



Appeal Decisions

Site visit made on 8 September 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2020

Appeal A: APP/X1355/C/20/3254440

Land to the North of High Fairhills, Huntshieldford, St John's Chapel, County Durham DL13 1RQ

- 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 Miss Lorraine Davie against an enforcement notice issued by Durham County Council.
- The enforcement notice, numbered EN/20/00002, was issued on 9 June 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the operational development consisting of the demolition of a building, excavation, engineering and construction operations for the widening of the existing access track, creation of an access track, formation of levelled area of land and creation of a hardstanding and building operations including infrastructure and erection of a timber framed stone clad building.
- The requirements of the notice are:
 - (1) Cease all engineering and construction operations on the land, other than those necessary to comply with the remedial steps set out below; and
 - (2) Restore the land to its condition prior to development taking place by undertaking the following actions, ensuring that the works described do not interfere with, pollute or alter the natural course of the adjacent stream/watercourse: (a) Dismantle in its entirety and permanently remove from the land the timber framed building, including stone cladding; (b) Dismantle in their entirety and remove from the land all foundations and infrastructure constructed to support the building, removing the resultant materials and building debris from [the] land; (c) Permanently remove from the development area of the land all the storage tanks and associated pipework installed for purposes of storage of water or waste; (d) Permanently remove from the land all pipes, valves and other equipment installed to provide water from the stream to the development, including those inserted into the stream, buried under the stream edge and laid across the land, and remove all of the resultant materials from the land; (e) Re-instate the area affected by the engineering works for the building and area re-graded for the creation of hardstanding/building platform area, by removing the built-up area and re-distribute the material to re-instate the levels of the land ensuring that the land is evenly graded tying in with the surrounding existing and re-instated topography; (f) Re-instate the land excavated for the creation and widening of the access track, using the material displaced by the development, ensuring the land is graded to tie in smoothly with the surrounding topography, on the section marked A-B-C on Plan 2; and (g) Cultivate the re-instated soils to foster natural regeneration.
- The periods for compliance with the requirements are: (1) 7 days; (2)(a) 8 weeks; (2) (b), (c) and (d) 10 weeks; and (2) (e), (f) and (g) 12 weeks from the date on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal succeeds in part on grounds (f) and (g) and the enforcement notice is upheld as varied in the terms set out below in the

Formal Decision.

Appeal B: APP/X1355/W/20/3254445

Land to the North of High Fairhills, Huntshildford, St John's Chapel, County Durham DL13 1RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss Lorraine Davie against the decision of Durham County Council.
- The application Ref DM/20/00942/FPA, dated 7 April 2020, was refused by notice dated 9 June 2020.
- The development proposed is a replacement farm building.

Summary of decision: The appeal is dismissed.

Preliminary matters

1. The Council's reasons for issuing the notice the subject of Appeal A include reference to the effect of the development on the living conditions of neighbours, a matter not referred to in its reasons for refusing the planning application the subject of Appeal B. While the appellant has raised a procedural concern in respect of this, Appeal A does not include an appeal on ground (a)¹. Accordingly, the development's planning merits, including any effect on living conditions, are not before me in that appeal.
2. Appeal B seeks planning permission for development already commenced and I have taken the date of the application and the description of development from the application form, not the decision notice.
3. Since the appeals were lodged, the emerging County Durham Plan (the CDP) has been determined sound subject to modifications being made and the Council intends to adopt the Plan imminently. Since the CDP has progressed towards adoption, I shall give it significant weight in accordance with paragraph 48 of the National Planning Policy Framework (the Framework). Of relevance are policies found in the Wear Valley District Plan (the WVDP), which remains the development plan for the time being.

Appeal A – the appeal on ground (c)

4. This ground of appeal is cited in respect of the alleged widening of the access track and the formation of a new section marked B-C on Plan 2 accompanying the notice. For the appeal to succeed on this ground, the appellant needs to demonstrate that these works do not constitute a breach of planning control, because they are not development or do not require express planning permission.
5. Aerial images indicate that section B-C either did not exist, or had been grassed over for several years, up until at least 2018. This section of track has therefore been formed or materially changed within the last 4 years. By reason of their nature and extent, including the formation of a plateau where the track widens to meet the building, these works go beyond repair or maintenance.

¹ That in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted, or as the case may be, the condition or limitation concerned ought to be discharged.

6. The other section of track is a constant feature in aerial images between 2000 and 2018 and it is less clear how it has changed since. However, photographs from December 2019, January 2020 and June 2020 indicate that work to this section of the track was concurrent with work to section B-C, and therefore formed part of the same development project.
7. The works to the track, including cut and fill of approximately 15 cubic metres of material adjacent to the building, have substantially altered its character, physically altered the land, and have a degree of permanence. Accordingly, they are engineering operations requiring planning permission and the appeal on ground (c) must fail.

Appeal B

Main issue

8. The main issue in this Appeal is the effect of the development on the character and appearance of the countryside, with particular regard to the special landscape quality of the North Pennines Area of Outstanding Natural Beauty (the AONB).
9. Under paragraph 172 of the Framework, great weight should be given to conserving and enhancing the landscape and scenic beauty of the AONB, which has the highest status of protection in relation to these issues. The landscape is characterised by the transition from valley to moorland, with larger settlements along the river and smaller enclaves on the roads climbing the sides of the dale. Within this landscape, buildings are generally grouped in roadside locations, along watercourses and in farmsteads. Isolated buildings within fields are small, of traditional rural form, and nestled in the landscape.
10. The building is visible from public vantage points, including nearby roads and the public footpath that follows the adjacent watercourse. It replaced a field barn with a smaller footprint, which was set into the hillside. The larger footprint and raised floor of the new building result in a more substantial structure that does not exhibit the rural form of a field barn and has not utilised existing landforms. It is therefore unduly imposing within the rural landscape and does not contribute positively to the area's character and landscape features. Furthermore, the scale of engineering work necessary to create a level area for the building and at the termination of the new track increases this perception and adds to the adverse visual effect on the scenic quality of the AONB's landscape.
11. The visual impact of the development on the intrinsic character and beauty of the countryside and the special qualities of the AONB could be partly mitigated by landscape planting, as nearby trees already do to some extent when in leaf. However, this would not conceal the building or the engineered landform entirely, especially in the winter months, unless it were so extensive that it would be uncharacteristic of the open landscape in this part of the AONB.
12. For these reasons, the development does not contribute positively to the quality of built environment in the area and fails to protect and enhance the AONB's landscape qualities and scenic beauty, to which I give great weight. It has not been demonstrated that this harm can be mitigated successfully. Accordingly, the development is unacceptable and in conflict with policies GD1,

ENV2 and BE19 of the WVDP, policies 10, 29 and 38 of the emerging CDP and Part 15 of the Framework.

Other matters

13. The proposed agricultural use of the building would not affect the living conditions of any neighbour to the extent that it would result in conflict with development plan or national policies.
14. The building stands adjacent to a watercourse that supplies fresh water to nearby homes. The proposal includes a doorway and a short flight of steps leading towards the watercourse, although photographs of the former building indicate that it included a doorway in a similar position. Requirement 2 (d) of the notice indicates that pipes have been laid to draw water from the watercourse, although they were not visible on my visit and the floor plans do not include any features requiring water supply. However, no evidence has been presented to suggest this would affect water quality and the application form confirms that the development does not include any proposals for disposal of foul sewage, which would. Furthermore, were any impact on the provision of drinking water to arise, it could be addressed outside of the planning process.

Conclusion on Appeal B

15. For the reasons given above, the development is unacceptable and the appeal should be dismissed.

Appeal A – the appeal on ground (f)

16. For the appeal to succeed on this ground, the appellant needs to demonstrate that the steps required by the notice exceed what is necessary to remedy the breach of planning control the notice alleges. The appellant has raised a procedural concern that the notice defines the land as her entire holding and therefore, by reason of the requirements in section 5.1, prevents her from carrying out routine works of repair or maintenance on any part of her land.
17. The description of the breach of planning control in section 3 of the notice indicates that it is directed at the operational development of the new building and the works to the track associated with it, reflected in the reference to “engineering and construction operations” in the requirements. The appellant has not indicated what works of repair and maintenance elsewhere on the holding might be affected by the notice; however, such works need not constitute development requiring planning permission, in which event they would not be prevented by the notice. In view of this, I do not find the notice to be invalid. However, a variation in the wording of requirement 5.1 would clarify that the notice is only concerned with the building and the works to the track and would not make its requirements more onerous. Accordingly, this variation can be made without giving rise to injustice.
18. For these reasons, the appeal on ground (f) should succeed and I shall vary the notice accordingly.

Appeal A – the appeal on ground (g)

19. The appellant is unlikely to be able to attend the site or oversee any works to secure compliance for some time from November 2020 onwards. This should have no effect on her ability to comply with the first requirement, step 5.1, to

cease all engineering and construction operations, within 7 days of the notice taking effect.

20. While the appellant's personal attendance may not be necessary in order to comply with the other requirements of the notice, there may be some effect on her ability to issue instructions to others, or to arrange for another person to do so, or oversee the works. Accordingly, it would be reasonable to extend the periods for compliance for steps 5.2 a – g to allow a greater lead-in time for the works required by those steps.
21. While County Durham has become subject to local restrictions following a rise in Covid-19 infections during the appeal process, those restrictions do not currently prevent people working or travelling to work. Therefore, they should not have a significant effect on the ability of contractors to carry out compliance works. Should further restrictions have that effect, the Council has noted that it has the discretion under section 173A(1)(b) of the 1990 Act as amended to waive or relax any requirement of an enforcement notice, including extending the compliance period. However, that would be entirely a matter for the Council.
22. For these reasons, the appeal on ground (g) should succeed and I shall vary the notice accordingly.

Conclusions – Appeal A

23. For the reasons given above, I conclude that the appeal on ground (c) should not succeed and the appeals on grounds (f) and (g) should succeed. I shall uphold the enforcement notice with variations.

Appeal A – Formal Decision

24. The appeal is allowed on grounds (f) and (g) and it is directed that the notice be varied in section 5 by inserting the words "forming part of, or associated with, the construction of the building and the formation or widening of the track leading to it" before the words "on the Land".
25. It is further directed that the notice be varied in section 6 by:
- The deletion of "8 weeks" and the substitution of "12 weeks" in step 5.2 a;
 - The deletion of "10 weeks" and the substitution of "14 weeks" in steps 5.2 b, c and d; and
 - The deletion of "12 weeks" and the substitution of "16 weeks" in steps 5.2 e, f and g.
26. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Appeal B – Formal Decision

27. The appeal is dismissed.

Mark Harbottle

INSPECTOR