



Appeal Decision

Site visit made on 8 November 2023

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Levelling Up Housing and Communities

Decision date: 22 November 2023

Appeal Ref: APP/C2741/C/23/3316437

Land to west of No 2 Scoreby Lane, York YO41 1NP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Nicola Mandle against an enforcement notice EN issued by the York City Council (LPA).
 - The enforcement notice, reference LCS1.3813, was issued on 5 January 2023.
 - The breach of planning control as alleged in the notice is as follows:
Erection of 2 timber buildings in the approximate positions shown marked 'Building 1' and 'Building 2' on the attached plan.
 - The requirements of the notice are as follows:
 - Permanently remove the said 2 buildings from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal was made on ground (b) only as set out in section 174(2) 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 as amended have lapsed. See matters of clarification below.
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Decision

1. The Appeal is allowed. See formal Decision below.

Matters of clarification

2. As indicated above the appeal was made on ground (b) only. However, the Appellant's arguments amount to an appeal on ground (c) since it is contended that the two 'buildings' (the stables) constitute permitted development. It is stressed that the stables are set on 'skids' which means that they are mobile structures and are able to be moved around on the Appellant's land and do not require of planning permission.

3. I have, therefore, dealt with the appeal on the basis that the grounds of appeal are (b) and (c) and in doing so I am satisfied that no injustice will be caused to the appellant, the LPA or any other person. In any case, the LPA contends that planning permission is required for the two stables and thus their position also amounts to arguments on ground (c).

Background information

The Appeal site and the Planning History

4. The appeal site is located to the west of Stamford Bridge, approximately 8 miles from the centre of York and within the general extent of the York Green Belt. The

two cottages on Scoreby Lane lie just to the south of the A166, York to Bridlington road. The free-standing stable units are set at right angles to each other and are located in the north-east corner of the field, which lies immediately to the west and south-west of the Appellant's property at No 2. Scoreby Cottages. There is a narrow tree plantation between the northern boundary of the field and the A166. Scoreby Farmhouse and Hendwick Hall are located to the south-west,

5. In 2000 an application for the erection of a stables and store and the creation of an access track was refused planning permission. More recently, in 2021, another application for the erection of a stable block, an associated yard area and access track was also refused planning permission and an appeal against the decision was dismissed (APP/C2741/W/3283872).

6. The proposal at that time was for a much larger L-shaped stable building, with a concrete forecourt and access track from the field gate to the concreted area. Having seen the details of this application and the previous Inspector's decision, I share his and the Council's concerns about the effects that the development would have had on the openness of the Green Belt, and the character and appearance of the locality.

7. However, the appeal scheme now before me is much smaller. There is no access track; no concrete hardstanding; no drainage system; and no permanent fencing. The stables are proprietary free-standing units, as opposed to a custom-designed stable block and the fencing around the two stables is temporary comprising simple metal poles and ropes/wires.

8. The notice was issued following a complaint to the Council. An Enforcement Officer visited the site and was shown by the Appellant that the two units were on 'Skids' and 'could be moved'. The Appellant states that she was not sure how often the mobile stables would need to be moved around the site.

9. The LPA indicates that it wrote to the Appellant on 8th August 2022, pointing out that the structures were, in their view, a considerable size. They advised that the authority considered that they would be classed as permanent buildings, if they remained on the land, in the same location, for longer than a 28-day period. The Council considered that the stables were not mobile and, because their position remained the same, considered it expedient to issue the enforcement notice.

10. The allegation set out in the notice is the '*Erection of 2 timber buildings in the approximate positions shown marked 'Building 1' and 'Building 2' on the attached plan*'. It is evident, therefore that the Council considers that operational development has taken place without the benefit of planning permission and that permission is required for the two stables. Clearly the Appellant disputes this and I now turn to the two grounds of appeal.

The Appeal on ground (b)

11. To be successful on this ground it must be shown that what is alleged in the EN has not occurred as a matter of fact. This is different to contending that what is alleged in the EN does not constitute a breach of control.

12. There is no dispute that the Appellant has erected two timber stables in the north-east corner of the field adjacent to the 2 cottages. I saw and inspected them closely during my site visit. It is clear therefore that, irrespective of whether the development carried out constitutes a breach of planning control, as a matter of

fact the allegation as set out in the EN has occurred. It follows that the appeal cannot succeed on ground (b) and I now turn to the ground (c) arguments.

The Appeal on ground (c)

Introduction

13. The Appellant's case is that planning permission is not required for the two proprietary free-standing mobile stable units because they are on 'skids' and are completely moveable and are not permanently fixed to the land. It is contended that the issuing of the enforcement notice is '*completely unfair*' and not necessary. It is stressed that the stables were purchased as mobile stables and that they are being used as such. It is also indicated that the Appellant is willing to move them around the field '*as frequently as required under the legislation*' and that '*all she was waiting for was for the LPA to confirm what that frequency needed to be*'.

14. The Council's case is that, due to their size, design, and permanence, the two stables are buildings which fall within the definition of operational development contained in Section 55(1) of The Town and Country Planning Act 1990 (as amended). It is considered that they constitute inappropriate development within the Green Belt and that the very special circumstances required for development in the Green Belt do not exist in this case.

15. At this point I need to stress that the Appellant has not made an appeal on ground (a): that is, that planning permission should be granted for the works as carried out. I am not, therefore considering the planning merits (as did the previous Inspector) and whether planning permission should be granted. I am only empowered to consider whether a breach of planning control has occurred and thus whether planning permission is required for the two stable units.

Reasons

16. In enforcement cases there are often disputes as to whether a 'moveable' or 'temporary' structure is a building. The Courts have held that this is a matter of fact and degree based on the specific circumstances of each case. The two relevant case law authorities are '*Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385*, endorsed by the Court of Appeal in '*Skerritts of Nottingham Ltd v SSETR (No.2 [2000] 2 PLR 102*'. Three primary factors are identified as being decisive of what constitutes a 'building'. These are 'size', 'permanence' and 'physical attachment'.

17. In considering 'size', as well as taking into account the physical dimensions of the structure(s), there is also the question of whether or not they had been brought to site either partially constructed, or in full in a completed state. There is no firm evidence either way, but it is normal for proprietary mobile shelters or stables to be delivered more or less fully assembled.

18. In this case there are two separate units, but they are of the same manufacture and are both on the usual 'skids' associated with temporary and/or mobile field structures. I acknowledge that the Council may be concerned about the combined size of the units and the manner in which they have been laid out.

19. However, the two units could well have been separated and placed in different parts of the field and the Appellant has indicated a willingness to move them around. They are also much smaller than the stable block which was the subject of the previous appeal and are not set within a concreted compound within the field.

20. On balance I do not consider that the combined size of the units (even in this particular location within the Green Belt) can be decisive in determining that the stable units are 'buildings', and, therefore, operational development in accordance with Section 55 of the Act. The fact that a building contractor would not have been required to construct the prefabricated stables on site reinforces my view that the first test must lie in the Appellant's favour.

21. Turning to the second test of 'permanence' it is evident that the stable units have not been moved from where they were originally placed within the field. This has led to one of the reasons why the Council considers that they are permanent fixtures. However, the question is whether they were capable of being easily moved, after a short time of being placed in their original position, and how easily moveable they are today. It should also be noted that 'permanence' does not necessarily connote that the state of affairs is to continue forever, or indefinitely.

22. Having seen the stables positioned within the field, as a matter of fact and degree, I consider that the units are capable of being moved quite easily. They are on the proprietary metal skids and have not been placed on any firm foundations. Each could be moved separately. What has been referred to by the Council as a hardstanding is simply rubber matting. During my site visit a section of this was lifted to show the compacted earth of the field immediately below.

23. In conclusion on this second test, I consider as a matter of fact and degree, that, although the Appellant has so far retained the units in their original positions, it has been demonstrated that they are moveable and not permanent structures on the land. I therefore find in her favour on this second test.

24. The third test relates to physical attachment and, in particular, how the units are fixed to the ground. Again, during my site visit, I noted the metal pins which were fixed to the bottom timber sections of the stable units. These went some way into the ground to help to hold the units in place and are a noticeable means of fixing the units to the ground.

25. However, in my view, these metal pins amount to no more than the equivalent of 'tent pegs'. Clearly, in combination with the weight of the units, these metal pins will assist in stabilising the stables during heavy winds, but one cannot be certain that the units could not be moved by a gale force wind.

26. The stables are not fixed to any solid base and do not have the foundations which would be necessary for a permanent structure. They are not attached to any services and the only physical change caused by the stables to the land itself is that the grass has disappeared, and the earth base has been compacted below the rubber mats. This is also the case in the areas immediately outside of the stable units. This lack of change to the finished surface of the land reinforces my view that the units are mobile, rather permanent structures on the land.

27. I have noted the Council's references to the drainage of the stable units via gutters and downpipes. It is contended that the stables are '*connected to fixed drainage which is an engineering operation that has been incorporated into the ground in this location to drain the 2 stables in a permanent fashion*'.

28. However, having inspected this aspect of the works during my site visit I completely disagree with the Council's interpretation of this part of the works carried out. I accept that there are gutters and downpipes fixed to the buildings and that this results in water being taken off the roofs. But, on site, I noted that

where the downpipe spouts meet the ground, the water is simply poured onto the land below the rubber matting and is not attached to any field drainage system.

29. There is no 'fixed drainage' in the ground and no sign of any engineering works to facilitate the drainage. The only fixed components, relating to the water run-off from the roofs of the stables, are the gutters and downpipes and these can hardly be described as an engineering operation. They are simply building materials attached to the mobile stable units in order to direct water away from the roof and onto the adjacent ground. They will continue to perform this function wherever they might be placed within the field and without being connected to any drainage system.

30. In conclusion, therefore, I also find in the Appellant's favour with regard to the third test and it follows that I consider that the two stable units do not constitute development which requires planning permission.

31. As a matter of fact and degree, I consider that they are clearly temporary and moveable structures. It follows that, in my view, there has not been a contravention of planning control and that the appeal must succeed on ground (c).

Other Matters

32. Due to the planning history of the site, to a certain extent I can understand why the Council considers that the long-term intention and aspiration of the Appellant is to have permanent stabling close to her residential property.

33. The stables are in roughly the same position as the proposed larger stable which was refused on appeal. Furthermore, as indicated above, they have not been moved from their original position. In fact, had they been moved to another position, the Council may have been convinced of their movability and may have decided that it was not expedient to issue an enforcement notice.

34. The Appellant appears to have been waiting for the Council to suggest an appropriate location, as well as informing her how often they might need to be moved. However, following the Council's letter of 8 August 2022, the fact that the stable units remained where they were led the Council to conclude, albeit incorrectly, that the stables were 'buildings' which required planning permission.

35. Between the date of the letter and the issue of the enforcement notice there was a period of just short of 5 months which would have given more than adequate time for the stables to be moved, either just a few metres from their current position or out into the open field. The latter position would have made the units more obvious within this part of the Green Belt but nevertheless, planning permission would not have been required.

36. Finally, I do not accept the Council's contention that *'the fact that the stables feature skids so they could be moved is simply a tactic to sidestep the previous refusals of planning permission and appeal decision'*. I have concluded above that the two units are genuinely moveable and do not require planning permission. They can be moved anywhere within the field, albeit they are well screened by the tree plantation where they are. The fact that they have not been moved does not alter the situation or my conclusions that planning permission is not required for the two free-standing mobile stable units.

37. I have noted that a local Councillor and the Parish Council are in support of the Appellant. They should be in good positions to judge any physical impact of the two

stables, even though the planning merits are not relevant in an appeal where only legal grounds are pleaded. Apart from the original complaint to the Council, I have not been referred to any other objections to the use of the two moveable stable units within this part of the Green Belt.

Formal Decision

38. The appeal succeeds and is allowed on ground (c). The enforcement notice issued on 5 January 2023, relating to land to the west of No 2 Scoreby Lane Cottage, York YO41 1NP is quashed.

Anthony J Wharton

Inspector