



Appeal Decisions

Hearing held on 18 October 2022

Site visit made on 18 October 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal A Ref: APP/G2713/C/22/3298638

Land at The Airfield, Bagby, North Yorkshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Martin Scott against an enforcement notice issued by Hambleton District Council.
- The notice was issued on 11 April 2022.
- The breach of planning control as alleged in the notice is without planning permission the extension to hangar A and hardstanding adjacent to hangar A.
- The requirements of the notice are:
 - (i) remove the unauthorised extension to Hangar A identified in blue on the plan attached to the enforcement notice.
 - (ii) Remove the hardstanding adjacent to Hangar A identified in green on the plan attached to the enforcement notice.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: 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 Ref: APP/G2713/W/22/3297476

Bagby Airfield, The Airfield, Bagby Village Street, Bagby, Thirsk, North Yorkshire YO7 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Martin Scott against the decision of Hambleton District Council.
- The application Ref 21/00668/FUL, dated 4 March 2021, was refused by notice dated 22 October 2021.
- The development proposed is described as 'retrospective extension to Hangar A and proposed hard standing adjacent to Hangar A'.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal C Ref: APP/G2713/W/22/3297473

Bagby Airfield, The Airfield, Bagby Village Street, Bagby, Thirsk, North Yorkshire YO7 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal is made by Mr Martin Scott against the decision of Hambleton District Council.

- The application Ref 21/01058/FUL, dated 21 April 2021, was refused by notice dated 22 October 2021.
- The development proposed is the retention of two temporary hangars on site for use for aircraft storage and ancillary storage of airfield machinery and equipment for a period of 24 months.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal D Ref: APP/G2713/C/22/3301099

Land at The Airfield, Bagby, North Yorkshire YO7 2PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Martin Scott against an enforcement notice issued by Hambleton District Council.
- The notice was issued on 10 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the laying of approximately 25 metres of concrete on the runway.
- The requirements of the notice are:
 - (i) Remove the concrete and all associated materials from the land.
 - (ii) Reinstate geo-textile matting to the runway.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: 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 E Ref: APP/G2713/W/22/3301098

The Airfield, Bagby Village Street, Bagby, Thirsk, North Yorkshire YO7 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Martin Scott against the decision of Hambleton District Council.
- The application Ref 21/01243/FUL, dated 10 May 2021, was refused by notice dated 22 February 2022.
- The development proposed is described as 'retrospective and proposed concrete alterations to existing runway, reinforced geotextile matting to runway and works to facilitate drainage'.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. In Appeals B, C and E, the Section 78 appeals, the Council referred to policies from the Local Development Framework Development Plan Document Development Policies Adopted 26 February 2008. This has been replaced by the Hambleton Local Plan Adopted February 2022 (the Local Plan). I have therefore had regard to the policies from the adopted development plan in determining the appeals.
 2. The Council confirmed at the Hearing that the reasons for refusal and reasons for issuing the notices are broadly similar. Consequently, since the considerations are the same in each appeal, I have considered the appeals together.
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3. In respect of Appeal B, the decision notice refers to potential harm to the living conditions of the local population arising from the use of the building for aeronautical engineering purposes. This was not given as a reason for issuing the subsequent enforcement notice.
4. At the Hearing the Council confirmed that following their investigation, they concluded that the building was only being used for storage and the appellant confirmed that they only use it as such. Consequently, it was agreed that this reason for refusal falls away.
5. The addresses in the banner headings above and in the decisions, are taken from the application forms and enforcement notices, noting variances.

Validity of Appeal C

6. At the Hearing the Council questioned whether the appeal was valid, since a breach of condition notice had been served prior to the appeal being made. After the event the Council were asked to cite the specific authority which supports this view. The Council referred to Section 78, paragraph 4AA of the Act however, this concerns development in Wales. On this basis there is no reason to conclude that the appeal is invalid.

Environmental Impact Assessment

7. Third parties raised the matter of whether the developments individually or cumulatively constituted EIA¹ development. I asked the main parties for their views. Both confirmed that they do not consider that the developments fall within the scope of the regulations, and in the absence of contrary explanation, I have no reason to take a different view.

Application for costs

8. An application for costs was made by Mr Martin Scott against Hambleton District Council. This application is the subject of a separate Decision.

Appeals A and D on ground (a) and the deemed planning applications and Appeals B, C and E

Main issues

9. Based on the above, the submissions and discussion at the Hearing, the main issues are:
 - Whether there is a requirement for a business plan setting out the operational/functional need for the developments and, if so, whether such a need has been demonstrated.
 - Whether the developments would lead to an increase in use of the airfield such that there would be harm to the living conditions of nearby residents with particular regard to noise and disturbance.

¹ The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Business plan

10. The principal dispute between the main parties is which policy from the Local Plan is relevant to the developments. In this respect the appellant contends that the developments can take support from Policy EG2 of the Local Plan whereas, the Council consider Policy EG7 of the Local Plan to be relevant. In summary the disagreement relates to whether a business plan is required.
11. Policy EG2 of the Local Plan relates to the protection of employment land. Amongst other matters, it states that proposals for the expansion, intensification, upgrading or redevelopment of an existing employment site for employment uses will be supported, provided that adverse environmental and amenity impacts are avoided or minimised to an acceptable level.
12. The Council do not dispute that the site is an employment site however, they contend that it does not constitute an *employment use* for the purposes of Policy EG2 and cannot take support from that policy.
13. The justification to the policy sets out a definition of the term *employment use* and states that *some uses that are referred to in the Use Classes Order as 'sui generis' may as an exception be considered as employment uses*. The appellant contends that the airfield is a sui generis use and I do not disagree. However, such a use is not referred to as sui generis in the Use Classes Order².
14. Since the airfield does not fall within the definition of *employment use*, it cannot take support from this policy.
15. Policy EG7 of the Local Plan relates to businesses in rural areas. The airfield is a business in a rural area. The justification to the policy sets out that the purpose of the policy is to promote a vibrant rural economy and to support businesses with a genuine need to be located in the countryside.
16. There is no dispute between the parties that the developments require a countryside location, in accordance with criterion d of the policy.
17. However, the Council consider a business plan setting out the operational/functional need for the scale of development proposed, as set out in the justification to the policy, should be provided.
18. Unlike the definition of *employment use* discussed above, which is an aid to the interpretation of the policy, the justification in respect of Policy EG7 essentially sets out an additional criterion which proposals must satisfy. However, there is no requirement in the policy itself, for development, which it is accepted, requires a countryside location, to demonstrate an operational/functional need. It would therefore be inappropriate to attach significant weight to that requirement.
19. The Council confirmed at the Hearing, their view that in the absence of a business plan and *viability* [my emphasis] assessment, the developments could result in increased investment, maintenance and operational costs and pressure for relaxation of the controls set out in planning permission reference 16/02240/FUL. The concern being that this could lead to harm to the living conditions of nearby residents.

² The Town and Country Planning (Use Classes) Order 1987 as amended

20. However, even if I were to accept that a business plan is required, the policy nor the justification refer to a viability assessment being part of any such plan and no evidence has been provided to demonstrate a development plan policy justification for requiring one. Consequently, whilst I acknowledge the comments of York Aviation, such comments are based on the perceived requirement for an economic case for the developments, and therefore do not alter my view.
21. Since there is no development plan policy requirement for a viability assessment, the Council's concerns about the potential to result in pressure for relaxation of the controls set out in the permission, are a matter of little weight.
22. Notwithstanding the above, the appellant's addendum to the previous business plan briefly sets out the operational/functional need. In summary, the developments enable safer and more convenient year-round use of the runway, storage of two additional aircraft, and storage of airfield machinery and paraphernalia for a further two years whilst permission 16/02240/FUL is completed.
23. The temporary hangars have already been subject to a temporary permission, granted on appeal. I could see at my visit, they were in use for the storage of machinery, one or two small aircraft and other paraphernalia associated with the use of the airfield.
24. The appellant's explanation for requiring a further 24 months was essentially limited to the need to insulate hangar C1. However, the Council identified no harm in respect of the impact on the character and appearance of the area and I note the previous Inspector's comments that *they do not seriously impinge upon the rural character of the site's surrounds*. There is also no suggestion that they are being used for purposes that cause harm to the living conditions of residents in respect of noise and disturbance.
25. Overall, I find that the developments serve an operational and functional need and since they require a countryside location, accord with Policy EG7 of the Local Plan. Accordingly, there is no conflict with Policies S1 and S5 of the Local Plan which together seek sustainable development which does not harm the character, appearance, and environmental qualities of the area.
26. The developments also accord with the National Planning Policy Framework which states that decisions should enable the sustainable growth and expansion of all types of business in rural areas and which recognises the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time.

Living conditions

27. Along with concerns about viability, the Council in submissions expressed general concerns that the developments could lead to an increase in the number of flights and planning conditions capping the movements are more likely to be reached more often, resulting in greater levels of disturbance.
28. However, the Council acknowledged that provided the airfield operates within the conditions imposed on the permission 16/02240/FUL, there would be no

harm caused to the living conditions of residents in respect of noise and disturbance. This is acknowledged by York Aviation.

29. There is evidently local concern about developments at the airfield, and the Council explained that since the approval in 2019 there have been numerous breaches of planning control, resulting in a number of enforcement and breach of condition notices being issued. However, whilst they told me that the required monitoring system does not work properly, they confirmed there has been no breach in respect of movement (flight) numbers.
30. The appellant explained that the improvements to the runway surfacing were not undertaken with a view to increasing flight numbers, and that the runway was already used in winter, albeit the improvements make its use a more attractive prospect. The appellant also confirmed that the additional aircraft stored in hangar A are new customers.
31. On this basis it is possible that these developments could result in an increase in the number of flights. However, this is a matter over which the Council have some control. Further, in the absence of evidence that the number of movements has exceeded or indeed come close to the number permitted, this is a matter of little weight.

Overall conclusion on the appeals on ground (a) and the S78 appeals

32. For the reasons given above, I conclude that the developments comply with the development plan read as a whole, and the appeals should succeed.

Conditions

33. The Council suggested conditions restricting the use of the extension to hangar A and the temporary hangars to storage, and making the permission for the hangars temporary, which the appellant was agreeable to. The Council did not suggest any conditions in respect of the runway works but at the Hearing confirmed a time limit and plans condition would be sufficient.
34. Conditions restricting the use of the hangars are necessary in the interests of safeguarding the living conditions of local residents and the plans and time limit conditions in the interests of certainty.

Formal Decisions

Appeal A Ref: APP/G2713/C/22/3298638

35. The appeal 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 extension to hangar A and hardstanding adjacent to hangar A at The Airfield, Bagby, North Yorkshire as shown on the plan attached to the notice, subject to the following condition:
 - 1) Hangar A, as shown on drawing 1452-135, shall not be used other than for the purpose of aircraft storage and ancillary maintenance of aircraft for the purposes of keeping aircraft airworthy. No commercial maintenance activities are to be permitted within Hangar A.

Appeal B Ref: APP/G2713/W/22/3297476

36. The appeal is allowed. Planning permission is granted for extension to Hangar A and proposed hard standing adjacent to Hangar A at Bagby Airfield, The Airfield, Bagby Village Street, Bagby, Thirsk, North Yorkshire YO7 2PH, in accordance with the terms of the application, Ref 21/00668/FUL, dated 4 March 2021, subject to the following condition:

- 1) Hangar A, as shown on drawing 1452-135, shall not be used other than for the purpose of aircraft storage and ancillary maintenance of aircraft for the purposes of keeping aircraft airworthy. No commercial maintenance activities are to be permitted within Hangar A.

Appeal C Ref: APP/G2713/W/22/3297473

37. The appeal is allowed. Planning permission is granted for the retention of two temporary hangars on site for use for aircraft storage and ancillary storage of airfield machinery and equipment for a period of 24 months at Bagby Airfield, The Airfield, Bagby Village Street, Bagby, Thirsk, North Yorkshire YO7 2PH, in accordance with the terms of the application, Ref 21/01058/FUL, dated 21 April 2021, subject to the following conditions:

- 1) The temporary hangars permitted shall be for a limited period being the period of 24 months from the date of this decision. At the end of this period the temporary hangars shall be removed, and the land restored to its condition before the development took place.
- 2) The temporary hangars hereby permitted shall only be used for storage purposes associated with the airfield and for no other purpose.

Appeal D Ref: APP/G2713/C/22/3301099

38. The appeal 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 laying of approximately 25 metres of concrete on the runway at The Airfield, Bagby, North Yorkshire YO7 2PH, as shown on the plan attached to the notice.

Appeal E Ref: APP/G2713/W/22/3301098

39. The appeal is allowed. Planning permission is granted for concrete alterations to existing runway, reinforced geotextile matting to runway and works to facilitate drainage at The Airfield, Bagby Village Street, Bagby, Thirsk, North Yorkshire YO7 2PH, in accordance with the terms of the application, Ref 21/01243/FUL, dated 10 May 2021, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, 1452-47 and 1452-48.

APPEARANCES

FOR THE APPELLANT:

Stuart Natkus	Barton Willmore, now Stantec
Ben Brown	Barton Willmore, now Stantec
Martin Scott	

FOR THE LOCAL PLANNING AUTHORITY:

Craig Allison	Hambleton District Council
Anne Rawlinson	Hambleton District Council

INTERESTED PARTIES:

Michael Crick