



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 15th April 2024

Appeal Ref: APP/Q9495/C/23/3318704

Land on the north side of the A66, Troutbeck, Penrith CA11 0SH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Roger Savage against an enforcement notice issued by Lake District National Park Authority.
 - The notice was issued on 9 February 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, a material change of use of the Land, and the building erected on the land, from use as agriculture, to use as an aerodrome for the landing and taking off of light aircraft, and for agriculture.
 - The requirements of the notice are to:
 - i. Discontinue the use of the Land and the building as an aerodrome for the landing and taking off of light aircraft, and for any associated activities; and
 - ii. Remove from the land all light aircraft, landing strip delineation markers, wind socks and picnic tables and any other items associated with the landing and taking off of light aircraft.The term 'light aircraft' includes all aircraft, helicopters, gyrocopters, gyroplanes and microlights.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

The appeal on ground (a)

2. The appellant initially made this appeal on ground (a) as well as (d), with (a) being that planning permission ought to be granted for what is alleged. He paid the requisite fee for me to consider the deemed planning application.
3. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the Regulations) require the carrying out of an environmental impact assessment (EIA) process for 'EIA development' before planning permission is granted. 'EIA development' includes development described in Schedule 2 to the Regulations which is likely to have significant effects on the environment.
4. Where an appeal is made against an enforcement notice, and it appears to the Secretary of State that the alleged development comprises or includes 'Schedule 2 development', Regulation 40 requires that the Secretary of State must make a screening direction. If insufficient information has been provided to enable that work, the Secretary of State may request, by way of notice to the appellant, the submission of specified additional information.

5. The Planning Inspectorate wrote to the appellant on 12 May 2023 stating that the alleged development falls within the description at paragraph 10(e) of Schedule 2, namely the construction of airfields, but insufficient information had been provided for a screening direction as to whether the notice concerns EIA development. The appellant failed to provide the information requested within the deadline given and so, in accordance with Regulation 40(10), the appeal on ground (a) lapsed. It follows that I cannot consider the planning merits of the alleged development.

The site and its planning history

6. The site subject to the enforcement notice includes an airstrip and grassland, plus a building which was constructed for agricultural use but is now partially used as an aerodrome. The surrounding landscape is dominated by agricultural uses and characterised by improved pasture and meadow.
7. The appellant applied in 2021 for a Lawful Development Certificate (LDC) for 'Use [of the site] as an aerodrome for the landing and take-off of light aircraft and for agriculture' at the appeal site. The application was refused and an appeal (ref: APP/Q9495/X/21/3274261) against that decision by the National Park Authority (NPA) was subsequently dismissed.
8. The '2021 appeal' decision letter is a material consideration to this case, insofar as the basis on which the appellant sought an LDC is relevant to his enforcement appeal on ground (d). However, I am not bound to make the same decision as the previous Inspector. I have taken account of all the evidence before me, some of which was not submitted or available in 2021.

The appeal on ground (d)

9. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters alleged. This is a 'legal' ground of appeal where the onus is on the appellant to make their case on the balance of probabilities.
10. The time limits for taking enforcement action are set out in s171B of the Town and Country Planning Act 1990 (the Act). In the case of development comprising the material change of use of land or a building to a mixed use as alleged, no enforcement action may be taken after the end of ten years beginning with the date of the breach. It is necessary for the appellant to show that the alleged material change of use had taken place by no later than 9 February 2013, and that the mixed use had been carried out for a period of ten years without significant interruption when the notice was issued.
11. When looking at the continuity of any land use, the general rule is that any interruptions during the ten year period should be considered on a fact and degree basis. A short suspension in activity, perhaps during a period of illness will not usually be fatal to a ground (d) appeal, and the same applies if there are non-material fluctuations in the scale of a use. However, any significant break in the continuity of a use can serve to stop the clock so that, when the use is resumed, the developer is back at day one in the ten year period.
12. Before I look at the evidence in this case, I recognise that the use of a private field as an aerodrome – alongside agriculture – would be unlikely to involve the constant landing and taking off of light aircraft. However, the appellant's case that the alleged mixed use is 'immune' from enforcement action is predicated

on there having been a material change of use in the first place. The appellant will need to show when the use was introduced on a significant scale, and that it continued to be significant as a matter of fact and degree.

Evidence of the use

13. The appellant states that the aerodrome use was commenced in 2009, but its use was relatively low-key at that time. Indeed, the appellant's aviation activities may then have largely comprised 'touch and go' training for gyroscopes flown from the airfield nearby at Berrier. However, since activities at Berrier had a greater impact on local residents, the appellant began to use the appeal site as a satellite for practice take offs and landings, low flying exercises and engine failure.
14. The appellant suggests that the earliest entry in his annual flight logs dates from 16 January 2012 and that is more than ten years before the notice was issued. However, the appellant has chosen not to submit copies of his logs which might have shown when and how often any light aircraft were taken off or landed. There is information before me of 32 aircraft visiting the site between May and December 2019, and 150 flights in and out during the whole of 2020. But that does not make it probable that the alleged mixed use took place for any continuous ten year period.
15. Users of the airfield submitted 16 letters to the NPA in support of the 2021 LDC application; the authors describe use of the land for the landing and take-off of aircraft, and comment on the location of and facilities at the site. Three of the letters refer to using the land since 2010 and another to its use over the last decade. Similarly, an RAF Training Officer wrote expressing appreciation of 'the regular use of Troutbeck airfield over the last 5 years'. Taken individually or collectively, however, the letters again do not show that the alleged mixed use has probably taken place for a ten year period without significant interruption.
16. Moreover, the NPA did not become aware of the unauthorised mixed use until 2019, even though they had determined three applications relating to the site or adjacent land between 2014 and 2018. The NPA was alerted to the use from a complaint which, alongside the flight records, indicates a significant increase in aeronautical activity at the appeal site from 2019 onwards.
17. I accept the appellant's evidence that during the coronavirus pandemic, even though the commercial element of the use had to be curtailed at that time, he then continued to fly from the site in a private capacity. I also accept that the alleged aerodrome use would naturally be carried out to a lesser extent in the dark winter months, and there could be breaks at any time for weather and ground conditions. However, that a use of this kind would be expected to fluctuate is more, not less reason, for the appellant to give details of the actual activity. As it stands, the appellant has not given precise information as to when the site was used for the landing and taking off of light aircraft.

Conclusion on ground (d)

18. In a case such as this, an appellant's evidence should not be rejected simply because it is uncorroborated. If there is nothing to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. I would not

dismiss this appeal simply because the appellant failed to submit his annual flight logs. However, his evidence, as it is, remains imprecise and ambiguous.

19. The appellant suggests that any breaks did not amount to cessation or abandonment of the use. That may be so but, in planning terms, a use cannot be 'abandoned' if it has not acquired lawfulness, and the appellant has failed to demonstrate that the alleged mixed use could be found as such. He has not shown that, on the balance of probabilities, the site was used for a period of ten years, prior to the issue of the notice, for a mixed use comprising use as aerodrome for the landing and taking off of light aircraft plus agricultural use.
20. I conclude that it was not too late for the NPA to take enforcement action when they did. The appeal must fail on ground (d) and the notice must be upheld.

Elaine Gray

INSPECTOR