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## Appeal Decision

Site visit made on 11 May 2021

**by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

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

**Decision date: 01 June 2021**

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**Appeal Ref: APP/E2734/C/21/3267595**

**Field at 431432 447440 Swindon Lane, Kirkby Overblow, North Yorkshire**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Philip Brown against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice was issued on 14 December 2020.
- The breach of planning control as alleged in the notice is the material change of use of the land to the use of the land for equestrian purposes.
- The requirements of the notice are:
  - i. Cease the use of the land for equestrian purposes.
  - ii. Remove from the land the following items:
    - a) The Stables
    - b) Yellow portacabin
    - c) Blue Portacabin Green van body/cabin
    - d) Decorative wall mounted stone sign which states 'Harewood Stables'
    - e) Decorative stone sign which states 'Swindon Lane Dunkeswick
    - f) Fences
    - g) Planting boxes
    - h) Laurel hedges
    - i) Flag stones laid near the stables.
  - iii. Restore the land to agricultural use.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

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### Site description and Background

1. The appeal site comprises land on Swindon Lane and consists of some open land, a hardstanding area, a two bay stable as well as other items including a yellow portacabin/container, green van body, decorative stone signs, fences and flag stones. I also noted that there are other items on the land including a caravan, water storage containers and a blue steel portable drying room and toilet that are not listed in the enforcement notice.
2. I also observed that some items identified in the notice, including planting boxes and laurel hedges appear to have been removed from the land.

### The appeal on ground (b)

3. The ground of appeal is that the breach of planning control alleged in the enforcement notice had not occurred as a matter of fact by the date of issue of the enforcement notice. Therefore, in order to succeed on this ground it would

need to be demonstrated that the material change of use of the land to the use of the land for equestrian purposes had not occurred.

4. It is my understanding that the owner has kept horses on the land for over fifteen years. It is his contention that it has only been used for grazing and there is no question of equestrian or leisure use of the land, including riding activity, training or exercising horses. Instead it is contended that the horses have the freedom to graze. In this respect the appellant has quoted case law which confirms that the use of land for grazing horses falls within agricultural use and consequently planning permission would not be required.
5. However, The Council's evidence contradicts the appellant's assertion with respect to the precise use of the land. Indeed, under a previous planning application (reference 18/00345/FUL) the appellant stated that the horses are reared as trotting animals and he is involved in trotting events as a recreational hobby. Therefore, at that time the appellant agrees that the horses were used for recreational equestrian purposes.
6. Case law<sup>1</sup> held that equestrian activities are related to leisure not agriculture and has also held that whether land is primarily used for grazing is a matter of fact and degree and just because horses happen to graze on an area of land does not make it grazing land for agricultural purposes if they are fed by other means. I have considered the evidence regarding the feeding regime and although the horses do graze the land their diet is supplemented by other feed that is imported onto the site, including carrots.
7. The Council clearly served the enforcement notice because at that time the activities taking place on site involved active equestrian (trotting) uses and therefore the primary use of the land was not agricultural. Furthermore, the items on the land at the time the enforcement notice was served, including stables, areas of hardstanding, fences, a yellow portacabin, green van body and other horse-related paraphernalia, changed the character of the land from agricultural to equestrian and are there to support the equestrian use rather than agriculture.
8. I have considered the range of other evidence before me including the name of the site which is "Harewood Stables" which clearly indicates that the keeping of horses takes place on the land which is an equestrian use rather than agricultural.
9. Therefore, for the reasons given above I conclude that the breach of planning control as alleged in the enforcement notice had occurred as a matter of fact and the appeal on ground (b) must fail.

### **The appeal on ground (c)**

10. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The material change of use of the land to equestrian use is a change of use for which planning permission is required. There are no permitted development rights which allow for such a change of use to take place without planning permission.

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<sup>1</sup> Belmont Farm Ltd v MHLG [1962] 13 P&CR 417 and Sykes v SSE and South Oxfordshire District Council v SSE [1981] 42 P.&C.R. 19

11. Case law<sup>2</sup> has established that an enforcement notice directed at a material change of use of land can require the removal of ancillary operational development within a ten year immunity period, even if four years has passed, if the works were intended to facilitate the unlawful use. Furthermore, an enforcement notice can require the removal of items which are part and parcel of facilitating the material change of use that has occurred.
12. In this particular case, the items that are required to be removed by the enforcement notice were present in order to facilitate the material change of use that had occurred on the land. These include items that may not in themselves require planning permission and may not be considered to be operational development. I have taken account of the appellant's evidence with respect to each of the items, including some of which have already been removed from the land, but it is clear to me that because they are part and parcel of the change of use and would not be there otherwise, they cannot be considered as permitted development.
13. Therefore, the appeal on ground (c) fails.

#### **The appeal on ground (f)**

14. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s174(4)(b)). Since the notice required the equestrian use to cease, all items with the use to be removed from the land and the land to be restored to agricultural use, the purpose is clearly to remedy the breach.
15. The appellant has not clearly set out what lesser steps would achieve the purpose of the enforcement notice and, in any case, not ceasing the use leaving any of the items on the land would not achieve that purpose. In this respect the appeal on ground (f) fails.

#### **Conclusion**

16. For the reasons given above and taking account of all evidence submitted I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

*A A Phillips*

INSPECTOR

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<sup>2</sup> *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598 and *Somak Travel v SSE & Brent LBC* [1987] JPL 630