



Appeal Decisions

Inquiry held on 10-11 August 2022

Site Visit made on 11 August 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2023

Appeal A Ref: APP/W9500/C/21/3272453

Appeal B Ref: APP/W9500/C/21/3272454

Silpho Brow Farm West, Silpho, Scarborough YO13 0JP

- 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 Ms C Edwards (Appeal A) and Ms Lou Smith (Appeal B) against an enforcement notice issued by North York Moors National Park.
- The enforcement notice was issued on 1 March 2021.
- The breach of planning control as alleged in the notice is: without planning permission;
 - (i) The change of use of the Land for the purposes of keeping of horses and ponies and stabling horses and ponies, together with associated storage of items including the storage and or use of a portable building, a caravan, plant, equipment and materials;
 - (ii) The undertaking of unauthorised engineering works to install drainage as shown in images 11 and 12.
- The requirements of the notice are
 - (i) Cease the use of the Land described in paragraph 3(i) above.
 - (ii) Remove from the Land the vehicles, building materials, goods and waste materials as shown in images 1 to 9 inclusive.
 - (iii) Remove the portable building and caravan from the Land as shown in image 7.
 - (iv) Remove the goods that have been stored within the agricultural barn as shown in image 10.
 - (vi) Remove the horses and ponies associated with the use from the Land.
 - (vii) Cease the selling of goods from the Land.
 - (viii) Either:
 - a) Complete the drainage works that have been undertaken, as shown in images 11 and 12 and cover the works over and restore the land to previous levels of grassland, or
 - b) Remove the drainage works that have been undertaken, as shown in images 11 and 12 and restore the land effected to previous levels as grassland.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(b), (c), (d), (a), (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.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal C Ref: APP/W9500/W/20/3262806

Silpho Brow Farm West, Sur Gate, Silpho, Scarborough YO13 0JP

- 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 Ms C Edwards against the decision of North York Moors National Park.
- The application Ref NYM/2019/0431/FL, dated 17 June 2019, was refused by notice dated 14 September 2020.
- The development proposed is: 1. Change of use of agricultural buildings for the purposes of stabling horses and commercial storage in connection with the use of the site as a Horse Rescue and Horse Rehoming Charity. 2. Retention of touring caravan for workers rest room and retention of portacabin for use as workers accommodation. 3 Siting of replacement summerhouse. 4 Gravel surfacing of field entrance to assist with drainage.

Summary of Decision: The appeal is dismissed in part and allowed in part as set out in the Formal Decision below.

Preliminary Matters

1. All evidence at the Inquiry, including that from interested parties, was given under affirmation.
2. The parties have had the opportunity to address the revised National Planning Policy Framework (the Framework) published in July 2021. It is therefore the July 2021 Framework to which I will have regard.
3. Evidence was submitted by the appellants following the close of the Inquiry. The evidence related to submissions in respect of separate legal action in which the appellants are involved in. Opportunity has been given for the North York Moors National Park (the LPA) to comment on that evidence, and I have taken any comments received into account. I am satisfied that the materiality of the evidence to the main issues for the appeals did not justify the reopening of the Inquiry.

The Appeal Site

4. The Land to which the notice relates comprises several buildings including a large building referred to as a barn, adjacent yard areas and with fields directly south of the buildings. In addition, the Land includes a field to the north-west referred to as the 15-acre field.

The Enforcement Notice

5. In respect of the alleged breach, there had been references in written submissions to agricultural use on the Land. However, the parties agreed at the Inquiry that any agricultural use on the Land at the time the notice was issued was not of such a level to comprise a primary use. Thus, the Land was not in a mixed use at the time the notice was issued. There is no need to consider a correction to the alleged breach accordingly.
6. I raised the matter of potentially unclear language within the alleged breach stated in the notice in respect of the phrase "including the storage and or use of a portable building". The allegation should also state a material change of use, as this is the act of development as defined by statute. At the Inquiry the parties agreed that notice should be corrected to make clear that the alleged breach was the material change of use of the Land to use for the purposes of

keeping of horses and ponies and the stabling of horses and ponies, together with the associated storage of items, plant, equipment and materials, and the siting of a portable building and caravan for use as worker accommodation.

7. The appellants indicated that the revised wording was their understanding upon receipt of the notice of what was alleged to have been done. The parties considered no injustice would arise from the correction and I see no reason to conclude otherwise. I am satisfied, therefore, that I can correct the alleged breach accordingly without injustice to either the appellant or the LPA.
8. The plan attached to the notice identifies the farmhouse and its rear garden as part of the Land to which the notice relates. Whilst a photograph attached to the notice shows various items stored in the rear garden of the property, there is no suggestion that the alleged material change of use has taken place on that part of the Land occupied by the house or its garden. Moreover, there is no suggestion that the lawful use of that part of the Land is not residential. I was able to see from my site visit that the house and its rear garden were functionally and physically separable from the remainder of the Land. I will thus correct the plan attached to the notice to omit the house and rear garden from the Land to which the notice relates. I am satisfied I can do so without injustice to the appellants or the LPA.

Appeals A and B on ground (b)

9. An appeal on ground (b) is made on the basis that those matters stated in the enforcement notice as constituting a breach of planning control have not occurred.
10. The notice, as corrected, alleges that there has been a material change of use of the Land to use for the purposes of the keeping of horses and ponies and the stabling of horses and ponies, together with the associated storage of items, plant, equipment and materials, and the siting of a portable building and caravan for use as worker accommodation.
11. The appellants argue that the fields are used for the grazing of horses not the keeping of horses. However, I heard at the Inquiry that horses are trained from time to time within the fields. Moreover, horses do not exclusively graze in the fields as they are fed with cut hay in both fields during winter months. Furthermore, I heard that at an appropriate point during a horse's time on the Land, welfare checks are carried out on them twice a day. The horses are also regularly handled and taken for walks and rides.
12. I also saw from my site visit that part of the large barn building had been given over to stables. The appellant indicated at the Inquiry that horses have been stabled within the barn, along with horse clothing and equipment. As a result, I am satisfied that the primary use of the Land at the date the notice was issued was the keeping and stabling of horses, rather than simply grazing.
13. The appellants also argue that the outdoor storage is related to agricultural use on the Land and the residential use of the dwelling. However, photograph 9 apart, the photographs appended to the enforcement notice show that, amongst other things, large quantities of hay bales were being stored externally on the Land, along with water troughs. The evidence points towards these items being stored in connection with the horse keeping and stabling. Moreover, the appellant accepts that the barn is used for the storage of items

relating to the horse rescue and rehoming charity they operate. Indeed, the photographs attached to the notice depict that was the case at the time just prior to the notice being issued. There are large quantities of boxes within the barn which contain items which it was said are sold off-site to fund the charity.

14. In any event, the alleged breach does not specify external storage only. It specifies associated storage across the Land, which includes the external and internal areas. As such, it is apparent that at the date the notice was issued the Land was also used for storage associated with the horse keeping use. As a result, the evidence leads me to conclude that the alleged breach has occurred as a matter of fact.
15. The appeals on ground (b) therefore fail.

Appeals A and B on ground (c)

16. An appeal on ground (c) is made on the basis that those matters stated in the notice to constitute a breach of planning control, do not constitute a breach of planning control.
17. The appellants' arguments on ground (c) are limited. Nevertheless, it was indicated at the Inquiry that the appellants believe that the alleged use amounts to agriculture and that, since the previous use of the Land was agriculture, no material change of use has taken place.
18. The appellant indicates that the 24 acres was previously used as a farm where cattle and sheep were reared and butchered on site. Such a use would fall within the definition of agriculture set out in section 336(1) of the 1990 Act. It defines agriculture as including, "horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes."
19. The alleged use would not fall within the definition of agriculture under section 336(1) since horses kept on the Land in the manner they are do not fall within the definition of livestock, that being any creature kept for the production of food, wool, skins or fur, of for the purpose of its use in the farming of land. I have set out in the ground (b) appeals why the alleged use does not amount to the use of land as grazing land. Case law has made clear that the keeping of horses which involves activities other than just putting the horses out to graze does not fall within the definition of agriculture.¹
20. In this instance, the Land is in use for keeping horses with the purpose of caring for them and training them before they are eventually rehomed elsewhere. It seems to me that the visual impact of the alleged use is materially different to the previous agricultural use, since the items associated with the alleged use would not ordinarily be found on agricultural land. As a result, I am satisfied that a material change of use has taken place and thus the alleged breach amounts to development under section 55(1) of the 1990 Act. In the absence of any evidence of planning permission having been

¹ *Belmont Farm v MHLG* [1962] 13 P&CR 134

granted for such development, either expressly or via the Town and Country Planning (General Permitted Development) (England) Order 2015, the material change of use element of the alleged breach amounts to a breach of planning control.

21. Turning to the engineering operations element of the breach. I heard at the Inquiry that the works comprised the digging of an open trench close to the field entrance of the 15 acre field. It is said that pipework has been installed and all that is left to be completed is the connection to the highway culvert. It seems to me that those works have involved some element of pre-planning.
22. Moreover, whilst they have not been in this case, the works are ones which generally would be supervised by a person with engineering knowledge. As a result, the drainage works element of the breach amounts to engineering operations and thus development under section 55(1) of the 1990 Act. Since there is no evidence of planning permission having been granted for the works, they amount to a breach of planning control.
23. The appeals on ground (c) therefore fail.

Appeals A and B on ground (d)

24. In an appeal on ground (d), it is necessary for the appellants to demonstrate, on the balance of probabilities, that at the date the notice was issued, no enforcement action could be taken in respect of the breach of planning control stated in the notice as the time for taking enforcement action had expired.
25. In the cases of breaches of planning control involving a material change of use, section 171B(3) of the 1990 Act makes clear that no enforcement action may be taken after the end of the period of ten years beginning with the date on which the material change of use took place. Thus, it is necessary for the appellants to demonstrate that the material change of use of the Land to use for the purposes of keeping of horses and ponies and the stabling of horses and ponies, together with the associated storage of items, plant, equipment and materials, and the siting of a portable building and caravan for use as worker accommodation took place on or before 1 March 2011 and thereafter subsisted without interruption for a period of 10 years.
26. The appellants indicate that horses have been kept by them in the 15 acre field since December 2010. It is also said that the previous owner of the barn used it for the storage of goods which they sold on the internet. Thereafter, the appellants used the barn for the storage of goods associated with the horse rehoming charity before they purchased the Land in 2014. However, evidence of such use is limited. Photographs attached to surveyor's report show storage within the barn. In any event, the report is from 12 September 2014. Thus, it does not evidence storage prior to 1 March 2011.
27. Moreover, little evidence of the extent of use of the 15 acre field for horse keeping has been put to me. One of the appellants' witnesses indicated at the Inquiry that, whilst they recalled use of the field in late 2010, they did not recall how many horses were using it. Neither of the appellants were able to provide clear, unambiguous figures for the number of horses at that time either. Whilst a figure of 6-7 horses was mentioned, the time period for such numbers was vague. The only contemporary evidence before the Inquiry was a photograph provided by an interested party which showed a single horse in a

- snow covered field. The field appears to be the 15 acre field. Whilst the photograph is undated, the appellants say that metadata taken from image puts the date of the photograph as 19 December 2010.
28. Even if that is the case, it still only shows a single horse in the field. I am not satisfied that is sufficient contemporaneous evidence that the use of the Land had materially changed to horse keeping on or before that date. In addition, there is little supporting evidence which demonstrates any horses in the field at that point were being kept rather than solely being grazed.
29. Furthermore, the appellant accepted at the Inquiry that the keeping of horses on the lower fields had been for a period of less than 10 years prior to the notice being issued. It is said that that prior to purchase in 2014, the previous owner allowed a third party to graze sheep on the lower fields for 1-2 years. Thus, the lower fields were in agricultural use in 2014.
30. In order to benefit from immunity, it needs to be demonstrated that the Land as a whole was in use for the keeping and stabling of horses for 10 years or more. Clearly, that is not the case. Even if the barn and the 15 acre field were in use for horse keeping and stabling with associated storage, up until the appellants' purchase in 2014, the Land would have been in use for a mixed use of horse keeping, stabling, storage and agricultural use. As set out above, there has been a material change of use from agriculture to horse keeping and stabling with associated storage. The evidence before me suggests that such a material change of use on the Land as a whole did not take place until after October 2014 at the earliest.
31. I consider, therefore, that the appellants have not demonstrated that the keeping of horses and ponies and the stabling of horses and ponies, together with the associated storage of items, plant, equipment and materials, and the siting of a portable building and caravan for use as worker accommodation took place on or before 1 March 2011 and continued thereafter without interruption for a period of 10 years. That aspect of the breach is not therefore immune from enforcement action.
32. In respect of the engineering operations element of the breach, the relevant time limit under section 171B(1) of the 1990 Act is four years. Nevertheless, the appellant accepted at the Inquiry that the drainage works were not substantially complete on or before 1 March 2017. Thus, that aspect of the breach is not immune from enforcement action.
33. The appeals on ground (d) therefore fail.

Appeal A on ground (a) and Appeal C

Preliminary Matters

34. Retention is not an act of development. I have therefore determined Appeal C on the basis that planning permission is sought for the siting of a touring caravan and portacabin for use as workers accommodation.
35. Whilst it was not part of the development for which the application was originally submitted in respect of Appeal C, the erection of a toilet block was added to the proposed development during the application process. The LPA determined the application on the basis that it included the erection of a toilet block and I have proceeded on the same basis.

36. The description of development in respect of the deemed application for planning permission deriving from the appeal on ground (a) is taken directly from the alleged breach. It is the corrected matters stated in the notice as constituting a breach of planning control on which I shall base my decision on the ground (a) appeal.
37. There is a slight difference between the two developments in Appeal A and Appeal C in that Appeal C also seeks planning permission for a replacement summerhouse and toilet block which do not form part of the matters alleged in the notice in respect of Appeal A. Nevertheless, the two appeals otherwise essentially relate to the same development on the same land and raise the same main issues. I have therefore considered both in the round, albeit drawing separate conclusions and decisions on each.

Main Issues

38. The main issues in both appeals are:

- whether the developments will conserve or enhance the landscape and scenic beauty of the North York Moors National Park; and,
- the effect of the development on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

National Park

39. The appeal site lies within the North York Moors National Park. Paragraph 176 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks which have the highest status of protection in relation to these issues. It goes on to state that the scale and extent of development within National Parks should be limited.
40. Strategic Policy G of the North York Moors National Park Authority Local Plan (July 2020) (the LP) sets out that the high quality, diverse and distinctive landscape of the North York Moors will be conserved and enhanced.
41. The appeal site sits on the crest of the landscape as the valley rises up from the north sea to the east. The landscape here is characterised by wide, far reaching vistas, with a patchwork of agricultural fields punctuated by dense plantations of mature trees. Small clusters of vernacular farmsteads and agricultural buildings are interspersed throughout the landscape.
42. The fields immediately to the south of the buildings of Silpho Brow Farm West exhibit a steep topography, sloping sharply away from the buildings towards a beck. The 15 acres field to the north west continues the sharp trajectory, ceasing only where it meets a dense plantation of mature trees. As a consequence of this topography, the appeal site features prominently in the wider landscape.
43. The LPA raises no concern with the principle of the appeal site being used for the keeping and stabling of horses in connection with a horse rescue charity. The LPA's concerns nevertheless derive from three aspects of the development. They are the external storage of items associated with the use, poaching from the over use of the fields by horses and the drainage excavation works carried out on the 15 acre field.

44. A series of photographs have been provided which exhibit high levels of external storage on the appeal site over a period of several years. The storage has largely comprised vehicles, plant, agricultural equipment, containers, wood, plastic, waste material and various other items. It is undoubtedly clear that during the lifetime of the appellant's ownership, the appeal site has been kept in an untidy condition, which has detrimentally impacted upon the character and appearance of the landscape in which it sits.
45. I saw from my site visit efforts to reduce clutter had been made. A triangular area of land adjacent to the barn has been enclosed by close boarded fencing. Within that land, a significant amount of storage was taking place. Its visual impact was nevertheless limited by the fencing.
46. In the fields adjacent to the farmhouse and barn, I saw several vehicles were being stored. These were largely tractors and trailers along with other items of agricultural plant and machinery. In themselves, such items do not appear unduly out of keeping with the agricultural character of the surrounding landscape. Indeed, I was able to see from my site visit several instances of farms in the wider area where outside storage of tractors and trailers are common.
47. However, the quantity of storage in this instance is significant for a site of this scale. It was indicated at the Inquiry that some of the vehicles and the plant and machinery is used in connection with Mr B Edwards' business which operates off-site. Nevertheless, it was indicated that equipment is regularly bought and sold to facilitate the horse charity, including through the cutting of hay to feed horses during winter months. Furthermore, I was also able to see from my site visit that tyres, timber, pallets and bags of netting were also being stored externally. As such, even at what is said to be significantly reduced levels, I found the level of external storage apparent at my site visit to be beyond that which would be typically found at agricultural premises in the area.
48. I saw that the barn contained a significant quantity of materials, including substantial levels of boxes of household items which it is said are sold online to fund the charity. I was able to see that there is presently little vacant space within the barn for any additional goods to be stored. It was the appellant's evidence that the charity relies on being able to store a certain level of goods in order to be able to ensure a steady income stream for the charity. There is thus the legitimate concern that in order to improve the charity's economic performance, an increase in the level and size level of goods being stored on the site would need to occur. Whilst I accept this may not be the existing ambition of the current owner, circumstances can change and the permission, in any event, runs with the land. Given the lack of available space within the barn, there is the realistic prospect of any future increase in goods resulting in pressure for outside storage.
49. I note the appellants are making efforts to reduce the amount of goods being stored on the site. However, it is evident that the current level of operation is unable to be carried out without relying on a significant amount of material being stored on the site in order to fund the charity. Indeed, that was the evidence of the appellants at the Inquiry where it was clear that storing goods on the site in order to sell is essential to the viability of the charity. The appellant accepted in their evidence that much of the items which are sold are

low value. They therefore need to be sold in large quantities to support the charity.

50. In addition, whilst they have since been removed from the Land, the use facilitated the keeping on the Land of a mobile home and portacabin. I heard that they were provided to offer welfare facilities to those working in the horse keeping business. I note that due to circumstances arising out of the Covid-19 pandemic, the charity does not currently bring volunteers or staff onto the site to support its work. However, there is nothing to prevent that happening in the future. Indeed, the use runs with the land not the operator, and any future operator could require the use of a portacabin and mobile home for welfare use. Whilst they have been removed, as part of the alleged breach of planning control stated in the notice, they form part of the development for which planning permission is sought under the deemed application.
51. The presence of the mobile home and portacabin as existed at the date the notice was issued appeared as intrusive and incongruous features within the landscape. Such items are not a characteristic feature of the surrounding landscape in the agricultural context in which they sit here.
52. As a result, the amount and character of the outside storage associated with the horse use, along with the mobile home and portacabin, is of such a level that it is detrimental to the character and appearance of the landscape. In principle, a condition requiring no outdoor storage or indeed setting an acceptable level of storage would overcome the harm. However, it is clear from the evidence of all parties that the use has been carried out since 2014 relying on using the outdoor spaces for such high levels of storage. I am not satisfied that the appellant has demonstrated that the business can continue to operate sufficiently with much reduced levels of outdoor storage. As such, I find such a condition would not overcome the harm and meet the tests set out in the Framework.
53. The appellant accepts that in the past the Land has not been managed as well as it could have been and that poaching has negatively impacted upon the landscape. Nevertheless, the appellant has provided a Pasture Recovery and Management Plan (PRMP) which it is said they began adhering to in 2021. The PRMP sets out the treatment and reseedling of parts of the Land. The PRMP contains a section on ongoing management which is the key to ensure future landscape impacts from poaching are maintained at acceptable levels. This part of the report states that the plan will be reviewed in Spring 2022 following soil analysis and annually thereafter. No such review is before me.
54. The PRMP goes on to state that each area (of the Land) will receive appropriate management to continue to repair and improve the condition of the Land and also provide suitable grazing. The PRMP does not, however, state what that appropriate management will entail. This was not particularly expanded upon in evidence at the Inquiry. The evidence before me showed that in previous years, the keeping of horses on the Land had resulted in significant churn to the fields, removing much of the grass and weed cover to the detriment of the appearance of the landscape.
55. In the absence of sufficient evidence setting out how the Land will be managed in future years, and thus how the negative landscape and visual impacts of poaching will be managed, I am led to conclude that the developments will

- unduly affect the landscape through the keeping of horses and ponies on the Land.
56. I heard at the Inquiry that the drainage works in the 15 acre field were done to prevent surface water run off onto the highway. An open ditch was therefore dug within the 15 acre field with a pipe installed connecting the ditch to the culvert under the highway. It is also proposed to cover an area of around 12m by 14m in loose gravel on the Land between the ditch and the highway. It is said the drainage works have not been fully connected as the culvert has collapsed and is awaiting repair.
57. I was able to see from my site visit that the open ditch is limited in scale given the context of a field of 15 acres in size. However, the works were clearly visible from the highway and visible through vegetation gaps on the adjacent public right of way. Moreover, the introduction of a significant area of hardstanding in the form of loose gravel would embellish the visibility of the drainage works. Whilst the works have had positive benefits in reducing surface water run-off, they will nevertheless introduce a distinct element of engineered form into an otherwise natural and unspoilt part of the landscape. Whilst in isolation, the landscape harm of the drainage works are limited in their extent, the fact that they have been done to facilitate the use of the Land compound the harmful effects arising from the development overall.
58. I conclude, therefore, in respect of Appeal A that both the use of the Land for the keeping and stabling of horses and ponies with associated storage along with the associated touring caravan and portacabin and the drainage works which have been carried out to facilitate the use of the 15 acre field for the keeping of horses, will result in harm to the character and appearance of the area.
59. As a result, the development in respect of Appeal A fails to preserve the landscape and scenic beauty of the National Park. It thus, conflicts with Strategic Policy A and Strategic Policy C of the LP which seek to conserve the National Park and that development will be supported where it is of high quality design that makes a positive contribution to the local environment. There is also conflict with LP Strategic Policy E and Strategic Policy G which seek to conserve and enhance the natural environment and distinctive landscapes of the North York Moors.
60. Finally, there is conflict with LP Policies B1 and B11 which state that employment or training facilities should not be detrimental to the character and appearance of the landscape and that commercial horse development should have no unacceptable adverse visual impact upon the landscape.
61. Moreover, I conclude in respect of Appeal C that the use of agricultural buildings for the purposes of stabling horses and commercial storage in connection with the use of the site as a Horse Rescue and Horse Rehoming Charity along with the retention of the touring caravan for workers rest room and retention of portacabin for use as workers accommodation and the gravel surfacing of field entrance to assist with drainage results in harm to the character and appearance of the area.
62. The development in respect of Appeal C, insofar as it relates to the material change of use, the siting of the mobile home and portacabin and the drainage works, thus conflicts with Policies SPA, SPC, SPE, SPG, BL1 and BL11 of the LP.

63. I nevertheless consider that the proposed replacement summer house would be physically and functionally separable from the material change of use and associated works. It would measure around 2.2m in height with a width of around 2.25m and a depth of around 3m. Moreover, it would be sited in place of an existing structure. Whilst it would be widely visible in the landscape, it would be read in the context of the house and larger buildings associated with Silpho Brow Farm West. As a result, I am satisfied that it would not appear as an unduly incongruous or obtrusive feature in the landscape.
64. Moreover, I am satisfied that the proposed toilet block would also be physically and functionally separable from the remainder of the development. It would cover a very small footprint in comparison to the existing buildings and located adjacent to the existing barn such that it would be largely screened from public view. In that context, it would not appear unduly harmful to the character and appearance of the area and the wider landscape.
65. I conclude, therefore, in respect of Appeal B, insofar as it relates to the replacement summerhouse and the toilet block, that it would not conflict with Policies SPA, SPC, SPE and SPG of the LP.

Living Conditions

66. The farm house at the appeal site is a semi-detached property which adjoins the dwelling of Silpho Brow Cottage. In addition, a short distance to the north of the appeal site is the property of Silpho Brow Farm East.
67. The LPA's concerns principally derive from the alleged intensification of traffic movements to and from the site as a result of the use. It is said that those increased movements will result in harmful effects on the living conditions of the occupiers of those adjacent properties in terms of noise and disturbance.
68. I heard at the Inquiry that the number of visitors and the frequency of visitors is limited. Horses are taken into the site relatively infrequently, with around 6 horses rehomed at the site every year. People who are rehoming horses from the site are required to visit 3 times before the horses are removed from the site into their care. On average, the movements arising from this activity are thus around 18 trips per year. I agree with the appellant that is a relatively limited number and would not be dissimilar to use of the Land for agriculture or indeed a holiday cottage use as found in neighbouring properties. Moreover, I also heard that the goods sold by the charity is done online or through the charity's shop in Scarborough and thus, there are no visitors to the property to collect goods.
69. As a result, the evidence before me leads me to conclude that the level of traffic movements arising from the developments will not be materially different in frequency and scale to those associated with an agricultural use on the Land. Moreover, it seems to me that, given the physical arrangement of the appeal site in respect of the neighbouring properties, any vehicles associated with the use will not be driven in such close proximity to the neighbouring properties such that levels of noise and disturbance arising from those vehicles would be of a harmful level to the occupiers.
70. I conclude, therefore, that both developments as a whole, in respect of both Appeal A and Appeal C, do not conflict with Policy BL11 insofar as it relates to

the effect of horse related development on neighbouring residents by reason of disturbance.

Other Matters

71. I have considered the detailed evidence raised by the neighbouring resident who gave extensive oral evidence against the developments at the Inquiry. However, given my findings in respect of the main issues above, they do not lead me to any different overall conclusions. In particular, concerns have been raised by both the Local Highway Authority and neighbouring residents regarding the effect of the developments on highway safety. However, again given the harm arising from both appeals to the landscape and scenic beauty of the National Park, a finding either way on highway safety would not change the outcome of the appeals.

Conditions – Appeal C

72. Since I will allow Appeal C and grant planning permission in part for the summerhouse and toilet block, it is necessary to consider whether conditions are necessary to make the development acceptable. Since works to construct the summerhouse and toilet block have not commenced, it is necessary to impose the standard time limit condition. Moreover, it is necessary in the interests of the character and appearance of the area to impose a condition to ensure details of materials are agreed with the LPA. It is also necessary to impose a condition requiring the works to be carried out in accordance with the submitted plans. Finally, it is necessary in the interest of the character and appearance of the area to ensure the summerhouse is only used for residential purposes.

Conclusion on Appeal A on ground (a)

73. Whilst I have found a lack of harm in respect of the living conditions of neighbouring residents, I have found harm in relation to the landscape and scenic beauty of the National Park. That is the prevailing consideration. Consequently, for the reasons given above, and having considered all matters raised, I conclude that the development conflicts with the development plan as a whole and there are no material considerations which suggest a decision should be made other than in accordance with the development plan. As a result, the appeal should be dismissed and the deemed application for planning permission refused.

Conclusion on Appeal C

74. Whilst I have found a lack of harm in respect of the living conditions of neighbouring residents, I have found harm arising to the landscape and scenic beauty of the National Park. As a result, for the reasons given above, and having considered all matters raised, I conclude that the development conflicts with the development plan as a whole and there are no material considerations which suggest a decision should be made other than in accordance with the development plan. Therefore the appeal should be dismissed insofar as it relates to the change of use of agricultural buildings for the purposes of stabling horses and commercial storage in connection with the use of the site as a Horse Rescue and Horse Rehoming Charity, the retention of touring caravan for workers rest room and retention of portacabin for use as workers

accommodation and the gravel surfacing of field entrance to assist with drainage.

75. For the reasons given above, and having considered all matters raised, I conclude that the appeal should be allowed insofar as it relates to the siting of replacement summerhouse and erection of a toilet block.

Appeal A and B on ground (f)

76. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary. Section 173(4) of the 1990 Act sets out that the purpose of an enforcement notice can be (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach.
77. The notice requires the unauthorised use to cease and the removal of vehicles, building materials, goods, waste materials, the portable building, caravan and horses and ponies from the Land, along with the removal or completion of the drainage works. I am satisfied therefore that the purpose for the notice is to remedy the breach of planning control by discontinuing any use of the Land and by restoring the Land to its condition before the breach took place under section 173(4)(a) of the 1990 Act.
78. On that basis, the first requirement to cease the use of the Land for the purposes of keeping of horses and ponies and the stabling of horses and ponies, together with the associated storage of items, plant, equipment and materials, and the siting of a portable building and caravan for use as worker accommodation, does not go beyond what is necessary to remedy the breach.
79. Likewise, requirement iii) to remove the portable building and caravan, requirement iv) to remove the goods stored in the barn and requirement vi) to remove horses and ponies from the Land do not go beyond what is necessary to remedy the breach, since those aspects either comprise elements of the breach or have facilitated the unauthorised use. Nonetheless, I will vary the notice so it requires the removal of the 'items' stored in the agricultural barn rather than goods to ensure consistency with the breach of planning control.
80. Requirement ii) is to remove the vehicles, buildings materials, goods and waste materials shown in the images attached to the notice. I raised two points at the Inquiry with this requirement. Firstly, the breach of planning control does not include reference to vehicles on the Land. It is necessary therefore for all the vehicles shown in the images attached to the notice to have facilitated the unauthorised for the notice to be able to require their removal.
81. At the Inquiry, the LPA suggested that the notice be varied so the allegation omits the blue car shown on image 2 attached to the notice. However, it was clear from the evidence of Mr B Edwards that some of the vehicles were parked on the Land and used for work elsewhere. Thus, it seems to me that the correct way to vary that requirement would be to make clear that only those vehicles shown in the images which have facilitated the unauthorised use are removed. Ultimately, the landowner will be best placed to know what the condition of the land was prior to the breach.
82. Secondly, the notice, as corrected, alleges the storage of plant and equipment associated with the horse keeping and stabling use. However, there is no requirement within the notice to remove associated plant or equipment from

the Land. The LPA argued at the Inquiry that the word vehicles would include plant. However, it seems to me that there is a clear material difference between the definition of plant and the definition of vehicles. This effectively means the LPA has underenforced and that any plant or equipment associated with the unauthorised use can be retained on the Land.

83. The LPA indicated at the Inquiry that the omission of plant or equipment from the requirements was unintentional. Not removing the plant or equipment from the Land would not remedy the breach. The insertion of removal of plant and equipment within the requirements would make the notice more onerous on the appellant. The appellant says that injustice would arise as some plant on the Land is used for ancillary agricultural activities which can be lawfully carried out on the Land. Nevertheless, I am satisfied that a requirement to remove the plant and the equipment from the Land which has facilitated the unauthorised use would not result in injustice to the appellant, since it would ensure that any plant or equipment which has not facilitated the unauthorised use could be retained. Such a requirement is the minimum necessary to remedy the breach. In addition, I will vary the notice to change the reference to goods to items, again to ensure consistency with the breach.
84. Requirement vii) of the notice is to cease the selling of goods from the Land. However, the notice is not directed against a breach of planning control involving the sale of goods from the Land. I heard at the Inquiry that there are no physical sales of goods from the Land. Sales are carried out online and thus goods which are stored on the Land are shipped from the site for sale elsewhere. Moreover, even had the sale of goods been carried out on the Land to facilitate the unauthorised use, the requirement to remove the goods stored in the barn associated with the use would satisfactorily remedy the breach. Such a requirement therefore goes beyond what is necessary to remedy the breach and I will therefore vary the notice to delete it.
85. Finally, the notice requires either the removal of the drainage works or the completion of the drainage works. I raised the point with the parties that a requirement to complete the drainage works would go beyond what is necessary to remedy the breach by restoring the Land to its former condition. Moreover, even if, as the LPA suggested, the purpose of the notice in that respect was to remedy injury to amenity, the notice does not allow for any control over the manner in which the drainage works are completed and thus whether the completion would satisfactorily remedy any injury to amenity. The parties thus agreed at the Inquiry that the requirement to complete the drainage works was excessive and the notice should be varied to delete that requirement. I will also correct the incorrect grammatical use of the word 'effected' as opposed to affected within requirement vii).
86. The appeals on ground (f) succeed to a limited extent.

Appeal A and B on ground (g)

87. An appeal on ground (g) is made on the basis that the time for compliance stated in the notice falls short of what should reasonably be allowed. The notice gives a time period of 6 months. The LPA accepts that the 12 month time period put forward by the appellants would be an appropriate timescale for compliance. I am satisfied that such a timescale would deal with the planning harm with the necessary expediency whilst allowing a more appropriate timescale for the requirements to be undertaken.

88. The appeals on ground (g) therefore succeed.

FORMAL DECISIONS

Appeal A

89. It is directed that the enforcement notice is corrected by:

- the insertion of the word “material” between the words “the” and “change” in section 3(i) of the notice;
- the deletion of the words, “including the storage and or use of a portable building a caravan, plant, equipment and materials” from section 3(i) of the notice and their substitution with the words, “plant, equipment and materials, and the siting of a portable building and caravan for use as worker accommodation”, in section 3(i) of the notice.
- the deletion of the words “in red” from section 2 of the notice and their substitution for the words “and hatched in black”.
- the substitution of the plans annexed to this decision for the plans attached to the enforcement notice; and,

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

- the insertion of the words “plant, equipment” between the words “the” and “vehicles in section 5(ii) of the notice;
- the deletion of the word “goods” and its substitution with the word “items” in section 5(ii) of the notice;
- the insertion of the words, “which have facilitated the use of the Land described in paragraph 3(i) above” after the word “inclusive” in section 5(ii) of the notice;
- the deletion of the word “goods” and its substitution with the word “items in section 5(iv) of the notice;
- the deletion of the words, “cease the selling of goods from the Land” from section 5 of the notice;
- the deletion of the words “Either (a) complete the drainage works that have been undertaken, as shown in images 11 and 12 and cover the works over and restore the land to previous levels as grassland, or” from section 5(vii) of the notice;
- the deletion of the words “6 months” and its substitution with the words “12 months” as the time for compliance in section 6 of the notice;
- the deletion of the word “(b)” from section 5(vii) of the notice; and,
- the deletion of the word “effected” and its substitution with the word “affected” in section 5(vii) of the notice.

91. Subject to the corrections and variations, the appeal is dismissed and 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.

Appeal B

92. It is directed that the enforcement notice is corrected by:

- the insertion of the word "material" between the words "the" and "change" in section 3(i) of the notice;
- the deletion of the words, "including the storage and or use of a portable building a caravan, plant, equipment and materials" from section 3(i) of the notice and their substitution with the words, "plant, equipment and materials, and the siting of a portable building and caravan for use as worker accommodation", in section 3(i) of the notice.
- the deletion of the words "in red" from section 2 of the notice and their substitution for the words "and hatched in black".
- the substitution of the plans annexed to this decision for the plans attached to the enforcement notice; and,

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

- the insertion of the words "plant, equipment" between the words "the" and "vehicles in section 5(ii) of the notice;
- the deletion of the word "goods" and its substitution with the word "items" in section 5(ii) of the notice;
- the insertion of the words, "which have facilitated the use of the Land described in paragraph 3(i) above" after the word "inclusive" in section 5(ii) of the notice;
- the deletion of the word "goods" and its substitution with the word "items in section 5(iv) of the notice;
- the deletion of the words, "cease the selling of goods from the Land" from section 5 of the notice;
- the deletion of the words "Either (a) complete the drainage works that have been undertaken, as shown in images 11 and 12 and cover the works over and restore the land to previous levels as grassland, or" from section 5(vii) of the notice;
- the deletion of the words "6 months" and its substitution with the words "12 months" as the time for compliance in section 6 of the notice;
- the deletion of the word "(b)" from section 5(vii) of the notice; and,
- the deletion of the word "effected" and its substitution with the word "affected" in section 5(vii) of the notice.

94. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Appeal C

95. The appeal is dismissed insofar as it relates to the change of use of agricultural buildings for the purposes of stabling horses and commercial storage in connection with the use of the site as a Horse Rescue and Horse Rehoming Charity, the siting of a touring caravan for workers rest room and siting of a

portacabin for use as workers accommodation, and the gravel surfacing of field entrance to assist with drainage.

96. The appeal is allowed insofar as it relates to the summerhouse and toilet block and planning permission is granted for the siting of a replacement summerhouse and the erection of a toilet block at Silpho Brow Farm West, Sur Gate, Silpho, Scarborough YO13 0JP in accordance with the terms of the application, Ref NYM/2019/0431/FL, dated 17 June 2019, and the plans submitted with it so far as relevant to that part of the development hereby permitted and 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:
 - Proposed Toilet Block WV02 dated 18/11/18;
 - Summer House Plans dated 17/6/19;
 - Drainage Plan dated 18/11/19.
- 3) No development of the summerhouse or toilet block shall take place until details of all external materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 4) The summerhouse hereby approved shall only be used for purposes incidental to the enjoyment of the host dwelling and for no other purpose.

J Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Garry Edwards

He called:

Mr Bill Edwards

Cathy Edwards

Louisa Smith

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Smith

He called:

Mark Hill Dip URP MRTPI
Head of Development Management – NY Moors National Park Authority

Rosie Gee
Enforcement Team Leader – NY Moors National Park Authority

INTERESTED PERSONS:

Mrs Jacqui Shipman	Local Resident
Ms Kay Aitchison	North Yorkshire County Council

DOCUMENTS

- 1 LPA Notification Letter dated 28 June 2022
- 2 LPA Notification List
- 3 LPA Written Response to Inspector Pre-Inquiry Note 2
- 4 Photographs submitted by Mrs Shipman
- 5 Appellant Opening Statement
- 6 Statement of Mr A Martin dated 9 August 2022
- 7 LPA Opening Statement
- 8 Additional Suggested Condition
- 9 LPA View Points for Site Visit
- 10 LPA Closing Submissions
- 11 Appellant Closing Submissions
- 12 Appellant View Points for Site Visit

Plans

These are the plans referred to in my decision dated:10 January 2023

by J Whitfield (BA Hons) DipTP MRTPI

Land at Silpho Brow Farm West, Silpho, Scarborough YO13 0JP

Appeal A Ref: APP/W9500/C/21/3272453

Appeal B Ref: APP/W9500/C/21/3272454

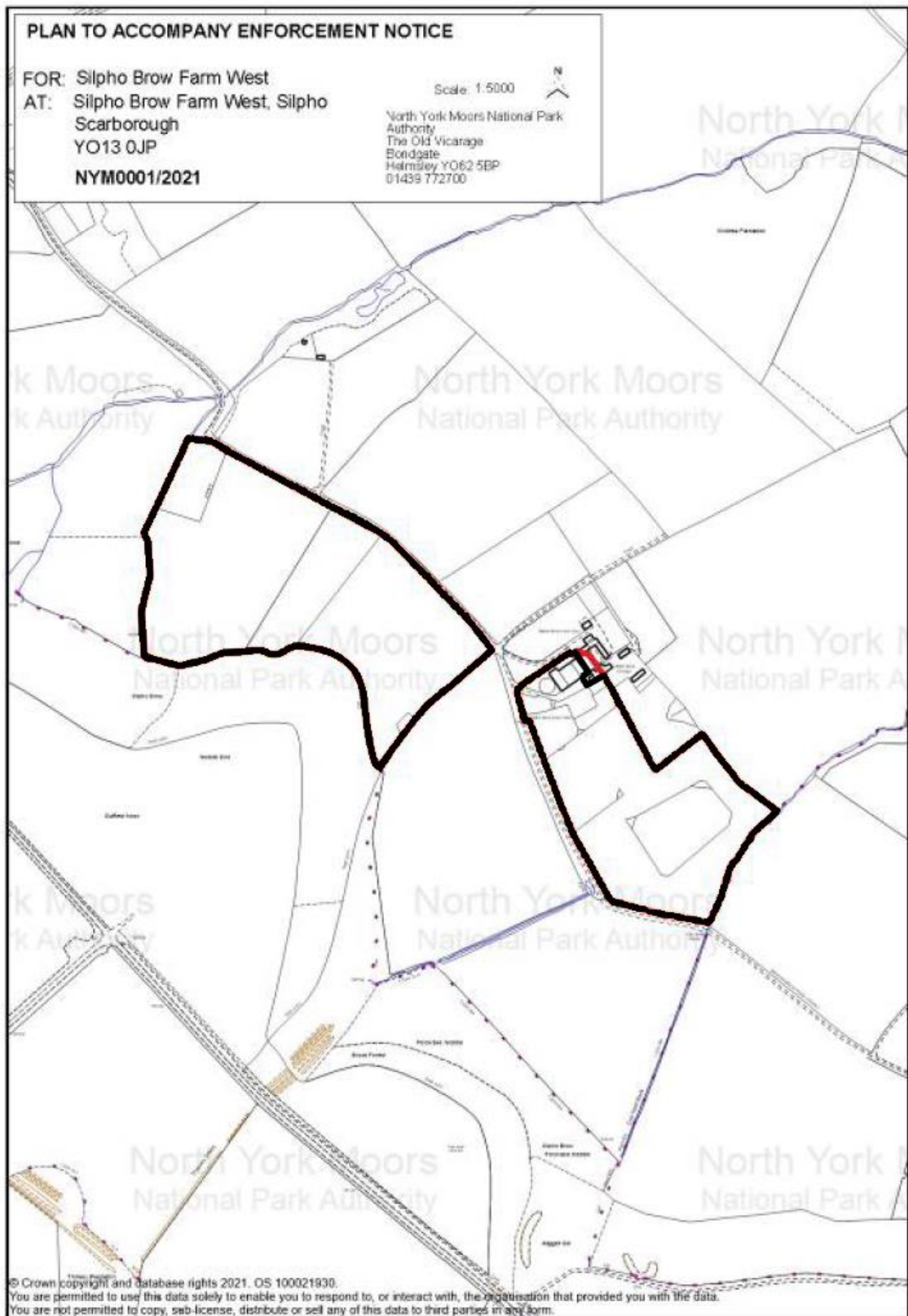
Scale: NTS



Map showing Silpho Brow Farm West, farm and agricultural buildings



Map showing land to the North West of Silpho Brow Farm West



Map to accompany the Enforcement Notice showing both the main farm site and field to the North West where the drainage works have been undertaken.



Numbers on the map relate to the below images.