



Appeal Decisions

Site visit made on 26 January 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Refs: APP/H2733/C/21/3285724 (Appeal A) and APP/H2733/C/21/3285723 (Appeal B)

Land to the north of Main Street, Flixton, Scarborough YO11 3HS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Nikki Oram (Appeal A) and Daniel Steven Oram (Appeal B) against an enforcement notice issued by Scarborough Borough Council.
 - The enforcement notice (Notice 1) is dated 30 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building used for general non-agricultural storage on the land, edged red and marked "Building A" on the plan attached to the enforcement notice.
 - The requirements of the notice are: (i) Demolish or dismantle the building marked A (including its metal framework) on the land (ii) Remove from the land all material resulting from the performance of paragraph (i).
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended
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Appeal Refs: APP/H2733/C/21/3285726 (Appeal C) & APP/H2733/C/21/3285725 (Appeal D)

Land to the north of Main Street, Flixton, Scarborough YO11 3HS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Nikki Oram (Appeal C) and Daniel Steven Oram (Appeal D) against an enforcement notice issued by Scarborough Borough Council.
 - The enforcement notice (Notice 2) was issued on 30 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the land to use for the storage of metal containers (shown in the attached photos) and or the use of the metal containers for B8 General Storage (non-agricultural storage).
 - The requirements of the notice are (i) Cease the use of the land for the storage of metal containers or for use of the metal containers for B8 (General Storage) or for any use other than agricultural storage. (ii) Remove from the land all of the metal storage containers and any non-agricultural items or material stored on the land.
 - The period for compliance with the requirements is three months.
 - Appeal C is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since Appeal C has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal D is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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**Appeal Refs: APP/H2733/C/21/3285728 (Appeal E) &
APP/H2733/C/21/3285727 (Appeal F)**

Land to the north of Main Street, Flixton, Scarborough YO11 3HS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Nikki Oram (Appeal E) and Daniel Steven Oram (Appeal F) against an enforcement notice issued by Scarborough Borough Council.
 - The enforcement notice (Notice 3) is dated 30 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the land (Marked Units 1 and 2) to use for general non-agricultural storage (B8 General Storage use).
 - The requirements of the notice are: (i) Cease the use of Units 1 and 2 for B8 (General Storage) use or for any use other than agricultural storage. (ii) Remove from the land all non-agricultural items or material stored on the land.
 - The period for compliance with the requirements is three months.
 - Appeal E is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since Appeal E has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal F is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. Appeal A is allowed, the enforcement notice (Notice 1) is quashed, and planning permission is granted on the application deemed to have been made under s.177(5) of the 1990 Act as amended for development already carried out, namely the erection of a building used for general non-agricultural storage at Land to the north of Main Street, Flixton, Scarborough YO11 3HS as shown on the plan attached to the notice.

Appeal C

2. It is directed that:
 - the plan attached to Notice 2 is deleted and substituted with the plan below;
 - the text of the allegation of Notice 2 be deleted in its entirety and replaced with the following text: 'Without planning permission, the material change of use of the land to use B8 (General Storage) and the siting of the metal containers shown on the plan attached to the enforcement notice to facilitate that change of use.'; and
 - the text of the requirements of Notice 2 be deleted in its entirety and replaced with the following text: '(i) Cease the use of the land for B8 (General Storage) (ii) Remove the metal containers from the land.'
3. Subject to these corrections, Appeal C is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under s.177(5) of the 1990 Act as amended for development already carried out, namely the material change of use of the land to use B8 (General Storage) and the siting of the metal containers to facilitate that change of use at Land to the north of Main Street, Flixton, Scarborough YO11 3HS as shown on the plan attached to the notice.

Appeal E

4. It is directed that:

- the text of the allegation of Notice 3 be deleted in its entirety and replaced with the following text: 'Without planning permission, the material change of use of the land (Marked Units 1 and 2) to use for general non-agricultural storage (B8 General Storage use).'
 - the text of the requirements of Notice 3 be deleted in its entirety and replaced with the following text: '(i) Cease the use of Units 1 and 2 for B8 (General Storage) use.'
5. Subject to these corrections, Appeal E is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under s.177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land (Marked Units 1 and 2) to use for general non- agricultural storage (B8 General Storage use) at Land to the north of Main Street, Flixton, Scarborough YO11 3HS as shown on the plan attached to the notice.

The enforcement notices

6. The allegation in Notice 2 gives rise to a number of issues. Firstly, it alleges 'the change of use of the land...'. 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 land'.
7. Notice 2 attacks a number of metal storage containers. Although the notice refers to photographs of the containers, the Council confirm that these were not attached to the notice when it was served. A plan was attached with a red line that correctly identifies the land in question. However, as the plan does not show the containers, I agree that the omission of the photographs leads to a degree of ambiguity. It appears from the submissions that the appellant has understood the allegation. Nonetheless, in the interests of precision, I direct that the notice be corrected by the substitution of the plan attached to it with the plan below at the end of the decision letter, which clearly shows the metal containers marked C, D and E.
8. Some ambiguity arises from the general wording of the allegation in Notice 2. It is somewhat convoluted and appears to contain two alternative versions that are connected by the words 'and or'. To resolve any uncertainty, I have directed that the text of the allegation be replaced by a more concise form of words.
9. Notice 2 goes on to require the appellants to remove the metal containers and also 'any non-agricultural items or materials stored on the land'. The notice should go no further than is necessary to remedy the breach. In this case, the breach can be remedied by the cessation of the use and the removal of the metal containers. It is not clear what items or materials are being referred to here, or whether they are integral to and solely for the purpose of facilitating the unauthorised use. That being the case, I have directed that the requirements should be corrected accordingly.

10. Turning to Notice 3, again, the cessation of the unauthorised use is enough to remedy the breach. The remaining wording in part (ii) of the requirements is therefore unnecessary. Finally, the same matter arises in terms of the omission of the word 'material' from the allegation. I direct that Notice 3 is corrected to address these matters.
11. I am satisfied that none of these corrections cause any injustice or make the notices more onerous.

Appeals A, C and E on ground (a)

Preliminary Matters and Main Issues

12. Although the appeals relate to three separate enforcement notices, the unauthorised developments are in close proximity and the issues relating to each are very similar. Therefore, in order to avoid unnecessary repetition, I have dealt with the ground (a) appeals as one.
13. The main issues are:
- Whether the developments meet objectives to promote sustainable development in the countryside; and
 - The effect of the developments on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

14. The developments are located on land at the western edge of the village of Flixton, with a single access lane taken from Main Street. The site is located outside any development limits and so it is within the open countryside for planning purposes.
15. Building A sits in the location of a previous agricultural building that was permitted in 2014 (ref: 14/00087/AD) and known locally as the Giraffe Shed. The appellant confirms that the Giraffe Shed was taken down and replaced by Building A, which was divided into six units. From December 2019, these units were rented out to third parties for the storage of cars and other items.
16. In the case of Building B, planning permission (ref: 16/01336/FL) was previously granted in 2016 for the change of use of Units 3 and 4 from agricultural storage to general storage in use class B8. Condition 2 of this permission imposed a personal condition restricting the use to the appellants and their business, which provides renewable energy systems and electrical services. Notice 3 relates to the remaining Units 1 and 2 within this building.
17. In addition, nine metal storage containers have been placed in three separate groups on the site.

Whether sustainable development

18. The National Planning Policy Framework (NPPF), at paragraph 84, supports a prosperous rural economy. Amongst other things, planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new

buildings, and the development and diversification of agricultural and other land-based rural businesses.

19. In paragraph 85, there is a clear recognition that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements. Such development should be sensitive to its surroundings and should not have an unacceptable impact on local roads. The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
20. Policy EG3 of the Scarborough Borough Local Plan (LP) relates to employment land delivery and identifies a number of allocated sites for B1, B2 and B8 uses. On non-allocated sites, these uses will be permitted within development limits as long as they comply with other relevant LP policies. Outside development limits, LP Policy EG6 allows for the expansion of existing employment sites and premises, subject to the stated criteria.
21. LP Policy ENV6 seeks to protect the character of the open countryside by restricting development outside development limits. In such locations, development will be limited to that for which a countryside location is essential. In order to comply, development must accord with one or more of the given criteria. It should also be of a scale compatible with its surroundings, and should not have an unacceptable impact on the character and appearance of the open countryside. However, the word 'essential' does not appear in the relevant NPPF paragraphs, and to that extent, LP Policy ENV6 is inconsistent with the NPPF.
22. The crux of the Council's case is that there is no essential requirement for the unauthorised B8 storage developments to be located in the open countryside. Within the six criteria listed in LP Policy ENV6, the word 'essential' reappears but only within criterion (a) relating to development that is 'essential for farming, forestry or other essential land management activity'.
23. Criterion (b) refers to 'development that relates to the functional needs of, or consolidates or diversifies an established rural business.' It follows that, if the appellant can show that the developments in question meet this criterion, then they would fall into the umbrella definition of developments for which a countryside location is essential, in the wording of LP Policy ENV6.
24. As noted above, the planning history shows that a business exists at the site. Given its countryside location, it could reasonably be described as an established rural business. The appellant explains that when the business suffered a downturn in 2018, the four units in Building B were rented out for commercial storage to raise some additional income. Subsequently, Building A was divided into six units and was also rented out to third parties for storage from December 2019.
25. In 2020, the coronavirus pandemic further harmed the business, and gave rise to a need to store business equipment on site that could not be used during the restrictions. The nine storage containers were brought to site for that purpose. The Council contend that the permitted business did not have a presence on the site between the time that Units 3 and 4 were rented to third parties and the arrival of the metal containers. Therefore, the metal containers could not amount to the expansion of a business that was not present.

26. However, it is not the case that the electrical business ceased to exist. Instead, there was a need for it to change in response to the prevailing circumstances, and the renting out of the units reasonably falls within the definition of diversification of the original business.
27. The Council further dispute the need for the containers, stating that the excess equipment for the electrical business should have been stored in Units 3 and 4 of Building B, in line with condition 02 of the 2016 permission. However, if those units had been rented to third parties, then they were not available for use by the electrical business. The provision of the containers for storage would therefore amount to consolidation of the continuing electrical business.
28. Turning to Buildings A and B, the Council argue that they provide speculative storage space for other businesses, rather than accommodating existing established rural businesses that need to expand in their existing location. However, there is nothing in the wording of LP Policy ENV6(b) that ties the diversification of businesses to their existing location. The fact that the storage units continue to be used by businesses elsewhere in the area demonstrates that there is demand and need for these services.
29. Sustainable development encompasses three overarching objectives, as set out in NPPF paragraph 8. The developments that are the subject of the enforcement notices meet the economic and social objectives in that they support business growth and provide services to the community. In terms of the environmental objective, the Council do not allege harm to the natural, built or historic environment. From the available evidence, I have no basis on which to take a different view.
30. I therefore conclude that the developments, namely the construction of Building A and the use of the metal containers and Units 1 and 2 for B8 storage, meet objectives to promote sustainable development in the countryside, as sought by the NPPF. No conflict arises with LP Policies ENV6 or EG6. Although some conflict arises with LP Policy EG3 insofar as the B8 uses are not on allocated sites and are outside development limits, in the absence of any significant harm, this conflict does not justify the withholding of planning permission.
31. I have taken into account the wishes of Folkton Parish Council that the village should remain a farming community and be protected from non-agricultural development. However, this approach is not in line with the local and national policies which support a range of business types in the countryside, and so these representations have not led me to a different conclusion.

Living conditions

32. LP Policy DEC4 seeks to ensure that existing and future occupants of land and buildings are provided with a good standard of amenity. The Council object to the developments on the basis of noise and disturbance to neighbouring residents.
33. I note, however, that the Council frame their concern in terms of what is likely to happen, despite the fact that the unauthorised developments have now been operational for some time. Therefore, if harm has arisen, then it should be

tangible and demonstrable. Despite this, the Council have offered little evidence of harm to living conditions.

34. The appellant has provided details of the trips generated to the developments over the period of a week in October 2021. The busiest day was Monday 4th October, with a total of five trips recorded. On the other days, between two and four trips were noted. Furthermore, there is little evidence to demonstrate that this is a materially greater number of trips than those associated with the previous agricultural use across the site. Indeed, farming operations tend to take place across considerably longer hours, whereas the appellant confirms that almost all the trips occurred during working hours.
35. The Council do not dispute the appellant's evidence, which shows that the traffic generated by the developments is not excessive. I note that a neighbouring resident has brought up the issue of noise and also the health effects of traffic fumes. However, they have provided no substantive detail on either of these concerns. In any event, it is unclear how much of the traffic in question can be attributed directly to the unauthorised developments, given that other premises use the same access lane.
36. I therefore conclude that it has not been shown that the developments that are the subject of the appeals have materially harmed the living conditions of neighbours to date, or will do so in the future. That being the case, no conflict arises with LP Policy DEC4.

Other matters

37. I have taken into account the concern raised by a nearby resident relating to highway safety. They state that they have witnessed many near misses in respect of vehicles coming out of the entrance to Manor Farm Court since the unauthorised developments began at the appeal site.
38. However, the Council have raised no concerns on traffic safety grounds, and there is no detailed evidence before me relating to the problems that have been alluded to. Having regard to the number of other properties that take access from the lane, and the relatively good visibility along it, I do not consider that the additional storage uses have given rise to a significantly greater conflict between users of the lane and the main road, so as to result in a highway safety issue in this case.
39. Damage to the access track has also been alluded to. However, this is a private matter to be resolved between the relevant parties, and is outside the remit of the appeals.

Conclusion

40. For the reasons above, I conclude that Appeals A, C and E succeed on ground (a), the enforcement notices, as corrected, are quashed, and the deemed planning applications are granted. As a result, there is no need to consider the appeals on grounds (f) or (g).

Elaine Gray

INSPECTOR

Plan

This is the plan referred to in my decision dated: 28 March 2022

by Elaine Gray MA(Hons) MSc IHBC

Land at: Land to the north of Main Street, Flixton, Scarborough YO11 3HS

Reference: APP/H2733/C/21/3285726 (Appeal C)

Scale: not to scale

Manor Farm

