



Appeal Decisions

Site visit made on 6 March 2023

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal A Ref: APP/G2713/C/22/3299979

Appeal B Ref: APP/G2713/C/22/3299980

Appeal C Ref: APP/G2713/C/22/3299981

**Land at Thorpe Farm, Great Smeaton, Northallerton, North Yorkshire
DL6 2EZ**

- 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 1990 Act as amended).
- The appeals are made by Mr R W Fife (Appeal A), Mrs Marjorie Fife (Appeal B) and Mr Tom Fife (Appeal C) against an enforcement notice issued by Hambleton District Council.
- The notice was issued on 19 April 2022.
- The breach of planning control as alleged in the notice is, without planning permission the engineering operation to create an overflow pond on the Land.
- The requirements of the notice are to: (i) Remove the overflow pond and associated drainage; and (ii) Restore the land to its previous condition.
- The period for compliance with the requirements is: Three months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
- Appeal C is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary Decisions Appeals A, B and C: The appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

1. On the day of my site visit I was unable to access the outdoor amenity space of a house adjacent to the site. However, I am satisfied that I was able to see all I needed to from the site in order to make my decision.

Appeal A: The appeal on ground (a)

2. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the Enforcement Notice (the notice), planning permission ought to be granted.

Background and Main Issue

3. The overflow pond (the pond), that is the subject of the notice, is situated within the farmstead of Thorpe Farm, which is located to the east of the village core of Great Smeaton. The pond is situated to the west of a horse training gallop and adjacent to the outdoor amenity space of three houses.
4. Two retrospective applications for planning permission for an 'overflow pond' were submitted to the Council by the Appellant¹. Both were refused on the grounds of insufficient information.
5. There are ambiguities in the submitted evidence as to the purpose of the pond. Extracts from the Appellant's Planning Statement set out within the Council's evidence, state that the pond is 'required in high intensity events when the drainage scheme within the gallops cannot cope', and that 'there have been events where the pond has failed and led to flooding in the immediate area.'²
6. However, the Appellant's appeal submissions set out that there is no inlet pipe into the pond, but there is an outlet pipe into the property's field drainage system. This is stated to be a 'fully tried and tested self-efficient system' which is an integral part of the gallop, and in the unlikely event that there is surplus water from the gallop drainage, it will 'feed into the existing field drains which run south-north away from the adjacent land.'³ On this basis, the Appellant contests that the pond has no direct impact on any adjacent land and that it is now an amenity feature, which they seek to retain.
7. Notwithstanding this, bearing in mind the 'matters stated in the notice', in determining the appeal I am required to assess whether planning permission ought to be granted for the engineering operation to create an overflow pond on the Land.
8. In the context of the above and cognisant of the Council's reasons for issuing the notice, I consider the main issue to be, whether it has been demonstrated that the overflow pond is adequate to manage and mitigate any flood risk, having regard to the drainage characteristics of the site and the proximity of outdoor amenity space of adjacent houses.

Reasons

9. Evidence submitted by the Council illustrates that the land in the approximate area of the pond has a medium risk of surface water flooding⁴. In addition, a representation has been made by the occupants of one of the adjacent houses, declaring that their garden regularly floods because the pond is unable to cope with the amount of water it receives from the drainage system.
10. At the time of my site visit, I noted that the water level within the pond was slightly lower than the immediately surrounding land, and that the land was rather muddy, but not waterlogged or flooded. In addition, the Appellant highlighted surface water flooding on land located to the north of the site which

¹ Application Ref: 20/02148/FUL, Retrospective application for the digging of an overflow pond, refused 3 June 2021; and Application Ref: 21/03019/FUL, Revised application for retention of an overflow pond, refused 4 March 2022.

² Para 5.2 in the Officer's Enforcement Report Case Ref: 20/00009/CAT3; and para 6.10 in the Council's Appeal Statement.

³ Email dated 22 August 2022 from Appellant responding to the Council's Appeal Statement.

⁴ Map extracted from Environment Agencies website demonstrating Surface Water Flood Risk in the general area of Thorpe Farm.

is outwith their ownership. However, I am mindful that this is one point in time and is not necessarily representative of the conditions of the site and surrounding land at different times of the week, month or year.

11. I acknowledge the Appellant's conviction in declaring that the development has no direct or detrimental impact on the drainage characteristics or flooding of the site or adjacent land; and that any flooding of this land has been caused over many years by water coming from village drains to the west. However, no corroborative information has been provided as part of the appeal in this regard, with the Appellant's appeal submissions consisting of a short statement in the appeal form and rebuttals to the Council's appeal statement and the representation by an interested party.
12. Whilst it may be the case that extensive written and photographic evidence has been submitted previously to the Council including, what the Appellant states to be, 'trusted and unbiased local knowledge and specialist comments from a professional drainage contractor', none of the information cited has been put before me.
13. Appeal decisions must flow from the evidence submitted by the parties, and not from any external source. Generally, it is the responsibility of the parties to put relevant arguments and information before the Inspector to enable a balanced decision to be made.
14. The lack of any independent and robust drainage survey of the site and surrounding land along with the deficiency of any information which supports the Appellant's claims, wholly restricts the ability to undertake an accurate and informed appraisal of the development. As such, I cannot be certain that the overflow pond is adequate to manage and mitigate any flood risk within the site or surrounding land.
15. The removal of the inlet pipe to the pond and installation of an outlet pipe which runs to the established field drainage system of the gallop, appears to have been carried out following the submission of the appeal. I note the Appellant's assertion that, following this, there have been no instances of any excessive run-off or flooding. However, again, no robust corroborative evidence to demonstrate this has been provided.
16. I recognise that the evidence submitted by the Council and the interested party as part of the appeal is similarly limited in demonstrating their allegations of the instances of flooding at and around the site. However, aware of the potentially adverse consequences of allowing the development prior to it being confirmed that the pond is adequate to manage and mitigate any flood risk in the area, I am inclined to take a precautionary approach.
17. Any contribution that the pond makes to the local wildlife or the environmental qualities of the area have not been substantiated. Moreover, that the pond may now be considered as an amenity feature, which is sited in an inconspicuous location and is assimilating into the landscape, does not justify the development. As such, these matters carry little weight in support of the appeal.
18. Drawing the above together, as a matter of fact and degree, I conclude that it has not been demonstrated that the overflow pond is adequate to manage and mitigate any flood risk, having regard to the drainage characteristics of the site

and the proximity of outdoor amenity space of adjacent houses. As such, the development fails to meet Policy RM2 of the Hambleton Local Plan, adopted February 2022 (the HLP) which, amongst other things, requires flood risk to be considered for all development commensurate with the scale and impact of the proposed development and mitigated where appropriate. It also has the potential to conflict with Policy E2 of the HLP, in so far as it requires that all proposals provide and maintain a high standard of amenity for users of neighbouring land and buildings.

Conclusion on appeal on ground (a)

19. The appeal scheme conflicts with the development plan as a whole. There are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan. I therefore conclude that planning permission ought not to be granted for the matters stated in the notice. Accordingly, the appeal on ground (a) fails.

Appeals A, B and C: The appeals on ground (f)

20. The appeals on ground (f) are that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
21. When an appeal is made on ground (f), the starting point is to identify the purposes of the notice. Section 173(4) of the 1990 Act as amended sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
22. In this case, the requirements of the notice are to: (i) remove the overflow pond and associated drainage; and ii) restore the land to its previous condition. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred by restoring the land to its condition before the breach took place.
23. I note the Appellant's assertions that the flooding of adjacent land alleged by the Council and an interested party is not caused by the pond; that the pond has now become an amenity feature and an asset to local flora and fauna; and that filling the pond in will serve no logical purpose. However, the remit of an appeal on ground (f) is to determine whether the steps required by the notice to be taken exceed what is necessary to remedy the breach. The planning merits of the pond have been considered as part of the appeal on ground (a), and I have concluded that it has not been demonstrated that the overflow pond is adequate to manage and mitigate any flood risk.
24. In determining the appeals on ground (f), I have considered whether there is any 'obvious alternative' or 'lesser step' which would achieve the purposes of the notice with less cost and disruption. In this regard, I have assessed whether the, already implemented, removal of the inlet pipe to the pond and the connection of an outlet pipe to the existing field drains, achieves the purposes of the notice.

25. However, it is 'the engineering operation to create an overflow pond on the Land' that constitutes the alleged breach of planning control. Anything less than removing it and the associated drainage from the land would not remedy the breach and restore the land to its condition before the breach took place.
26. Therefore, I conclude that the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control, but are proportionate given the purpose of the notice. Accordingly, the appeal on ground (f) fails.

Conclusions Appeals A, B and C

27. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions Appeals A, B and C

28. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

F Cullen

INSPECTOR