



Appeal Decision

Site visit made on 27 April 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021

Appeal Ref: APP/V2635/C/20/3259251

Land at Holly House Farm, Stow Road, Wiggenhall, St Mary Magdalen, Norfolk

- 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 Marcus Mallett against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice was issued on 30 July 2020.
- The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the Land from use for the keeping and exercising of horses to a mixed use of keeping and exercising horses and use for motorcycle riding; without planning permission, the construction on the Land of raised earth mounds, jumps and track.
- The requirements of the notice are:
 1. The use of the Land for motorcycle riding permanently ceases.
 2. The raised earth mounds, jumps and track are demolished.
 3. The resultant earth and soil is permanently removed from the Land.
- 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), (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, and enforcement notice is upheld with variations.

The Notice

1. The use of the word permanently on two occasions within the requirements of the notice is unnecessary, having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not discharge the notice. The notice can be varied to delete the word without injustice to the appellant or the Council.

Preliminary Matters

2. The Council previously issued an enforcement notice on 12 July 2018 in relation to the Land alleging the material change of use of the land from paddock land to a mixed use of paddock land and use for motorcycle racing including practising and training for these events; and the construction on the land or raised earth mounds, jumps and tracks. The notice was subsequently quashed

on appeal¹, the Inspector finding that the alleged breach of planning control had not occurred.

Costs

3. An application for costs was made by Mr Marcus Mallett against King's Lynn and West Norfolk Borough Council. This application is the subject of a separate Decision.

The appeal on ground (b)

4. In an appeal on ground (b) the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice to constitute a breach of planning control have not occurred as a matter of fact.
5. The notice alleges both a material change of use to a mixed use of keeping and exercising of horses and use for motorcycle riding and operational development in the form of raised earth mounds, jumps and track.
6. The appellant accepts that the riding of motorcycles does take place on the land, albeit it is said to be for recreational purposes. Nevertheless, the allegation does not specify the purpose of the motorcycle riding, only that motorcycle riding takes place. I saw from my site visit that the southern end of the land is a formally arranged fenced area laid to grass which has the appearance of paddocks.
7. There is a distinction between the allegation in the notice here and that from the previous appeal, as the 2018 notice alleged the use of the land for motorcycle racing including practicing and training.
8. The appellant's arguments in respect of the change of use aspect of the breach primarily relate to the claim that the motorcycle riding can be carried out with the benefit of planning permission granted under the Town and Country Planning (General Permitted Development) (England) Order 2015. Such arguments fall for consideration under ground (c).
9. On that basis, the evidence before me leads me to conclude that the alleged material change of use to a mixed use of keeping and exercising horses and use for motorcycle riding has occurred as a matter of fact.
10. The appellant argues that no mounds, jumps or a track have been constructed and thus the operational development element of the alleged breach has not occurred. However, it is stated by the appellant there has been some movement of earth and soil on the land, indicating only that no man-made materials have been used. Nevertheless, the appellant states in submissions that some of the materials on the land have been moved into mounds.
11. The notice does not allege the use of man-made materials. It simply alleges the construction of raised earth mounds, jumps and track. The fact that the notice contains the phrase "earth mounds" indicates that the mounds, jumps and tracks have been created with natural materials.
12. I saw from my site visit that several mounds comprising of earth and soil of varying shapes and sizes had been arranged to give the appearance of a circuit. This lies in contrast to the previous Inspector's findings that such

¹ APP/V2635/C/18/321

mounds were randomly located. I saw that the mounds were separated into large, raised embankments with slopes at either end and smaller mounds arranged more tightly together to create a series of jumps. The earth appeared to have been carefully constructed in a formalised arrangement. What I saw broadly reflected the images of jumps and mounds provided by the Council in its statement which are date stamped 6 May 2020.

13. Furthermore, it was apparent that a track consisting of bare soil had been created as a result of the layout of the mounds. Indeed, I saw that a narrow line of lighter soil around the centre of the track had been created where the ground had been eroded more intensively than the outer parts of the track, indicative of use by a two-wheeled vehicle. Again, this contrasts with the findings of the previous Inspector who observed that there was no discernible track or any obvious jumps. As a result, my observations point towards the conscious creation of a track including mounds and jumps. Given the appellant's acceptance that the land has been used for motorcycle riding, it is reasonable to conclude that the arrangement of mounds, jumps and track has been done to facilitate that use.
14. I find, therefore, that both the alleged material change of use and the alleged operational development elements of the alleged breach of planning control have occurred as a matter of fact.
15. The appeal on ground (b) therefore fails.

The appeal on ground (c)

16. In the appeal on ground (c) it is necessary for the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control does not amount to a breach of planning control.
17. There is no argument from the appellant that the alleged material change of use does not amount to development for the purposes of section 55 of the 1990 Act. On the evidence before me, I see no reason to conclude otherwise.
18. Nonetheless, the appellant does argue that planning permission is granted for the use of the land for motorcycle riding by virtue of the GPDO. Article 3(1) of the GPDO grants planning permission for the classes of development deemed to be permitted development in Schedule 2 of the order. Class B of Part 4 of Schedule 2 sets out that the use of any land for any purpose is permitted development provided it is for not more than 28 days in total in any calendar year. Not more than 14 days in total may be for the purposes of (b) motor car and motorcycle racing including trials of speed and practising for these activities.
19. The appellant indicates that the motorcycle riding does not include racing, including time trails nor is there any practicing for those activities. That is disputed by the Council. Nevertheless, if that were to be the case, then the use of the land for motorcycle riding would not fall under the 14-day restriction under Class B. Instead, consideration would fall on whether it was in use for not more than 28 days in any calendar year.
20. The appellant indicates that the riding of motorcycles on the land does not exceed 28 days in a calendar year. However, very little evidence has been provided which demonstrates that is the case. In contrast, the Council indicates that the land has been used for motorcycle riding for well in excess of

- 28 days. It points to a written record contained in the appendices to its statement which is said to contain observations made of the site. It contains 36 instances between 19 March 2020 and 28 June 2020 when between 1 and 3 bikes were said to be using the land for several hours at a time. Whilst these records are not supported by photographs, there is nothing from the appellant which indicates that they are not an accurate representation of the use of the land on those dates and times. This would suggest a level of usage across the calendar year far in excess of the maximum 28 days allowed for under Class B.
21. As such, it appears immaterial in this case as to whether the 14 day or 28 day restriction applies, since the evidence before me indicates, on the balance of probabilities, that the land was in use as a mixed use of the keeping and exercising of horses and use for motorcycle riding for in excess of 28 days in a calendar year at the time the notice was issued.
22. Turning then to the operational development elements of the notice in the construction of earth mounds, jumps and tracks. Section 55(1) of the 1990 Act states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 55(2) sets out exemptions from the definition of development. There is no evidence that any of those exemptions apply here.
23. The Courts have held that activities which result in some physical alteration to the land and which have some degree of permanence to the land itself will constitute operational development.
24. I am satisfied that the alleged operational development does not amount to building or mining operations, since they have not resulted in the erection of a building nor the winning or working of minerals.
25. The Courts have taken the view that an engineering operation could be an operation which would generally be planned in advance and would generally be supervised by an engineer, albeit that it was unnecessary that it should actually have been so supervised.
26. It has generally been established in case law that other operations amount to those which are not of the scale of engineering operations and not properly planned in advance to constitute such operations but nevertheless amount to an operation due to the physical change in the land which had occurred.
27. The appellant argues that the mounds, jumps and tracks are piles of earth which have been taken from the land and no additional materials have been used.
28. However, the appellant accepts that earth from the land has been moved into mounds. I was able to see from my site visit, and from the photographs of the Council, that the earth appeared to have been deliberately moved and arranged into a structured arrangement. I was able to see that several of the mounds protrude well above ground level, in some cases more than 1m. Moreover, they have been arranged with sloping sides presumably to ensure stability and to facilitate their use by motorcycles.
29. The appellant indicates that additional materials, including topsoil and fill sand, was brought onto the land in April/May 2020 but was not used for the construction of the mounds, jumps or track. In any event, it is apparent from the evidence before me that the moving of earth on the land to form the

mounds, jumps and track has resulted in clear physical change to the land. Whilst there is little evidence that it was planned in advance or such that it would typically be supervised by an engineer, I am satisfied that it has resulted to a physical change in the land of such permanence as to constitute other operations. As a consequence, I find that the construction on the land of raised earth mounds, jumps and track as alleged in the notice amounts to development for the purposes of section 55 of the 1990 Act.

30. Section 57(1) of the 1990 Act makes clear that planning permission is required for the carrying out of any development of land. Such permission may be granted by Article 3(1) of the GPDO. However, there is no evidence of the operational development falling under any of the classes of permitted development set out in Schedule 2 of the GPDO. Nor is there any evidence of planning permission have been granted for the development under section 58 of the 1990 Act.
31. Section 171A(1) of the 1990 Act makes clear that the carrying out of development without the required planning permission constitutes a breach of planning control.
32. In light of the above, and having considered all the evidence put to me, I find, on the balance of probabilities, that the material change of use of the land to a mixed use of the keeping and exercising of horses and motorcycle riding and the construction on the land of raised earth mounds, jumps and track amounts to a breach of planning control. I note that this is a matter the previous Inspector did not need to address, since that appeal succeeded on the appeal on ground (b).
33. The appeal on ground (c) fails.

The appeal on ground (a)

Main Issues

34. The main issues are:

- the effect of the development on the living conditions of neighbouring residents with particular regard to noise and disturbance; and,
- the effect of the development on the character and appearance of the area.

Reasons

Living Conditions

35. The appeal site comprises an area of land adjacent to the residential property of Brights Barn. Planning permission was granted for the material change of use of the land to a paddock in December 2014. It is sited between the river bank of the River Great Ouse and Stow Road.
36. The Council indicates the closest residential properties to the land are around 120m, although the evidence of the Council's Community Safety and Neighbourhood Nuisance Team indicates they are 140m to the south and 290m to the north.

37. The evidence of the Council indicates that background noise levels in the area are relatively low at around 25db. Given the rural nature of the site, lack of substantial built-up areas, its fenland character and proximity to the River Great Ouse, that seems to me to be a reasonable assessment of the noise character of the area.
38. The appellant indicates that riding can take place for up to 2 hours at a time. The record of occurrences produced by the Council for motorcycle riding taking place on the land between March and June 2020 indicates that on several occasions the time when motorcycles were on the land was in excess of 2 hours. In some cases, the Council indicates that it lasted for up to 6 or 7 hours. In addition, on several occasions more than one motorcycle was recorded, with three motorcycles present on several instances. I have no evidence to believe the Council's observations are not reflective of typical occurrences of motorcycle riding on the land.
39. As such, I consider that residents will be subject to the constant, unpredictable ebb and flow of motorcycle engines being revved up and down. Unfiltered, such noise will likely to be disturbing to the closest residents going about their daily activities in their homes and gardens, particularly when heard against the comparably low background noise levels of the area. Such noises would be compounded substantially when more than one motorcycle is using the land for riding at any one time, something which the Council's records indicate is a frequent occurrence. Noise levels are likely to be exacerbated given the lack of substantial intervening screening, landscape features or other forms of noise attenuation.
40. The appellant indicates that they have personally received no complaints regarding the use of the land for motorcycle riding. However, that would not necessarily occur. Notwithstanding that, complaints have been received by the Council in respect of noise.
41. As a result, I find the development will have a harmful effect on the living conditions of nearby residents with particular regard to noise and disturbance. Consequently, the development conflicts with Policy DM2 of the King's Lynn and West Norfolk Site Allocations and Development Management Policies Plan 2016 (the LP) which states that proposals will be assessed against their impact on neighbouring uses, looking at factors such as noise. Development that has a significant adverse impact on the amenity of others will be refused.

Character and Appearance

42. The appeal site lies in an area characterised by vast expanses of flat and open agricultural land, typical of the fenland landscape character which permeates throughout the wider area. Whilst the topography of the appeal site is relatively flat, the appeal site lies immediately adjacent to the embankment of the River Great Ouse.
43. The mounds, jumps and the track undoubtedly appear in contrast to the prevailing character of the wider area. However, since the site sits immediately adjacent to the embankment of the river, the extent to which the mounds, jumps and track alter than prevailing landscape character is limited. Moreover, the extent to which the construction of the mounds, jumps and track extend across the landscape is very minor given the narrow layout of the site.

44. Indeed, the site is somewhat physically separated from the wider landscape by the presence of Stow Road which forms a boundary of such permanent character as to limit any spread of the appeal site within the wider landscape. As such, the extent of change resulting from the development is limited and thus has a very limited effect on the wider landscape character.
45. In addition, the visibility of the land is restricted by the presence of the embankment to the east, the tree belt to the north and the housing to the south. Whilst the development will be visible in views from the west, these will be seen in the context of the embankment of the river, which extends high above the mounds, jumps and track subject of the notice. On that basis, I find the visual impact of the development to be limited.
46. I conclude, therefore, that the development will not have a harmful effect on the character and appearance of the area. As such it would be in accordance with Policy DM2 of the LP which relates to development outside of development boundaries. It would also accord with Policies CS06 and CS08 of the Kings Lynn and West Norfolk Borough Council Local Development Framework Core Strategy 2011 which seek to protect the character and beauty of its diversity of landscapes; and, respond to the context and character of places in West Norfolk by ensuring the scale, density, layout and access will enhance the quality of the environment.

Conclusion on ground (a) appeal

47. Whilst I have found that the development will not result in undue harm to the character and appearance of the area, I have found there would be harm to the living conditions of nearby residents. That is the prevailing consideration and I find the development conflicts with the development taken as a whole.
48. For the reasons given above, and having considered all matters raised, I conclude that the appeal on ground (a) should not succeed and the deemed planning application should be refused

The appeal on ground (f)

49. An appeal on ground (f) is that the requirements of the notice are excessive. Section 173(4) of the 1990 Act is clear that a notice can have one of two purposes. They are either to remedy the breach of planning control or, as the case may be, any injury to amenity which has been caused.
50. The notice, as varied, requires that the use of the land for motorcycle riding ceases, that the raised earth mounds, jumps and track are demolished, and the resultant earth and soil is removed from the land. On that basis, it seems to me that the purpose of the notice is to remedy the breach by restoring the land to its condition before the breach took place under section 173(4)(a) of the Act. As a result, any lesser steps that stop short of complete cessation of the use and demolition of the mounds, jumps and track would not remedy the breach of planning control.
51. I note that it is the appellant's case that the requirement for the earth and soil to be removed is excessive since they were pre-existing. It seems to me that regardless of whether or not the earth and soil which facilitated the construction of the mounds, jumps and tracks was pre-existing, it would nevertheless be excessive to require its removal from the site, since earth and soil could lawfully be brought onto the site for other uses. Indeed, if the

mounds, jumps and track been constructed from earth and materials already present on the site, their removal away from the land would be excessive. I am satisfied that the breach of planning control would be remedied by the requirement to cease the use and to demolish the mounds, jumps and track. As such, I consider the third requirement is excessive and the notice should be varied to delete it.

52. The appeal on ground (f) succeeds but only to a limited extent.

Decisions

53. It is directed that the enforcement notice is varied by:

- the deletion of the word 'permanently' from section 5(1) of the notice; and,
- the deletion of section 5(3) of the notice in its entirety.

54. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J Whitfield

INSPECTOR