



Appeal Decisions

Hearing held on 18 August 2020

Site visit made on 21 August 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 October 2020

Appeal A - Appeal Ref: APP/N2739/C/19/3228922

Viner Station, Roe Lane, Birkin, Knottingley, West Yorkshire WF11 9LP

- 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 Woodyfuel Limited against an enforcement notice issued by Selby District Council.
 - The enforcement notice is dated 12 April 2019.
 - The breach of planning control as alleged in the notice is: without planning permission the unauthorised change of use of the existing agricultural buildings to a mixed use comprising Class B2: General Industrial use and Class B8 Storage or Distribution use including the processing of logs to woodchip, internal drying and storage of woodchip, the external storage of logs and woodchip, together with the installation of biomass boilers, the creation of hardstanding, the creation of an access road, the installation of a weigh station and a bund along the northern boundary and associated works/installations.
 - The requirements of the notice are: Step 1 – Permanently cease the importation and processing of logs for the creation of woodchip for commercial/wholesale purposes. Step 2 – Permanently cease the drying of woodchip for commercial/wholesale purposes. Step 3 – Permanently cease the storage of logs and woodchip within the buildings and elsewhere on the land, and remove all existing logs and woodchip from the buildings and elsewhere on the land. Step 4 – Remove four out of the five biomass boilers from the buildings and all associated external extractor vents and flues. Step 5 – Remove the bund situated along the northern boundary of the land (and shown coloured blue on the plan attached to the enforcement notice). Step 6 – Remove the new access road and new hardstanding area and weigh station (shown as the hatched area on the plan attached to the enforcement notice) and return the land to its original condition.
 - The period for compliance with the requirements in Steps 1-4 is six months, and the period for compliance with the requirements in Steps 5 and 6 is seven months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B - Appeal Ref: APP/N2739/W/19/3228544

Viner Station, Roe Lane, Birkin, Knottingley, West Yorkshire WF11 9LP

- 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 Woodyfuel Limited against the decision of Selby District Council.
- The application Ref 2018/0681/FULM, dated 14 June 2018, was refused by notice dated 6 February 2019.
- The development is described as 'This document has been produced in support of a retrospective planning application made to Selby District Council to cover; the replacement of four fossil fuel boilers with biomass boilers, the addition of one additional biomass boiler, the drying of biomass on an existing drying floor, the improvement of a hardstanding area, the creation of a soil heap 'bund' along the

Northern boundary and the change of use of the existing buildings containing the 5 biomass boilers and drying floor as well as the external hardstanding area’.

Decisions

1. It is directed that the enforcement notice be amended by:
 - the deletion of the word ‘unauthorised’ from the allegation and the substitution of it by the word ‘material’;
 - the deletion of the words ‘six months’ from the period for compliance for Step 4, and their substitution with the words ‘eight months’; and
 - the deletion of the words ‘seven months’ from the periods for compliance for Steps 5 and 6, and their substitution with the words ‘ten months’.
2. Subject to these amendments, Appeal A is dismissed, and the enforcement notice is upheld.
3. Appeal B is dismissed.

Preliminary Matters

4. With regard to the wording of the enforcement notice, it alleges ‘... the unauthorised change of use of the existing agricultural buildings...’. The allegation is imprecise in that it refers to a ‘change of use’, whereas to reflect the definition of the term ‘development’ in s55(1) of the Act, it should state a ‘material change of use of the existing agricultural buildings’. I am satisfied that this amendment does not cause any injustice or make the notice more onerous.

APPEAL A ON GROUND (a) AND APPEAL B (s78)

Main Issues

5. Prior to the hearing, the main parties reached agreement on the previously disputed matter of flood risk and drainage in the area. The Council are satisfied that sufficient information has now been provided, subject to the imposition of relevant conditions, should the appeals be allowed.
6. Therefore, the remaining main issues are:
 - Whether the development is an acceptable form of diversification in the open countryside; and
 - the effect of the development on highway and public safety in the area.

Reasons

7. Viner Station is located in arable farmland. The appeal site includes land and a former grain store to the north of the site, which the appellant leases from the farm business that occupies the wider site. The development comprises the reuse of the grain store and associated land for the storage and processing of logs for woodchip. A number of external works were carried out, including the creation of a soil heap bund on land to the north of the building, a new access road, and storage areas.
8. In terms of the operation itself, virgin timber is brought to the site and processed into woodchip. The woodchip is then dried on the drying floors using

four biomass boilers which replaced the previous LPG burners. One additional biomass boiler was installed and is reserved for the use of the farm. Some woodchip is kept to feed the biomass boilers on site, and the rest is then sold as biomass fuel.

9. It is the Council's view that the development changes the use of the land from agriculture to a mixed use incorporating B2 General Industrial¹, with reference to the processing of the timber, and B8 Storage and Distribution, with reference to the fact that the woodchip product is sold and distributed off-site. With regard to the wider site, they consider that, due to the physical sharing of a farm building and the use of energy from one of the biomass boilers for farm purposes, the farm as a whole remains as a single planning unit. From the evidence before me, I have no basis on which to take a different view on either of these matters.

Whether an acceptable form of diversification

10. The Council object to the development on the grounds that it significantly intensifies the use of the site and introduces inappropriate industrial development to the open countryside. They also consider that the associated lorry movements are unsustainable for the location, adversely affecting the character of the area through the intensification of the use.

The relevant policies

11. The appeal site is outside any development boundary and is therefore in the open countryside for planning purposes. Policy SP2 of the Selby District Core Strategy (CS) sets out the strategy for the location of development in the district. In the countryside, development will be limited to the replacement or extension of existing buildings, the re-use of buildings preferably for employment purposes, and well-designed new buildings of an appropriate scale, which would contribute towards and improve the local economy where it will enhance or maintain the vitality of rural communities, meet rural affordable housing need, in accordance with Policy SP13.
12. CS Policy SP13 relates to the scale and distribution of economic growth. In rural areas, sustainable development which brings sustainable economic growth through local employment opportunities or expansion of businesses and enterprise will be supported. Examples of such development include the re-use of existing building and infrastructure, the diversification of agriculture and other land based rural businesses, and small-scale rural development. In all cases, development should be sustainable and be appropriate in scale and type to its location, not harm the character of the area, and seek a good standard of amenity.
13. Policy EMP8 of the Selby District Local Plan: Part 1 – General Policies (LP) is generally permissive of the conversion of rural buildings for commercial or industrial uses, subject to the relevant criteria that: the building should be structurally sound and capable of re-use without substantial rebuilding; the re-use will generally take place within the fabric of the building and will not require extensive alteration, re-building and/or extension; and the conversion of the building and ancillary works, such as the creation of incidental outside areas and the provision of satisfactory access and parking arrangements,

¹ Although some changes to the Use Classes set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) were introduced on 1 September 2020, uses B2 and B8 remain valid.

should not have a significant effect on the character and appearance of the area, or encroach into the open countryside. There is no dispute between the main parties that these local policies are generally compliant with the National Planning Policy Framework (NPPF).

Assessment

14. It is therefore necessary to consider the nature of the business itself and whether it is appropriate in this rural location. The business re-uses an existing building for employment purposes. There is no suggestion that the building was not structurally sound, or that substantial rebuilding was needed for the change of use. The retention and re-use of a building that might otherwise have become derelict weighs in favour of permitting the alleged use.
15. The processes generally take place inside the building, and there is no evidence that extensive alteration, re-building and/or extension was required. To that extent, the development complies with LP Policy EMP8. CS Policies SP2 and SP13 are also generally supportive of the re-use of existing buildings in the countryside, and SP2 explicitly states a preference for re-use for employment purposes.
16. In view of the industrial nature of the business, it is clear that the development departs from the previous agricultural use of the site. In terms of acceptable uses in the countryside, the policies are not prescriptive. Instead, they take a broad approach, supporting development that would 'contribute towards and improve the local economy' (SP2) and bring 'sustainable economic growth through local employment opportunities or expansion of businesses and enterprise' (SP13). As would be expected, SP13 refers to the diversification of agriculture as an example of sustainable development, but also includes 'other land based rural businesses'. In a similar vein, LP Policy EMP8 supports the conversion of rural buildings for commercial or industrial uses, subject to the stated criteria.
17. EMP8 also requires that the building conversion and any ancillary outdoor works should not have a significant effect on the character and appearance of the area or encroach into the open countryside. I note that the Council make no objection to the external works in terms of their visual effect on the character of the area, and I agree with that stance.
18. These principles within the local policies accord with paragraph 83 of the NPPF, which directs that planning policies and decisions should enable the 'sustainable growth and expansion of all types of business in rural areas...'. Therefore, there is nothing in the relevant national or local plan policies that would specifically preclude this type of B2/B8 usage within the countryside. Instead, the thrust of the policies is that a broad range of uses should be considered, subject to the more detailed criteria.
19. The development provides two jobs on site, bringing benefits to the local area in terms of direct employment opportunities. It also supports off site employment in haulage, and at the office base of the business which is located elsewhere. Although the policies are not prescriptive in terms of the size of enterprises, CS Policy SP13 makes reference to 'small-scale rural development'. Therefore, this seems to me to be the kind of relatively small enterprise in terms of employee numbers, and accommodated without

significant physical expansion into the countryside, that the policies seek to support.

20. Although the highway safety issues are to be considered separately below, the traffic generated by the business forms part and parcel of the Council's concerns regarding the effect of the development on the character of the area. The business generates approximately 36 lorry trips to and from the site per week, which is a total of 72 additional movements per week. Within this figure of 36 trips, 27 are for the purpose of bringing material to site, and nine trips are needed to take away the woodchip product. I note that there is a seasonal element to the business, with the highest demand being during the winter months, when more heating fuel is required.
21. The movements of lorries to and from the appeal site have a visual impact on the surrounding area and contribute to the intensification of the site. The appellant's Automatic Traffic Count (ATC), which I will return to below, shows that HGVs use the road network on a regular basis, in addition to all the other types of traffic that are to be found. On my visit, I also saw a number of agricultural vehicles, some of considerable size, using the roads in the surrounding area.
22. Whilst the countryside is of course valued as a place of leisure, my impression was that this rural area is also a place of work. If rural enterprises are to be supported, then it is usually the case that they will have transport needs of some description. In themselves, therefore, the lorry trips associated with the business are not out of keeping with the established rural working character of the area.
23. The Council contend that the industrial use of the appeal site is inappropriate. However, I have been unable to identify any tangible harm that would lead me to conclude that the new use is intrinsically inappropriate. No visual harm is alleged to the rural landscape, or to the Green Belt that lies close to the site. The business is some distance away from the nearest dwellings, and the Council are satisfied that the development does not cause any significant adverse effect on local living conditions. Although some references are made to noise from the site by interested parties, there is no evidence of formal complaints or ongoing problems relating to noise or disturbance. There appear to be no issues in terms of air quality or nature conservation matters.
24. The Council argue that the development has significantly intensified the use of the site. The appeal site was previously in agricultural use, characterised as a grain store used to dry and store crops grown at the site. Having viewed the operation on site, it seems to me that the process of drying the woodchip is broadly similar to the previous practice of drying crops.
25. There is little evidence to enable comparison with the intensity of the former agricultural use of the site. Indeed, as that use remains lawful, there would be nothing to stop the farm business from re-using the site at similar intensity if it so wished. Moreover, the intensity of the use, even if significantly increased, does not of itself equate to harm, and I have been unable to identify any sufficiently adverse impacts that would justify the withholding of planning permission for this particular reason.
26. The NPPF aims, at paragraph 148, to support renewable and low carbon energy. The business offers an alternative to fossil fuels in accordance with

paragraph 148. However, concerns have been raised over, for example, the distances that the timber needs to be transported over to reach the site, and the emissions of CO₂ when the biomass fuel is burned, and whether these factors render the business less environmentally sustainable than it might appear. The appellant states that the timber is brought from fairly local sources for cost reasons, but no more specific information has been given. Nevertheless, there is insufficient detailed or technical evidence for me to be certain of any conflict with paragraph 148.

27. The development brings economic benefits in terms of employment. There is a small benefit to the existing farm enterprise in terms of the income they accrue through the rental of the premises. Having regard to the thrust of local and national policy in relation to the rural economy, these benefits are clearly a material consideration in favour of the development, to which I attach moderate weight.
28. In the absence of substantive evidence to the contrary, and taking into account the benefits arising from it, I therefore conclude that the development is an acceptable form of diversification in the open countryside, in compliance with CS Policies SP13 and SP2, LP Policy EMP8, and with the aim of the NPPF to support a prosperous rural economy.

Highway and public safety

29. The Council are concerned that the roads leading to the appeal site from the A63, by reason of their poor alignments, insufficient widths, poor condition and lack of footways, are unsuitable for the traffic generated by the development, interfering with the free flow of traffic with consequent danger to highway users by virtue of its proximity to the public highway network.

Relevant policies

30. LP Policy T1 requires developments to be well related to the existing highways network. They will only be permitted where existing roads have adequate capacity and can safely serve the development, unless appropriate off-site highway improvements are undertaken by the developer.
31. As the development uses an existing access point from the road, the relevant part of LP Policy T2 states that developments which would result in the intensification of the use of an existing access will be permitted provided that there would be no detriment to highway safety.
32. The NPPF, at paragraph 109, states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Assessment

33. The preferred route to the site from the A63 is via Austfield Lane, Hillam Common Lane and Roe Lane, where the development is situated. In addition to the accompanied visit, I took the opportunity to drive through the surrounding area, and also along the route itself a number of times.
34. Hillam Common Lane is wide enough to allow two vehicles to pass, and although the Council consider that it would benefit from the addition of passing

places, their greater concerns relate to Austfield Lane and Roe Lane. These two roads are narrow, varying between approximately 4m and 4.8m in width, offering little more than a single carriageway width for much of their length. Neither lane has any footpath provision.

35. Where it joins the A63 and for the northern-most section, Austfield Lane is tightly enclosed by hedgerows. I noted the presence of Bert's Barrow, a farm shop which is within walking distance of Monk Fryston. South of Bert's Barrow, the tight hedgerows largely give way to open countryside, with grass verges, low fencing, and lower hedgerows along the roadside.
36. Roe Lane is significantly less enclosed, and therefore has good visibility for much of the stretch leading to the appeal site. The verges are mostly grassed, with fencing and ditches on the west side and verges alone on the east side. In terms of condition, the verges on the east side of Roe Lane are notably worse than the other side, with areas of damage where overrun by vehicles has occurred, and various patches of repair.
37. In support of their case, the appellant carried out an Automatic Traffic Count (ATC) between Monday 3rd and Sunday 9th June 2019. Although Fox Lane was included in the study, it has been discounted as part of the agreed route, and so I shall focus on the data for Austfield Lane and Roe Lane.
38. The business operates for only half the day on Saturdays, and not at all on Sundays, and so the weekday figures are more relevant to the appeal. For Austfield Lane, the average number of movements per day for weekdays is 1027, including 21 HGV (heavy goods vehicle) trips and 1006 LGV (light goods vehicle) trips. For Roe Lane, the average number of movements per day for weekdays is 709, including 19 HGV trips and 689 LGV trips.
39. As noted above, the business generates a total of 72 additional movements per week. Assuming operations over six days a week, and seven hours per day, this amounts to approximately two movements per hour. The change of use was implemented by June 2017, and so the business has been operating for approximately three years. If it is assumed therefore that the average HGV counts found in the ATC include an average of 12 movements a day associated with the development, then that would be a sizeable percentage of the total number of HGV movements. I note that the biomass business is busier in the winter months, whereas the ATC was carried out in June. Nevertheless, in the absence of any further data, the baseline for HGV trips is low, and therefore the traffic from the development represents a significant increase in HGV trips in the local network.
40. The data for overall trips from the ATC shows that the volume of traffic on the local roads is relatively light. There may be some delay if an HGV and a car or two HGVs need to slow down to manoeuvre past each other on the lanes. However, given the stated volumes of traffic, such delays would be unlikely to lead to any noticeable congestion or backing up of traffic. Consequently, I find little to suggest that the use of the appeal site has had an unacceptable impact on the free flow of traffic along the network.
41. Turning to the matter of safety, it is the appellant's stance that the additional traffic generated by the business is not materially harmful to highway safety in the area. As described, Austfield Lane and Roe Lane are essentially narrow country lanes. Particularly for the north section of Austfield Lane, forward

visibility is limited due to the curve of the road and the presence of hedgerows which, by and large, enclose both sides of the carriageway. Therefore, it is difficult for road users to gauge whether another vehicle is travelling in the opposite direction. On the southerly section of Austfield Lane, and most of Roe Lane, visibility is better, but nevertheless, their limited width makes it difficult for two vehicles to pass side by side in places.

42. The appellant has produced Personal Injury Collision data for the five-year period from 2014-2019. The study area included Roe Lane, Hillam Common Lane, Austfield Lane and Fox Lane. During this time, four accidents of 'slight' severity were recorded. All these incidents appear to be due to driver error, and not any intrinsic factors relating to the characteristics of the roads themselves. Furthermore, vehicle speeds are likely to be moderated by the width and alignment of the lanes.
43. Nonetheless, the fact that no serious accidents have occurred within the five-year period does not indicate that the roads are suitable to accommodate the additional HGV traffic associated with the use of the appeal site, or that accidents are unlikely to occur in future. I accept that the roads in question already carry heavy traffic, but it does not follow that they are inherently fit for that purpose.
44. The damage to the road, particularly on Roe Lane, speaks to the difficulties of vehicles passing in the narrow carriageways. The appellant contends that the condition of the roads and any damage to verges are not attributable to their operations. On my site visit to the area, I saw that the lanes are used by farm vehicles, some of substantial size and width, which are likely to cause damage to the verges, as are other large vehicles. However, it is implausible to suggest that the traffic associated with the development can have had no effect on the condition of the roads.
45. I saw that the degree of overrun and damage to the edge of the carriageway itself was noticeably greater on Roe Lane between the appeal site and the junction with Hillam Common Lane. To my mind that would suggest that the traffic visiting the site has contributed to at least some part of the degradation that has clearly occurred.
46. That damage and degradation is of concern in itself, in terms of the effect on the integrity of the highway and also the implications for road safety. Although it was dry on the day of the site visit, photographs have been submitted from along the route showing potholes full of water and puddling in the verges in wet conditions. Mud and debris being dragged onto the carriageway from unbound verges is likely to affect braking conditions, particularly in poor weather. Such conditions do not represent safe or suitable facilities to pull off the highway if meeting a vehicle approaching in the opposite direction.
47. Consequently, I find that the safety related fears are well-founded and are likely to have affected the way that the highways are used by local residents. Even in the relatively short time I spent driving in the area, I saw cyclists and pedestrians using the lanes. Representations from local residents also make reference to horse riding in the local area. Although the evidence has tended to focus on use of the roads by cars and lorries, I am mindful that non-motorised forms of traffic will also be adversely affected by the conditions discussed above.

48. Having regard to the nature of the highway network, as described above, I find that the increased use of local roads by HGVs associated with the site brings with it an increased risk of accidents and an increased risk of vehicles being forced to leave the carriageway onto unsuitable passing places. Although the overall quantum of traffic using the local network remains relatively low, it seems to me that the prevailing conditions of the local roads and the low baseline of traffic makes them vulnerable to change as a result of the increase in traffic associated with the development.

Mitigation

49. In recognition of the Council's concerns, the appellant has drawn up a scheme to improve the road network and has held some discussions with the Council regarding the plans. The proposals are based on the swept path analysis carried out by the appellant.
50. The business commits to use an eight-wheeled vehicle specified by A W Forest Products, with an overall length of 9.5m and an overall width of 2.55m. As the exact dimensions of this vehicle are not available within the software database, the similar DB32 Pantechon vehicle has been used instead. The swept path analysis drawings show two-way movements for a DB32 Pantechon vehicle and an estate car. I note that no analysis is given for two HGVs attempting to pass each other, which presumably happens from time to time on the preferred route.
51. In light of the analysis, the appellant has offered to construct three new passing places on Austfield Lane and three new passing places on Roe Lane, and to improve one existing passing place on each of the lanes. However, a number of concerns arise. Firstly, the scheme would be unlikely to address the lack of forward visibility on Austfield Lane on the section near the A63 junction. The appellant confirms that no additional passing places are proposed in this area due to the presence of mature trees and third-party land.
52. Secondly, the Council state that there are no existing passing places on the route. Turning to the larger scale drawings of the proposals, the indicative location of the existing passing place on Austfield Lane to be improved, which is around 430m north of the Hillam Common Lane junction, appears to be the mouth of the driveway to a private dwelling. The indicative location of proposed passing place #2 on Austfield Lane, around 280m north of the Hillam Common Lane junction, appears to be the access to a field. These do not appear to be formally made passing places, and I share the Council's concern over their suitability.
53. Furthermore, the question has arisen as to whether the new passing places could be contained within highways land, or if they would need to use land controlled by third parties. At Appendix D to their Highways Note, dated 11 July 2019, the appellant provides a letter from North Yorkshire County Council (NYCC), dated 19 June 2019, containing a plan of the highway maintainable at the public expense (HM@PE) covering the local area. The plan confirms that Roe Lane and Austfield lane are HM@PE. However, the plan shows little detail and is not to scale, and so it is difficult to be certain from this document alone that the new passing places would be entirely contained within public land.
54. The physical issues relating to the building out of the new passing places over ditches on Roe Lane were discussed at the site visit, as was the potential need

for permission from the Internal Drainage Board. I note that the letter from NYCC specifies that where ditches are present, whether plotted on the Ordnance Survey base mapping or not, the normal presumption is that these do not generally form part of the publicly maintainable highway. This in turn raises issues relating to the adoption of the passing places, as was discussed at the site visit.

55. The Statement of Common Ground contains a list of suggested conditions, one of which seeks the submission, approval and construction of the highway improvement works within six months of approval, were I to allow the appeals. However, given the remaining uncertainties set out above, I am not convinced that all these steps could be completed in this timeframe, with regard to the specific scheme before me.
56. Although the development would be in breach in the event that this condition was not fulfilled, the Council might then be obliged to take further enforcement action. Given the time that the development has already been in use without planning permission, plus the further time that would be needed to implement the condition, if it may be implemented at all, I am not persuaded that this is an acceptable approach, in view of the inherent uncertainties.
57. With regard to the second limb set out in NPPF paragraph 109, I am satisfied from what I have seen and heard that the development does not result in a severe residual impact on the road network.
58. Nevertheless, taking all the relevant matters into account, I find that the local road network is unsuitable to accommodate the level and nature of traffic associated with the change of use of the site. The increase in the use of the road network has been detrimental to highway safety and to the way in which the road network is used by all forms of traffic. For those reasons, I conclude that the development unacceptably conflicts with LP Policies T1 and T2, and with the NPPF.

Overall conclusion on Appeal A on ground (a) and Appeal B

59. I have found that the B2/B8 use is an acceptable form of development in this location and complies with the relevant policies. However, I have concluded that the impact of the development on highway safety is unacceptable. This is notwithstanding my finding under the first main issue that the character of the HGV traffic is not fundamentally out of keeping within the context of a working countryside, and this consideration is separate to the safety issues that arise. Whilst there may be a solution in terms of the appellant's willingness to carry out improvements to the local road network, there is not enough certainty for me to be comfortable that this matter can appropriately be dealt with by condition.
60. For those reasons, Appeal A on ground (a) fails, and Appeal B is dismissed.

APPEAL A ON GROUND (f)

61. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and that lesser steps would overcome the objections. The appellant raises no contention with regard to Steps 1 and 2, which require the cessation of the processes relating to the unauthorised use.

62. Step 3 requires the permanent cessation of the storage of logs and woodchip within the building and elsewhere on the land, and the removal of all existing logs and woodchip. The appellant accepts that the volume of logs associated with the business would be excessive once the unauthorised use ceased. However, they argue that the requirement to remove all the logs is excessive, given that some would continue to be used by the farm, whose agricultural use remains lawful.
63. Whilst it is reasonable for the farm to retain a number of logs for their own use, the difficulty is that it is unclear how many logs they would require. It would thus be difficult to draft a requirement that would be sufficiently precise. However, I see no reason why the parties cannot arrange for the farm to keep their share of the logs elsewhere until the appeal site reverts to its lawful use. Therefore, I do not consider Step 3 to be excessive.
64. It is the appellant's case that Step 4, which requires the removal of four biomass boilers, Step 5, which requires the removal of the bund, and Step 6, which requires the removal of the road, hardstanding area and weigh station, are excessive. They accept that the works may not have been carried out as permitted development in connection with the agricultural use. However, they argue that the removal of these elements would not be expedient and would not achieve any public planning benefit.
65. Under section 173(5), a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or might be permitted development, or might be immune from enforcement, so that the land is restored to its condition before the change of use took place.
66. The courts have held that such works must have been integral to or part and parcel of the making of the material change of use. There is no evidence to show that the works referred to in Steps 4-6 were undertaken for any other purpose or for any lawful use, and it appears that they were carried out to facilitate the unauthorised use. Furthermore, it seems to me that these steps are necessary to prevent the resumption of the unauthorised use. It is clear from the requirements that the purpose of the notice is to remedy the breach of planning control. Given this purpose, the requirements cannot be held to be excessive since any lesser steps would not fully remedy the breach of planning control.
67. With regard to the public interest, there is a need to uphold the operation of the planning system, which includes the requirement for development to accord with the planning policies of the Council's statutory development plan. The development plan is made and applied in the wider public interest. I have found that the requirements are necessary to fully remedy the breach, and so lesser steps that fell short of this aim would not be in the public interest.
68. The appellant also refers to the expediency of Steps 4-6. However, the exercise of expediency is a matter for the Council in taking enforcement action. Long established case law sets out that there is no jurisdiction for an Inspector to determine whether or not a local planning authority has complied with its obligation in terms of exercising expediency when issuing an enforcement notice. That is a matter which can only be challenged by way of judicial review.

69. I am satisfied that the requirements are commensurate to the breach in this case, and so the appeal on ground (f) fails.

APPEAL A ON GROUND (g)

70. The appeal on ground (g) is that the time given to comply with the notice is too short.

71. The enforcement notice allows six months for the completion of Steps 1-4. The appellant has argued that the time for completion of Step 4 should be at least eight weeks after Steps 1 to 3, to allow for the proper decommissioning and removal of the boilers.

72. The notice allows seven months for Steps 5 and 6. The appellant argued that eight weeks should be allowed for the completion of Steps 5 and 6 following the completion of Step 4. This is to take into account the risk of having to operate in winter conditions which might inhibit the use of machinery on site, and might also cause a risk to road users due to muddy conditions in wet weather.

73. On consideration, the Council are in agreement that eight months should be allowed for Step 4 and 10 months for Steps 5 and 6. I am satisfied that this revised timetable is reasonable, and so to that extent, Appeal A succeeds on ground (g).

CONCLUSION

74. For the reasons above, Appeal A and Appeal B are dismissed, and the enforcement notice is upheld, subject to variation.

Elaine Gray

INSPECTOR

APPEARANCES

For the appellant:

Mark Howells	Counsel, Kings Chambers
Kris Grey	Managing Director, Woodyfuel
Thomas Broderick	Senior Environmental Consultant, WRM
Richard Clark	Director, Arrowsmith Associates
Shazad Khan	Head of Transport Planning, Curtins
Stephen Holmes	Technical Director, Wardell Armstrong

For the Council:

Stephanie Hall	Counsel, Kings Chambers
Ruth Hardingham	Planning Development Manager
Fiona Ellwood	Principal Planning Officer
Rachel Robinson	Principal Planning Enforcement Officer
Richard Wood	Planning Consultant, Richard Wood Associates
Victoria Day	Project Engineer, North Yorkshire County Council
Gary Lumb	Maintenance Manager, North Yorkshire County Council
Meirion Jones	Senior Flood Risk Management Engineer, North Yorkshire County Council
Glenn Sharpe	Planning Solicitor
Sophie King	Selby District Council

Interested parties:

Cllr John Mackman	BSc(Eng), MIMechE, CEng, Ward Councillor for Monk Fryston (including Hillam and Birkin)
Dr Howard Ferguson	Local resident

DOCUMENTS RECEIVED DURING THE HEARING

Photographs and comments submitted by Dr Ferguson

Appeal decision APP/N2739/A/11/2152137 (Field east of Lowfield Road, Monk Fryston, North Yorkshire)

Map of the preferred route to/from the A63.