



Appeal Decisions

Hearing Held on 13 April 2021

Site visit made on 14 April 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st May 2021

Appeal A: APP/E2734/C/20/3248709

Appeal B: APP/E2734/C/20/3248710

The land situate and known as Brimham Rocks Adventure Farm, Fiddlers Green Farm, Brimham Rocks Road, Hartwith, Harrogate HG3 3HB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Richard Charles Burniston and Appeal B is made by Mrs Rebecca Susan Burniston against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice was issued on 29 January 2020.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to form a mixed use comprising:
 - i) Agriculture
 - ii) Education Centre (D1)
 - iii) Adventure Farm Recreational play centre including petting farm, playcentre use for seasonal recreational activities and the hosting of children's parties.
- The requirements of the notice are:
 - 1) Cease the use of the land edged red on Plan 1 as an adventure farm recreational play centre including use as a petting farm, playcentre, use for seasonal activities, the hosting of children's parties and for barrel rides propelled by quad bikes.
 - 2) Cease the use of the land hatched orange on Plan 2 for the purposes of patron car parking in connection with either the use of the land for education centre (D1) purposes or the use of the land for any of the purposes referred to in 3 iii) above.
 - 3) Permanently remove from the land hatched in orange on Plan 2 crushed rock hardstanding and restore land to agricultural paddock by reseeding.
 - 4) Cease the use of the building marked A and outlined in brown on Plan 2 as an adventure farm recreational play centre.
 - 5) Cease the use of the building marked B and outlined in pink on Plan 2 for Education centre (D1) purposes, or for any of the purposes referred to in 3 iii) above.
 - 6) Cease the use of the building marked C and outlined in grey on Plan 2 for Education centre (D1) purposes, or for any purposes referred to in 3 iii) above.
 - 7) Permanently remove from the land hatched green on Plan 2 all outdoor children's play equipment including but not limited to the following items: wooden castle, slide, wooden swings and all play equipment and structures.
 - 8) Permanently remove from the land hatched green on Plan 2 the grass material play surface and restore to agricultural paddock by reseeding.
 - 9) Permanently remove from the land hatched purple on Plan 2 the animal shelters and enclosures.
 - 10) Permanently remove from the land hatched blue on Plan 2 all seating and tables.
 - 11) Remove from the land hatched yellow on Plan 2 the sandpit areas and restore the land to agricultural paddock by reseeding.
 - 12) Operate building B outlined in pink on Plan 2 in strict accordance with the requirements of the 'Visitor Management Plan' dated 15/07/2017 attached at Schedule 1 to this notice.
- The period for compliance with the requirements is 4 months.

- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) and Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since there is an appeal on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:

The deletion of the word "(D1)" from paragraph 3 THE BREACH OF PLANNING CONTROL ALLEGED and paragraphs 5 (2), 5 (5) AND 5 (6) WHAT YOU ARE REQUIRED TO DO.

The deletion of the words "Operate building B outlined in pink" and substitute the words "Operate building A outlined in brown" in paragraph 5 (12) WHAT YOU ARE REQUIRED TO DO.

2. Subject to the corrections, Appeal A 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 material change of use of the land to form a mixed use comprising: (i) agriculture, (ii) education centre, and (iii) adventure farm recreational play centre including petting farm, playcentre use for seasonal activities and the hosting of children's parties at the land situated and known as Brimham Rocks Adventure Farm, Fiddlers Green Farm, Brimham Rocks Road, Hartwith, Harrogate HG3 3HB as shown on Plan 1 attached to the notice and subject to the conditions set out in the attached schedule.
3. Subject to the corrections, Appeal B is dismissed.

Preliminary matters

4. There is no dispute that planning permission 17/03641/FUL for the change of use of agricultural shed and stables to form education centre with associated access and landscaping (the 2017 PP) has been lawfully implemented. There is however dispute relating to what represents an educational activity and the extent of the land to which the 2017 PP relates.
5. Condition 2 of the 2017 PP seeks to ensure that the use of the education centre is carried out in strict accordance with the approved details. It was agreed that the visitor management plan (the VMP) and the Daily Activities document (the DA) form part of the 'submitted details' referred to in condition 2.
6. Since the notice was issued the Council has adopted its Harrogate District Local Plan 2014 – 2035 (December 2020). Planning policies referred to in paragraph 4 of the notice have therefore been replaced. A list of up to date planning policies are agreed in the SoCG, and I will have regard to these in determining the ground (a) appeal.

The notice

7. There is no need for the use class to be specified in the notice. It was agreed at the hearing that no injustice would be caused by my deletion of '(D1)' from the allegation and requirements 2, 5 and 6 of the notice.

8. The VMP relates to the operation of building A outlined in brown on Plan 2 attached to the notice. As such, requirement 12 incorrectly identifies 'building B outlined in pink'. It was agreed at the hearing that no injustice would be caused by my correction of what amounts to a clerical error.
9. The appellants consider the list of activities set out in 3(iii) to be disjointed and confusingly worded, making it difficult for them to understand the true nature of the Council's concerns. The appellant does not dispute that the activities listed in 3(iii) have occurred, albeit in some cases infrequently. While these activities could fall under a general description of 'recreational use', for clarity, the notice should expressly refer to them as individual components of the mixed use.

Ground (b) – appeals A and B

10. This ground is that the breach of control alleged in the notice has not occurred. In order to succeed, it would need to be demonstrated that there has been no material change of use to a mixed use comprising of the 3 elements set out in paragraph 3 of the notice. The burden of proof rests with the appellants and the relevant test is the balance of probability.
11. Fiddlers Green Farm is a working Dales sheep farm, with other livestock including, but not limited to, cattle, pigs, poultry, waterfowl, alpacas, guinea pigs, rabbits, donkeys, horses and reindeer. The farming activities have also been diversified through the implementation of the 2017 PP.
12. The appellants contend that the use of the site adheres to the 2017 PP. Whereas the Council contend that, in addition to the agricultural and educational uses, a third distinct use evidenced by the recreational activities set out in the allegation has been introduced.
13. S55(1) of the 1990 Act¹ defines development as including the making of a material change of use of any buildings or other land. While the meaning of 'use' is provided in s336(1) of the 1990 Act, the concept of 'material change of use' (MCU) is not defined. Establishing whether a MCU has occurred is achieved by identifying if there has been a significant difference in the character of the activities taking place, as a matter of fact and degree.
14. There is no recognised definition of 'education centre' and the ordinary definition of education is either 'the process of receiving or giving systematic instruction, especially at school or university' or an 'enlightening experience'. Whereas the ordinary definition of recreation is 'an activity done for enjoyment'.
15. There was no intention for the 2017 PP to create a 'school', however the DA does describe the provision of systematic instruction relating to countryside activities. The VMP also provides details of how the education use would be managed on a pre-booked system, to control the number and frequency of school and other groups throughout the week.
16. The number of days dedicated for use by schools and other organisations has reduced, thereby increasing the visits to the farm by the public. Furthermore, visits by the public have not operated on a pre-booked and structured learning experience basis. The number of visitors on site at any one time could

¹ Town and Country Planning Act 1990 as amended

significantly exceed the maximum of 60 specified in the VMP. Furthermore, while information boards are provided and staff may be available to answer questions and offer advice, public visitors are responsible for organising their own time, activities, and experiences, whether these are general activities or seasonal activities. Activities undertaken by the public are therefore more likely to be undertaken for enjoyment purposes rather than structured learning or as an enlightening experience.

17. Similarly, without the need to pre-book, the provision of the café coupled with the indoor and outdoor seating and play equipment are more likely to be used for recreational purposes than structured learning.
18. The lack of pre-booking by the public also has off-site impacts in terms of the vehicle arrival and departure pattern. Rather than the concentrated arrival and departure of up to 15 vehicles, up to 5 times per day, as set out in the VMP, the public's vehicles would arrive and depart the farm throughout business hours.
19. These differences in the type of activities carried out, the lack of structured learning and pre-booking as part of a larger group, while not necessarily all negative, have significantly changed the character of the use. For this reason, I find that a material change of use has occurred.
20. The appeal on ground (b) fails.

Ground (c) – appeals A and B

21. This ground of appeal is that those matters alleged, if they have occurred, do not constitute a breach of planning control. The burden of proof rests with the appellant and the relevant test is the balance of probability. While the requirements of the notice include the removal of operational development, these are not identified in the allegation, which only specifies a MCU.
22. The appellant's case in respect of this ground does not relate to the mixed use of the whole site, only to the use of buildings A, B and C, and to the provision of the animal shelters, fencing and outside seating and tables. The appellant contends that the 2017 PP provides for the mixed use of buildings A, B and C, and that the animal shelters do not constitute development, the fences are permitted development and the provision of seating and tables are de minimus to the education centre use.
23. The red line associated with the 2017 PP encompasses building A outlined in brown on Plan 2 attached to the notice, the access track and the land located between building A and Brimham Rocks Road. Notwithstanding the extent of the land within the red line, the DA states that groups of visitors will '*depart round the farm to visit the animals...go into fields...pond dip...*'. The Council also negotiated the use of the area identified on Site Plan Issue 2 as 'existing parking' to be the main parking area associated with the use, rather than the area identified within the red line. The distance between building A and the 'existing parking' contributes to the wider use of the farm by visitors.
24. It is clear from within the 2017 PP approved documents that activities associated with and ancillary to the education centre use would not be confined within building A or to the land shown to be in the red line. However, s7(1)(c)(i) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires an application for planning

permission to be accompanied by a plan which identifies the land to which the application relates. The plan identifying the land to which the 2017 PP relates was not amended during the determination process and as such, the 2017 PP could not apply to buildings B and C.

25. Even if I were to find that the education centre use extended beyond the red line land identified in the 2017 PP, this would only secure the use of the land identified in the notice for a mixed use comprising of the uses identified in paragraphs 3(i) and 3(ii) of the notice, and not those in paragraph 3(iii).
26. The appellant also claims that building C has the benefit of planning permission for Class D2 purposes, however this predates the appellants' purchase of the farm. The appellants used building C for agricultural activities only, until securing planning permission for the education centre, after which it was also used for seasonal recreation activities. While building C may have been used as an indoor riding arena, there has clearly been an intervening use for agriculture. Building C does not therefore have the benefit of planning permission for recreational use falling in the former Class D2 use.
27. The animal shelters, fencing and outdoor seating and tables are not part of the matters alleged. The appellants' case in respect of these elements would therefore fall to be considered under ground (f), whether the requirements are excessive to remedy the breach of planning control and under ground (a), that planning permission should be granted.
28. For the reasons given above, the appeal on ground (c) fails.

Ground (a) – appeal A and the deemed application

29. While the mixed use has occurred as a matter of fact, a significant part of that mixed use includes the keeping of approximately 550 sheep. It is not uncommon for farmers to keep a variety of livestock species in addition to their dominant species. While the Council argues that livestock, housed within the hatched purple area on Plan 2, is being kept for petting purposes only, it is clear from the appellant's evidence at the hearing, and the information contained in the DA, that these animals are not only farm livestock but are also integral to the approved education activities.
30. I saw that the field shelters within the area hatched purple on Plan 2 are small and of light weight construction. While some shelters stood on hard surfaces, most are not fixed to the ground and could be moved with ease. For these reasons the field shelters do not represent development as defined in s55 of the 1990 Act. The fences within the area hatched purple on Plan 2 form enclosures to separate the various livestock species. These fences are not adjacent to a highway and do not exceed 2 m in height. As such, the fences are permitted development as defined in Class C, Part 2 of the GPDO².
31. For these reasons, the field shelters and fences do not represent a breach of planning control and do not need to be considered in respect of the ground (a) appeal.
32. The appeal site lies within the Nidderdale Area of Outstanding Natural Beauty ("the AONB") and in determining the appeal I must have regard to the duty under S85(1) of the Countryside and Rights of Way Act 2000. This requires

² Town and Country Planning (General Permitted Development) Order 2015 as amended

that in making my decision I have had regard to the purpose of conserving and enhancing the special qualities, distinctive character and key features of the AONB. The **main issue** is the effect of the development on the character and appearance of the AONB.

33. The site is located within an undulating grassland area, dominated by fields typically enclosed by drystone walls. The surrounding landscape is open, with sporadic patches of woodland. Extensive views are available across the landscape.
34. The Council contend that unrestricted visitors and cars, uncharacteristic field pattern alterations, fences, field shelters, structures and organised activities within the front fields are unduly prominent in the landscape, which results in harm to the special qualities and tranquillity of the AONB. I have already found that the field shelters and fences are not a breach of planning control and the keeping of livestock in the area hatched purple is as likely to be for agricultural and educational purposes as it is for the purpose of a 'petting farm'. The provision of organised activities, whether seasonal or not, could also fall within the definition of education. It is the unrestricted visitor numbers and their vehicles coupled with the use of the outdoor play equipment that have the potential to affect the special qualities, distinctive character and key features of the AONB.
35. An application to retain the play equipment located in the area hatched green on Plan 2 attached to the notice has already been refused planning permission and an appeal³ against that refusal was dismissed, the Inspector finding that the play equipment "*would be unduly prominent within the landscape and harmful to the character and appearance of the Nidderdale AONB*". It is agreed in the Statement of Common Ground (SoCG) that this play equipment must be removed. Given the planning history and the appellants' agreement that the play equipment must be removed, there is no need for me to consider this matter further, other than to secure the play equipment's removal if the ground (a) appeal is successful.
36. The approved education centre use has the potential to generate significant visitor numbers. For example, days that are open to the public could generate up to 300 people, based on the 5 groups of up to 60 people per group set out in the VMP. Furthermore, the DA confirms that visitors would engage in activities across the farm, which would include the land hatched purple on Plan 2. However, the 2017 PP manages the effect of visitors on the special qualities, distinctive character and key features of the AONB through the imposition of conditions.
37. Information provided by the appellants in response to the planning contravention notices includes visitor number records. The figures provided are not dissimilar to those set out in the DA relating to the total number of visitors over a monthly period. However, the figures do not show how many visitors are on site at any one time. Without pre-booking, visitor numbers could significantly exceed the 60 visitors on site at any one time, which the Council previously found acceptable. This increase in visitor numbers would generate more vehicular and pedestrian activity and associated noise, which would harm the character and appearance of the AONB. As with the 2017 PP, this harm can however be addressed by the imposition of conditions requiring visits to be pre-

³ APP/E2734/W/19/3224951

booked and the number of visitors being controlled in accordance with the approach set out in the VMP.

38. Organised seasonal activities are an integral part of the education use as well as contributing to the recreation use. The 2017 PP did not seek to control where the organised activities set out in the DA could be carried out and that document makes it quite clear that groups would undertake activities across the farm, which would include buildings B and C as well as the front fields. There would be no significant difference in respect of organised activities being undertaken by a school, other group or on a more informal, recreational basis, such as a birthday party. As such, the addition of recreational activities would, of themselves, have no greater effect on the character and appearance or tranquillity of the AONB.

Other matters

39. The Council has provided details of other appeals that relate to similar mixed uses. Those cases do not however relate to developments at working farms, where the introduction of an education use has already been considered and found to be policy compliant. Widening the education use to include recreation use, would not cause harm, subject to the imposition of conditions similar in nature to those imposed on the 2017 PP.
40. The seating and tables, within the area hatched blue on Plan 2, provide visitors with somewhere outside to eat and drink in good weather. This facility is located close to the existing buildings and makes use of an existing area of hard standing. The seating and tables are moveable, and I find their siting and use to be de minimus to the mixed use.
41. While the 2017 PP makes provision for disabled parking and overflow parking to the front of building A, the main vehicle parking area is located towards the rear of the site, which is screened from Brimham Rocks Road by the existing buildings. Use of the area hatched orange on Plan 2 would increase visitor and vehicle activity levels into an area previously devoid of such activity. This would not conserve or enhance the character or tranquillity of the AONB. While the hedgerow planted adjacent to the Brimham Rocks Road frontage will provide effective screening in time, the use of this area for visitor parking is not necessary as adequate parking facilities exist elsewhere in the site.

Conditions

42. The Council suggested 8 conditions, and these were discussed at the hearing. The imposition of conditions limiting the number of visitors, requiring visits to be pre-booked and controlling the hours of operation of the mixed use are necessary to control the development in the interests of conserving the character, appearance and tranquillity of the AONB. Requiring a visitor record to be maintained, retained and made available for inspection will ensure that conditions relating to visitors and the operation of the business can be enforced.
43. Conditions identifying the location of vehicle parking facilities and preventing the use of the site for any other use than that specified in the notice are also required in the interest of conserving the character and appearance of the AONB.

44. The removal of the play equipment located in the area hatched green on Plan 2 of the notice is necessary in the interests of removing harm caused to the character and appearance of the AONB. While the suggested condition requires the play equipment to be removed within 3 months, the compliance period of the notice is 4 months. Given that COVID 19 restrictions have not yet been fully lifted, I consider 4 months to be reasonable.
45. The Council is also seeking to prevent the fields to the west of the access drive being used for educational and recreational purposes. These fields however provide visitors with an opportunity to be introduced to the habitat of the larger livestock, while remaining close to the buildings and facilities. I recognise the Council's concern that the unfettered use of the farmland could harm the landscape of the AONB. The imposition of a condition restricting the mixed use of the land west of the access road for organised activities on Mondays to Wednesdays only would allow the appellant to continue to cater for structured educational group sessions without causing harm to the landscape or special qualities of the AONB.

Conclusion on ground (a)

46. I have had regard to the purposes of conserving and enhancing the special qualities, distinctive character and key features of the AONB and for the reasons given above, and subject to the imposition of conditions, the development would not harm the character and appearance of the Nidderdale AONB. The development does not conflict with policies GS2, GS6, EC2, EC4, EC7, NE4 and TI3 of the Harrogate District Local Plan 2014 – 2035 (December 2020), which seek, amongst other things, to conserve and enhance landscape quality, support farm diversification and rural business expansion, and provide for appropriately designed parking facilities.

Overall conclusion

47. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and Appeal B fails. I shall grant planning permission for the use as described in the notice as corrected. The appeals on grounds (f) and (g) do not fall to be considered.

M Madge

INSPECTOR

Schedule of Conditions

- 1) The use of the site shall not exceed the following:
 - a. Monday to Wednesday external visitors are to be restricted to groups from schools, educational establishments and SEN care centres only. The number of groups per day is limited to a maximum of 2 and each group shall not exceed 30 students plus their carers.
 - b. Thursday to Sunday external visitors can include the general public. The number of groups per day is limited to 5 with no more than 60 persons per group.
- 2) Visitors to the site are to be admitted on a pre-booked basis only.
- 3) A visitor record shall be maintained, retained and made available for inspection by the local planning authority, this should include the names and addresses of visitors associated with the education centre and recreation uses.
- 4) Non-agricultural uses shall not take place except between the hours of 0900 and 1700 Monday to Sunday.
- 5) Vehicle parking associated with the education and recreation uses shall be provided within the areas annotated as disabled parking, overflow parking and existing parking on 'Site Plan Issue 2' of planning permission 17/03641/FUL and on no other areas of the site. The number of vehicles on site associated with the education centre and recreation uses shall not exceed a total of 65 per day.
- 6) The site shall not be used for any purposes other than those related to (or ancillary to) agriculture, education and recreation and for no other use, including any use within the same use class as defined by the Town and Country Planning (Use Classes) Order (or any order revoking and re-enacting that Order with or without modification) without the formal consent of the local planning authority.
- 7) Within 4 months of the date of this decision, the play equipment situated within the area hatched green on Enforcement Notice Plan 2 shall be removed and the land returned to its original condition.
- 8) The fields to the west of the access road and included within the red line on Plan 1 attached to the notice shall be used for agriculture except for organised activities taking place in compliance with condition 1(a).

APPEARANCES

FOR THE APPELLANT:

Steve Barker
MRTPI

Prism Planning Ltd

Rebecca Burniston

FOR THE LOCAL PLANNING AUTHORITY:

Constanze Bell
Barrister

Kings Chambers

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