



Appeal Decisions

Hearing Held on 16 August 2022

Site visit made on 16 August 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Appeal A: APP/N2739/C/22/3290686

Appeal B: APP/N2739/C/22/3290685

Land east side of Green Lane, Acaster Malbis, York, known as Laurel Lodge, Airfield Lane, Acaster Selby.

- 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 Mr Jonathan Hilton Cox (Appeal A) and Mr Simon Armstrong (Appeal B) against an enforcement notice issued by Selby District Council.
- The enforcement notice was issued on 9 December 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the carrying out of building and operational development and specifically the erection of a single storey dwelling, a car port/ garden store, creation of hardstanding including patio and paved areas, internal access road, gate and brick pillars, free standing light poles/lamp post and the erection of boundary fencing along with internal fencing on the Land.
- The requirements of the notice are Step 1 Cease the residential occupation of the dwellinghouse; Step 2 Demolish the dwellinghouse, carport and garden store; Step 3 Remove from the Land the new internal access road, paving and patio areas, any structures on the paving/patio areas and lights along the access road; Step 4 Remove the internal boundary treatments, gate and brick piers at the access. Remove any landscaping, including shrubs and trees; Step 5 Permanently remove from the Land all materials arising from compliance with the above steps; Step 6 Return the Land to its previous condition, with the sowing of grass seeds.
- The period for compliance with the requirements is Step 1: 3 months; Step 2: 6 months; Step 3: 8 months; Step 4: 8 months; Step 5: 9 months; Step 6: 10 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) (Appeal A only), (d), (f) and (g) 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 Decisions:

Appeal A: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: The appeal is dismissed.

Appeal C: APP/N2739/C/22/3290690

Appeal D: APP/N2739/C/22/3290691

Land east side of Green Lane, Acaster Malbis, York, dwelling adjacent to Laurel Lodge, Airfield Lane, Acaster Selby.

- 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 Mr Simon Armstrong (Appeal C) and Mr Jonathan Hilton Cox (Appeal D) against an enforcement notice issued by Selby District Council.

- The enforcement notice was issued on 9 December 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the carrying out of building and operational development and specifically the erection of a single storey dwelling, access road, creation of hardstanding including patio and paved areas, internal access road, gate and brick pillars, free standing light poles/lamp post and the erection of boundary fencing along with internal fencing on the Land.
- The requirements of the notice are Step 1 Cease the residential occupation of the dwellinghouse; Step 2 Demolish the dwellinghouse; Step 3 Remove from the Land the access road, the new internal access road, paving and patio areas, any structures on the paving/patio areas and lights along the access road; Step 4 Remove the internal boundary treatments, gate and brick piers at the access. Remove any landscaping, including shrubs and trees; Step 5 Permanently remove from the Land all materials arising from compliance with the above steps; Step 6 Return the Land to its previous condition, with the sowing of grass seeds.
- The period for compliance with the requirements is Step 1: 3 months; Step 2: 6 months; Step 3: 8 months; Step 4: 8 months; Step 5: 9 months; Step 6: 10 months.
- The appeals are made on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

1. For the avoidance of doubt, Appeals A and B relate to operations that include the dwelling known as Laurel Lodge; Appeals C and D relate to operations which include the dwelling known as Paddock Lodge.
2. The Council conceded, during the Hearing, that reference to the 'gate and brick pillars' within the Laurel Lodge notice was erroneous. I am satisfied that the relevant wording can be omitted from the alleged breach of planning control and requirements, without resulting in injustice to either main party.
3. At the Hearing, the appellants set out that they considered the access road leading to the dwellings comprised an improvement to an existing road, rather than new development, and that as such it did not require planning permission. I propose to treat this as a 'hidden' ground (c) appeal, that there has not been a breach of planning control, and have duly considered this point below.

Appeals C and D on ground (c)

4. The appeal on ground (c) is that part of the alleged matter does not constitute a breach of planning control. The appellants' ground (c) argument is that they consider the access road to be permitted development on the basis that it constitutes an improvement to an existing track.
5. Part 9 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) allows, amongst other things, for the carrying out of development within the boundaries of an unadopted private way, works required for its maintenance or improvement. At the Hearing, the Council provided some photographs of the site in its original condition, at the time of an earlier application to convert three agricultural buildings there¹. There appears to have been a single width access track leading up to where the dwellings, the subject of the present appeals, are

¹ Application ref 2014/1184/ATD

sited. The track appears to have been finished in tarmac, but is partly overgrown. From my visit it was apparent that whilst the existing access road follows the approximate route of the original track, it is likely to have been made wider. Accordingly I am not persuaded that works have taken place 'within the boundaries' of a private way; rather that there has been a more extensive engineering operation involved in the development of the present access road, which would be outside the limitations of the GPDO. The ground (c) appeals fail.

The appeals on ground (d)

6. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. S171B(1) of the Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'.
7. Therefore in order to succeed on this ground it would be necessary for the appellants to show, on the balance of probability, that the development alleged in the notices had been substantially completed at least 4 years before the notices were issued, that is by 9 December 2017.
8. Undisputed evidence submitted as part of the appellants' statement of case includes Google Earth and ESRI sourced aerial photographs. These images indicate the former piggery buildings in place on the site in July 2017 and the replacement buildings of Laurel Lodge and Paddock Lodge present in May 2018².
9. In support of their case, the appellants have submitted a range of documents, including invoices dated over the period October to December 2017 for various building materials and domestic furniture. Invoices dated September 2017 are also submitted relating to the provision of temporary office and toilet accommodation at the site. It seems to me that this is indicative of building work progressing on the site within this period but does not necessarily mean that work commenced in earnest on the two dwellings as early as September 2017.
10. Photographs are provided, purported to be dated 24 November 2017 (two images) and 5 December 2017, and are claimed to demonstrate that the buildings were substantially completed by this time. One of the earlier photographs comprises a view looking north-westwards and shows all of Laurel Lodge and part of Paddock Lodge, with blockwork walls prior to being rendered. In the foreground the access road and hardstanding area at the front of Laurel Lodge are partially visible, in relation to which finished surfaces appear to be incomplete. The second November photograph appears to show a fitted toilet and shower.
11. The latter image is a view looking south-eastwards, and captures rendering and pantile roof construction on parts of the buildings. However, what appear to be mature deciduous boundary trees are shown to be in-leaf in the background in this image. It seems to me that this serves to cast considerable doubt as to the purported December date of the photograph. By implication this also leads

² Enclosed with letter dated 5 August 2022. The latter image does not, in itself, indicate substantial completion of any of the development.

me to question the veracity of the 'November' photographs. Accordingly I find that these photographs do not, in themselves, weigh in favour of the proposition that the various developments had been substantially completed by the key immunity date. It should also be noted that the purported 5 December 2017 photograph does not feature the car port / garden store, which had not therefore been constructed at the time of that photograph. This was conceded by the appellants during the Hearing.

12. The Council submitted evidence at the Hearing of records and correspondence of building control applications and inspections relating to the two dwellings. These records indicate building control applications being received for Laurel Lodge on 23 November 2017 and for Paddock Lodge on 22 January 2018. Correspondence in relation to Laurel Lodge refers to building control related inspections of excavations on 30 November 2017 and of a partially built wall on 11 December 2017³. With regard to Paddock Lodge, correspondence refers to the first site inspection to discuss works in general as having taken place on 26 January 2018⁴.
13. The appellants questioned the accuracy and efficiency of building control record keeping. However, the application dates would still be consistent with statements on behalf of the appellants that works had not commenced on site on 5 and 10 October 2017 respectively⁵. Even if the applications were delayed and procedures had lagged behind works actually commencing, I have been provided with no sound reason to doubt the veracity of what the records and correspondence say.
14. It was suggested by the appellants that the reference in the building control records to excavations was in connection with drainage rather than building foundations, and that partial completion of a wall was referring to an external wall, rather than those associated with the building. Whilst possible, there is nothing, having regard to the aforementioned considerations, to persuade me that this is a probable scenario. Furthermore I do not consider that invoices for the delivery to the site of materials such as engineering bricks, cement and mortar plasticiser on 27 November 2017, drainage related materials on 13 November, loose sand on 20 November and various timber products on 24 November would be necessarily inconsistent with the aforementioned observations by building control surveyors. The mortar plasticiser may not necessarily have been used, as claimed, in connection with the render system, for example. In addition the invoices for various kitchen related furniture and appliances, dated 9 November 2017, and roof related timber products, dated 25 October 2017, does not show the same to have been fitted at these times.
15. I have given consideration to the invoice provided by Croft Builders and Property Developers Ltd, dated 8 January 2018, which refers to "both plots secure and weather tight, main bathroom fitted and most of kitchen and aga installed"; also to the further letter from the same builder confirming that it is his standard practice to invoice a customer some 6 to 8 weeks after completing works on the site.

³ Email correspondence between the Council and Ask Building Control – dated 16 August 2022.

⁴ Email correspondence between the Council and Ask Building Control – dated 15 and 16 August 2022.

⁵ See application for approval of details reserved by condition in relation to permission 2015/0504/ATD and email dated 10 October 2017 from Wayne Ashcroft.

16. The appellants confirmed at the Hearing that the bathroom and kitchen installation referred to in the invoice was in relation to Laurel Lodge. Clearly this information suggests construction works at Laurel Lodge had reached a very advanced stage by early December 2017 and is therefore anomalous with the building control record, around the same time, referring to a partially built wall. It is also inconsistent with the building control record suggesting that an initial visit to the Paddock Lodge site, to discuss the works generally there, only took place in late January 2018. However, as set out above, I have had reason to question the credibility of the appellants' evidence in this case and for this reason I am inclined to give greater weight to what is indicated by the building control record rather than the building works invoice. It would appear from bank statement records that a number of substantial payments were made to Croft Builders in November and December 2017 and January 2018. However a majority of these payments cannot be related to a specific invoice of works, and in any event this information does not alter my findings.
17. It was apparent from my visit to the site that Laurel Lodge is currently occupied by residents. I would have no reason to doubt that this property is now substantially completed.
18. An internal inspection of Paddock Lodge revealed an absence of internal plastering; also that no internal partition walls had been constructed and the floor surface was unfinished. Whilst pipework, in readiness to connect under floor heating appeared to be in place, any cooking, washing and living accommodation evidently still remains to be provided.
19. I am not therefore persuaded that at this stage Paddock Lodge can be described as fit for habitation. As a matter of fact and degree I consider that building operations remain to be undertaken and as such I find that this building cannot be regarded as substantially completed. The appellants take the view that the only outstanding works required are internal to the building, which would be exempt from the definition of development. Accordingly, in their view, the building can be regarded as substantially completed. However, I am mindful of settled case law in this regard which found that a building could not be regarded as substantially completed for the purposes of s171B(1), even if outstanding works affected only the interior⁶.
20. Drawing the above considerations together, the evidence points to the Laurel Lodge dwelling being substantially completed on the site later than suggested by the appellants, and the Paddock Lodge dwelling not being substantially completed at all. As to the various other developments alleged in the notices, it seems to me there is also insufficient evidence to indicate that they were substantially completed within the requisite time.
21. The appellants have failed to demonstrate, on the balance of probability, that the works alleged in both enforcement notices were substantially completed prior to the key immunity date of 9 December 2017. The ground (d) appeals therefore fail.

⁶ *Sage v SSETR & Maidstone BC* [2003] UKHL 22

Appeal A on ground (a)

Main Issues

22. The main issues are:

- Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
- The effect of the development on the openness of the Green Belt;
- The effect of the development on the character and appearance of the surrounding area.
- Whether the development can be regarded as in a sustainable location.
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Inappropriate development

23. Paragraph 137 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 138 notes that the Green Belt has five purposes, which include safeguarding the countryside from encroachment. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
24. Paragraph 149 states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. It then proceeds to list (and in paragraph 150) exceptional circumstances to this policy position. Policies SP2 and SP3 of the Selby District Core Strategy 2013 (CS) confirm that proposed development in the Green Belt will be considered in accordance with the provisions of the Framework. There is no dispute, however, that the development alleged in the notice would not meet any of the exceptions described, and as such would constitute inappropriate development.

Openness

25. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
26. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect⁷.

⁷ *Turner v SSCLG & East Dorset Council* [2016].

27. In terms of background, the sites subject to the current planning appeals were previously occupied by two piggery buildings, which were the subject of a permission allowing for their conversion to two dwellings⁸. However, the piggery buildings were not converted, but were instead demolished. The appellants explained the reason for this was that as work on the buildings proceeded, the fragility of their condition, which hitherto had been unclear, served to compromise their structural stability.
28. In terms of public viewpoints, the sites are visible from a bridleway (Green Lane) which passes immediately to the west, and also at greater distance from certain limited vantage points, in otherwise dense boundary hedging, along a road to the east. It is clear that the former piggery buildings would have impacted on the openness of the Green Belt, both in spatial and visual terms. The appellants' position is that the retention of the single dwelling, and car port / garden store, proposed in this case, would result in a net reduction both in terms of building area and volume occupied, when compared with the two piggery buildings. By contrast the Council's position is that, although the net reduction in building area and volume is not disputed⁹, because the former piggery buildings were demolished, they should not be regarded as forming the baseline against which the new development is assessed. Rather the new buildings should be regarded as 'new' development on a greenfield site, which results in both spatial and visual harm to openness.
29. Having considered this point, it seems to me that whilst not part of the original plan, and irrespective of whether they could have been saved had greater care been taken, the demolition of the piggery buildings was nevertheless only predicated on the new housing development project proceeding. In other words had it not been for the incentive of the new development, whether through conversion or otherwise, there is nothing to persuade me that the piggery buildings would not still have been in place, and therefore impacting on the openness of the Green Belt. Even if those buildings had been converted, in accordance with the aforementioned permission, that same impact on openness would nevertheless have been sustained.
30. Whilst I acknowledge that the conversion of the original buildings is not a 'fall-back position', I do not consider it to be irrelevant that the principle of two converted dwellings in this location, together with the impacts this would have, was deemed to be acceptable in the context of the GPDO. It therefore seems to me reasonable to take into consideration the positive net effect on openness in spatial terms, resulting from the difference in building footprint and volume between the dwelling and car port /garden store and the former redundant piggery buildings. Furthermore I am not persuaded that the various other alleged developments including hardstanding areas, road, fencing, and light poles, because of their limited scale and volume result in a material impact on openness in spatial terms.
31. The site is visible from the Green Lane bridleway immediately to the west, however from this perspective the impact of the development on openness in visual terms is significantly mitigated by the presence of intervening mature vegetation. Whilst the timber boundary fence appears relatively tall from

⁸ Ref 2015/0504/ATD.

⁹ The Council officer report in relation to application reference 2019/1173/FUL refers to the footprint being 22% smaller and the volume being 7% smaller (para. 5.52).

Green Lane and the upper part of the buildings are visible above this, the existence of very tall mature trees already results in a strong sense of enclosure along this bridleway.

32. The site is visible from a limited number of vantage points and at greater distance from the east. From this perspective I am not persuaded that the various alleged developments result in material visual harm to openness, when compared with the former piggery buildings.
33. Taking the above factors into account I do not consider that the various developments have caused visual harm to the openness of the Green Belt. Furthermore openness would be increased in spatial terms.

Character and Appearance

34. The appeal site is within a relatively flat and open agricultural landscape, interspersed with woodland and boundary hedges. There are, however, sporadic developments relatively nearby, including a truck repair centre and haulage depot to the north-east, an agricultural storage depot to the south-east and a converted dwelling, adjacent to the access road leading to the site. The site immediately adjoins open pasture, divided by ranch style fencing, with the heavily wooded bridleway of Green Lane immediately to the west.
35. I have set out above why I consider comparing the proposed development with the two piggery buildings, in terms of impact on the Green Belt, was justified. Similarly the previous existence of those buildings is relevant to the consideration of impact on character and appearance. I have also had regard to the appellants' Landscape and Visual Impact Assessment.
36. From Green Lane, the pantile roofs of the dwelling and car port / garden store, along with the close boarded boundary fencing are visible at close range. However these views are either significantly screened or filtered by dense and mature tree planting, which serves to mitigate visual and landscape impact. As set out above, the views of the site from the lane to east are intermittent and at considerable distance. From here, views are against a background of mature woodland which helps to absorb and soften the built development in the landscape.
37. When considering the nature, single-storey height, limited scale and relatively simple form of the development, also the various other associated developments targeted by the notice, I do not consider they draw the eye as an unfamiliar or incongruous sight within the surroundings, or that they result in a harmful urbanising impact. Whilst I acknowledge that the dwelling is taller, it nevertheless represents a significant improvement in terms of design quality, when compared to the dilapidated appearance of the previous piggery buildings, with their utilitarian features such as corrugated sheet roofing. I agree that the development could be further assimilated into the landscape by additional planting, which could be achieved through the imposition of planning conditions.
38. I conclude that the development does not result in harm to the character and appearance of the surrounding area, rather in a significant improvement as identified above. Accordingly it would conform with Policies SP18 and SP19 of the CS and with Saved Policy ENV1 of the Selby District Local Plan 2005 insofar

as they seek to secure high quality design and to protect the local distinctiveness of the natural environment.

Sustainable Location

39. Policy SP2 of the CS sets out the Council's spatial development strategy, which is essentially to prioritise new residential development in towns and villages, where it can be supported by a range of services and facilities. New development within the countryside will be strictly controlled and is required to conform with national Green Belt policy.
40. In terms of sustainable travel, it is highly probable that occupiers of the dwelling would be dependent on a private vehicle in order to access everyday services and facilities, in what is a relatively isolated countryside location. I am mindful that the Framework states that subject to certain exceptions, which do not apply in this case, the development of isolated homes in the countryside should be avoided.
41. However, when considering its limited scale and the relative proximity of York to the north (including the potential to use the Park and Ride system), to where travel is likely to be necessary in order to access a full range of services and facilities, it is unlikely that the development would give rise to a significant number or duration of car journeys. In addition, the amount of traffic generated would likely be less than had the former piggery buildings both been converted to dwellings in accordance with the permission granted previously. I also note that the sustainability of the location was not a reason for the Council serving the enforcement notice in this case. I therefore consider that the development, though at odds with the Council's locational strategy for new dwellings and the corresponding part of Policy SP2, would not be significantly harmful in terms of the sustainability of the location.

Other Matters

42. The Council is concerned about the potential for the nearby agricultural storage depot to cause noise disturbance to the residents. It suggests, in the event of the appeal being allowed, the inclusion of a condition to require a noise assessment, which depending on the outcome may mean residents having to change the position of living accommodation in order to help mitigate noise impact.
43. It is apparent that a previous noise assessment (NA) has not been able to capture the impact of the agricultural plant, due to its seasonal nature and limited window of operation. Notwithstanding this, the NA was able to make a comparative analysis by drawing on source measurement data taken from a similar proposed operation at a different site. I note that the NA concluded that an adverse impact would be unlikely on internal spaces, subject to windows being closed and an alternative form of ventilation provided. Further it considers that an adverse impact would be unlikely with regard to external amenity spaces. The agricultural plant operation was not considered to be a barrier to development.
44. I am mindful the Framework sets out that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established, and advises that where an

existing operation could have a significant adverse effect on new development in its vicinity, the new development should be required to provide suitable mitigation.

45. When considering the likely limited duration of the plant being operational and that any potential modifications to the dwelling in order to mitigate noise are likely to focus on the ventilation arrangements, I am satisfied that a planning condition requiring a further noise assessment would be reasonable and proportionate. I note that the appellants raised no objection to the imposition of such a condition.

Green Belt Balance

46. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. With regard to the development I have found harm to the Green Belt by way of inappropriateness. I have also found a degree of harm in terms of the countryside location of the site, though this attracts very limited adverse weight in this case.
47. Nevertheless, I have balanced these harms against my finding that the development results in a net benefit to the openness of the Green Belt, to which I attach significant weight; together with my finding that the development results in a significant improvement to the character and appearance of the surrounding area, to which I also attach significant weight.
48. I find that these positive factors clearly outweigh the harm that I have identified and therefore that the very special circumstances necessary to justify the development have been demonstrated in this case. Consequently it would accord with the Green Belt protection aims of the Framework and with Policies SP2 and SP3 of the CS when read as a whole. The ground (a) appeal therefore succeeds.
49. For the avoidance of doubt, I acknowledge that the appellants put forward other factors which they considered supported the case for the proposed development. Although the development would contribute to the available housing stock within the District, the contribution of a single unit is very minor, and I have not been provided with evidence that there is a shortfall in the supply of housing land. There is no evidence to persuade me that the development would be beneficial in ecological terms or that it would lend any significant support to the local economy. I am not therefore persuaded that these factors would result in any significant material benefits. Accordingly I have not afforded these factors positive weight in favour of the development in this case.

Conditions

50. I have considered the conditions suggested by the Council and discussed at the Hearing. Conditions confirming the loss of the permission unless details are submitted for approval concerning landscaping measures and their implementation, and requiring their replacement if necessary, are needed in order to help safeguard the character and appearance of the area.
51. The form of the landscaping details condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the

development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matter before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

52. A condition is required to confirm the approved plans, for the avoidance of doubt. A condition is required to secure the submission of a report verifying the effectiveness of ground remediation measures, in the interests of environmental protection and the health of residents. In order to protect the living conditions of residents, a condition is needed to require a noise impact assessment of the adjacent agricultural store. Finally a condition withdrawing permitted development rights for domestic extensions and alterations, and for the erection of enclosures, is required in view of the fact that limits to the quantum of development form part of the justification for planning permission in this case.

Appeals C and D on ground (f)

53. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and include remedying the breach of planning control by discontinuing the use of the land or by restoring the land to its condition before the breach took place (s173 (4) (a)).
54. The appellants' appeal on ground (f) is that the steps required are draconian, and that it would be possible to negotiate a less severe alternative scheme that would be acceptable to both parties, for example reducing the size of the building. However there are no details before me for consideration and it is not the purpose of the Hearing to discuss theoretical scenarios.
55. It is undisputed that the building subject to this notice has never been occupied for residential purposes. Accordingly it would be appropriate to omit the requirement to cease residential occupation of the dwellinghouse.
56. The appellants say that the requirement to sow grass seeds is excessive. I am not persuaded that the Council has been able to accurately identify the condition of the land immediately prior to the development. It seems to me that the landowner will be the person with the best knowledge of what that previous condition was, and as such I also propose to amend the requirement in the notice accordingly.
57. The appellants also say that the access road has always been there. Whilst I accept that there appears to have been an original track, I concluded earlier in my decision that it has been further developed. It is this development which is targeted by the notice, and any reinstatement of a lawful access track would be facilitated by the requirement in Step 6.
58. The notice requires the removal of landscaping measures. However such features are not specifically targeted in the breach of planning control, and in

any event I am not persuaded that in their current form they result in any material consequence. I therefore propose to omit the requirement for the removal of landscaping.

59. I am satisfied that the lights along the access road would benefit from the planning permission that I intend to grant in connection with the deemed application, the subject of Appeal A. It would therefore be logical to delete from the notice the requirement to remove them.
60. The ground (f) appeals therefore succeed to this limited extent.
61. However, with these exceptions, given that the purpose of the notice is to remedy the breach of planning control, to require this by the demolition and removal of the various developments and restoring the land to its condition before the breach took place would be in accordance with the Act. To require that does not, therefore, exceed what is necessary and the appeal on this ground must in the main fail.

Appeals C and D on ground (g)

62. The ground of appeal is that the time given to comply with the requirements is too short. The Council has set out a staggered approach to the compliance period for the various requirements. The appellants stated at the Hearing that a minimum period of 12 months should be allowed in relation to each of the requirements, so as to allow for careful demolition and stripping out.
63. However I am mindful that the building subject to these appeals has not been substantially completed, nor has it at any time been occupied for residential purposes. I am not persuaded that a compelling case has been put forward by the appellants that the compliance periods stipulated will not allow sufficient time for the various requirements to be met. The ground (g) appeals therefore fail.

Overall Conclusions

Appeals A and B

64. For the reasons given above, Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The notice will be quashed, and it follows that Appeals A and B on grounds (f) and (g) do not fall to be considered.

Appeals C and D

65. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decisions

Appeal A

66. It is directed that the enforcement notice be corrected by the deletion of the words "gate and brick pillars," in Schedule 3; and
- by the deletion of the words ", gate and brick piers at the access" in Schedule 5 Step 4.
67. Subject to these 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 carrying out of building and operational development and specifically the erection of a single storey dwelling, a car port/ garden store, creation of hardstanding including patio and paved areas, internal access road, free standing light poles/lamp post and the erection of boundary fencing along with internal fencing on the Land east side of Green Lane, Acaster Malbis, York, known as Laurel Lodge, Airfield Lane, Acaster Selby as shown on the plan attached to the notice and subject to the conditions below.

Appeal B

68. The appeal is dismissed, however the enforcement notice is not upheld because of the Appeal A success on ground (a).

Appeals C and D

69. It is directed that the enforcement notice be corrected in Schedule 5 by the deletion of the words "Step 1 Cease the residential occupation of the dwellinghouse"; and
- in Schedule 5 Step 3 by the deletion of the words "and lights along the access road" and by the insertion of the word "and" before the words "any structures"; and
- in Schedule 5 Step 4 by the deletion of the words "Remove any landscaping, including shrubs and trees."; and
- in Schedule 5 Step 6 by the deletion of the words ", with the sowing of grass seeds"; and
- in Schedule 6 by the deletion of the words "Step 1 3 months from the date when the notice takes effect."
70. Subject to the corrections the appeals are dismissed and the enforcement notice is upheld.

R Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1902.02 – ‘Site Plan’; 1902.03 – ‘Dwelling Structure B Elevations’.
- 2) The residential use hereby permitted shall cease and all associated development shall be demolished and / or removed from the land within **six months** of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within **three months** of the date of this decision a scheme for the soft landscaping works including details of the species, location, planting density and stock size on planting of all trees and shrub planting, and details for their management and maintenance, shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation.
 - ii) If within **eleven months** of the date of this decision the local planning authority refuse to approve the landscaping scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State;
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted landscaping scheme shall have been approved by the Secretary of State;
 - iv) The approved landscaping scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 3) Any trees or plants which within a period of 5 years of their implementation die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 4) Within six months of the date of this decision a contamination verification report that demonstrates the effectiveness of the remediation carried out shall be produced and submitted for the approval of the local planning authority.
- 5) Within twelve months of the date of this decision a noise impact assessment of the adjacent potato store, made during its operating phase and including any appropriate mitigation measures required in respect of the development hereby approved, together with their timescale for implementation, shall be submitted for the written approval of the local planning authority. Thereafter any approved mitigation measures shall be implemented in full, in accordance with the approved timescale, and shall be retained for the lifetime of the development.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Schedule 2 Part 1 Classes A, B, C, D, E, F and G or within Schedule 2 Part 2 Classes A and B shall be carried out.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Ms Kim Eastwood	Planning Consultant
Mr Simon Armstrong	Appellant
Mr Jonathan Hilton Cox	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Fiona Ellwood	Principal Planning Officer
Ms Rachel Robinson	Principal Planning Enforcement Officer
Mr Glenn Sharpe	Solicitor

Documents Submitted at the Hearing:

1. Timeline of events (provided by the Council).
2. Screenshots of Building Control administration records.
3. Copies of email correspondence between the Council and Building Control Surveyors.
4. Copies of email correspondence between the Council and Croft Builders.
5. Site visit photographs relating to application 2014/1184/ATD.
6. Council officer report relating to planning application 2019/1173/FUL.
7. Supplementary Council officer report and Committee minute relating to planning application 2019/0124/FUL.
8. Land Registry title plan*.

*submitted after the Hearing