow planting to take place during what the Council term the 'correct season', is called for in this instance. In the light of this, I shall vary the notice by extending the period for compliance to reflect this.
27. For the reasons given above I conclude that a reasonable period for compliance would be 6 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal therefore succeeds to this extent.

### **Formal Decisions**

#### **Appeal A Ref: APP/G2713/C/20/3246912**

28. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of two hangars on land at Bagby Airfield, Bagby, Thirsk, North Yorkshire, YO7 2PH referred to in the notice, subject to the following conditions:
- 1) The use hereby permitted shall be for a limited period until: either 31 December 2021; or until one month after the completion of the works to create Hangar C1 (as approved by application ref 16/02440/FUL), whichever occurs first. The buildings hereby permitted shall be removed and the land restored to its former condition on or before 31 January 2022.
  - 2) The buildings hereby approved shall only be used for storage purposes associated with the airfield and for no other purpose.

#### **Appeal B Ref: APP/G2713/C/20/3245980**

29. The appeal is allowed on ground (g) and I direct that the enforcement notice be varied in section 6 by the deletion of 'one month' and the substitution of '6 months' as the period for compliance. Subject to this variation, the enforcement notice is upheld.

*D H Brier*

Inspector