



Appeal Decisions

Site visit made on 9 May 2024

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th June 2024

Appeal A Ref: APP/X1355/C/23/3328027

Appeal B Ref: APP/X1355/C/23/3328028

Appeal C Ref: APP/X1355/C/23/3328029

Plot 1, Land lying to the North East of St Aidans Terrace, Trimdon Station, Durham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Pamela Duddin (Appeal A), Mr Anthony Tiffin (Appeal B) & Miss Victoria Tiffin (Appeal C) against an enforcement notice issued by Durham County Council.
- The enforcement notice is dated 17 July 2023.
- The breach of planning control as alleged in the notice is: Material change of use from agricultural land to a mixed use comprising of agriculture and siting of static caravan, storage of vehicles, erection of timber structures, excavation works, creation of a pond, creation of hardstanding areas within the subject site to accommodate access/egress arrangements.
- The requirements of the notice are:
 1. Permanently and completely cease the mixed use of the land for agricultural use and the siting of static caravan, storage of vehicles and associated paraphernalia and reinstate the land back to solely agricultural use.
 2. Permanently and completely remove the following structures from the site:
 - Beige steel container located along western boundary of the site;
 - Timber shed located within north-western corner of the site;
 - Timber rabbit hutch located within north-western corner of the site;
 - Table and chairs located along the northern boundary of the site;
 - Wind turbine located along the northern boundary of the site;
 - Roofless timber shed with water butt located along the northern boundary of the site;
 - Timber garage with water butt located along the northern boundary of the site;
 - Polytunnel and associated fixtures located within the north-eastern corner of the site;
 - Pig-sty and associated corrugated steel and smaller timber sheds located along the eastern boundary of the site;
 - Large metal canister located along eastern boundary of the site;
 - Small timber shed located adjacent to northern boundary of the site.
 3. Permanently and completely remove the following vehicles, caravan, speedboat and trailers from the site:
 - White Citroen Relay van (MF56 UBW) located along western boundary of the site;
 - White Mercedes van (KU04 NEY) located along western boundary of the site;
 - JCB digger located along western boundary of the site;
 - White Mercedes van (KP55 AVV) located within northern area of the site;
 - White Fiat van (RX03 BDE) located within northern area of the site;
 - White Mercedes horse transporter (L1 VEP) located within northern area of the site;
 - VW Beetle (VN04 WCR) located within northern area of the site;
 - Trailer (VX04 LFZ) located within northern area of the site;

- Blue metal roller located within northern area of the site;
 - Speedboat located along northern boundary of the site;
 - Geneva 35 static caravan located along northern boundary of the site.
4. Demolish the brick pillars and ornate horse's heads located on top of these pillars; dismantle the associated cast iron gates and remove all resultant materials completely and permanently from the site and dispose of these materials accordingly.
 5. Drain all water from the pond created within the subject site and remove the plastic membrane. Backfill the resultant cavity with earth and 10cm of topsoil and re-seed with grass seed.
 6. Backfill all trenches created within the subject site with earth and 10cm of topsoil and re-seed with grass seed.
 7. Excavate all hardstanding area(s) that have been created within the subject site and remove all resultant materials completely and permanently from the site and dispose of these materials accordingly. Backfill all these area(s) with earth and 10cm of topsoil and re-seed with grass seed.
- The period for compliance with the requirements is: 12 weeks.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. It is directed that the enforcement notice be corrected by the deletion of the allegation paragraph and its substitution with the following paragraph: 'Material change of use from agricultural land to a mixed use comprising of agriculture and siting of static caravan for human and animal welfare purposes, storage of vehicles, erection of timber structures, excavation works, creation of a pond, creation of hardstanding areas within the subject site to accommodate access/egress arrangements.'
2. Appeals A, B and C are dismissed, the deemed planning application is refused, and the enforcement notice, as corrected, is upheld.

The notice

3. With regard to the wording of the notice, it alleges the 'material change of use from agricultural land to a mixed use comprising of agriculture and siting of static caravan...' However, caravans may be used for a variety of different purposes. Therefore, it is essential that a notice does not simply allege the siting of a caravan, but also specifies what use of land the caravan is sited for.
4. The appellant states that the caravan is used for welfare facilities, including the provision of hot water, animal welfare and the incubation of eggs. I have therefore directed that the enforcement notice be corrected to reflect this use of the caravan. I am satisfied that no injustice arises to the parties as a result of this correction.
5. I note the appellant's concern at the perceived suggestion that the land is no longer in agricultural use, citing the fact that it is registered with DEFRA as a small holding. However, from the wording of the notice, it is clear that the Council are alleging that the land remains in agricultural use, but with additional uses and operational developments that facilitate a new mixed use. There is no suggestion that the original agricultural use has ceased.

Preliminary Matters

6. Since the enforcement notice was issued, the Government published a revised National Planning Policy Framework (NPPF) on 19 December 2023 and updated it on 20 December 2023. I have taken into account the responses from the parties on the revisions to the NPPF.

Ground (a), and the deemed planning application

Main Issue

7. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

8. The appeal site at Plot 1 is at the eastern end of a series of three plots of land that abut each other. The land is outside any development limits, and is in the open countryside for planning purposes.
9. The site lies in the East Durham Limestone Plateau County Character Area, which forms part of the larger East Durham Magnesian Limestone Plateau National Character Area. A Google Earth screenshot dated May 2020 shows that the land was grassed over, with little sign of any development. On my visit, I saw that the surrounding land was characterised by woodland to one side, and open agricultural land to the north and south.
10. Policy 10 of the County Durham Plan (CDP) states that development in the countryside will not be permitted unless allowed for by specific policies in the plan, which are set out in footnote 56. Development may be allowed for by relevant policies within an adopted Neighbourhood Plan (NP), but there is no evidence that any such NP is relevant to this particular site. Policy 10 goes on to set out some further exceptions to the restriction on development in the open countryside, including economic development, infrastructure development, and development of existing buildings.
11. Of these further exceptions, the most relevant to the appeal scheme is the first limb of the economic development paragraph. In order to fulfil this exception, development must be necessary to support an existing agricultural or other existing rural land-based enterprise or associated farm diversification scheme, including the provision of new or the extension of existing building(s), structures or hard standings required for the functioning of the enterprise.
12. At paragraph 5.75 under CDP Policy 10, particular reference is made to the proliferation of modern agricultural building in the countryside. However, all proposals for 'agricultural' buildings in the countryside will be assessed to determine whether they are genuinely required for agricultural purposes and are of a commensurate scale for the intended purpose. Small scale non-commercial activity may also be acceptable where it is closely related to the appellant's existing residence.
13. All development should be of a design, construction and scale which is suitable for and commensurate to the intended use. Any buildings, other structures and hard standings must be well related to the associated farmstead or business premises unless a clear need to ensure the effective functioning of the business for an alternative location can be demonstrated by the applicant.

14. In addition, CDP Policy 39 requires that new development will be permitted where it would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views.
15. A static caravan is located against the northern boundary of the plot. It was originally placed on the land as an emergency covid isolation room, but was never used for this purpose. It is currently used as a welfare facility for washing hands, heating warm water, and as a place to keep incubators/heat lamps for eggs and piglets. A small wind turbine has been placed at one end of the static caravan, and next to that is a timber garage with an adjacent water butt, which the appellant indicates is a generator shed. These installations are for power generation on the site, including for the incubator heat lamps.
16. The beige steel container was used to store tools, although it was broken into and the tools stolen. The large metal cannister is presumably also for storage use. The purpose of the roofless timber shed is not clear from the appellant's evidence. The timber shed in the north-west corner is for animal accommodation. Other animal enclosures include a rabbit hutch, a pig sty and a polytunnel which is used as a chicken coup.
17. A number of vehicles and items have been placed on the land, including cars, vans, a horse transporter, a digger which is used for agricultural purposes, a speedboat and a blue metal roller. The appellant says that the vans are on the land in temporary storage until a purpose-built structure can be provided for them. They indicate that plans have been submitted for this new building, but no further information on it has been provided through the appeal.
18. Brick pillars with horse head finials and metal gates have been installed which enclosing the northern section of Plot 1 for the security of the animals. A pond has been created roughly in the centre of Plot 1, to the west of the path that approaches the gates. In addition, hardstanding areas have been created to allow vehicular access to the plot, as a family member travels to the land twice a day by car to feed and look after the animals.
19. The gist of the appellant's case is that all the structures and items identified by the Council are part and parcel of the operation of the small farm. The revenue of the enterprise comes primarily from the sale of eggs and chicks. The appellant states that they are making effective use of land in a rural area by developing and diversifying the agricultural land into a small holding.
20. There can be little doubt that the appeal site still supports agricultural use, with farm animals being present at the time of my site visit, and shown in the photographic evidence that has been submitted. However, CDP Policy 10 requires justification for the presence of new agricultural buildings in the open countryside. Little information regarding the operation or scale of the business in question has been provided with the appeal submissions. Similarly, there is little justification for the storage of vehicles on agricultural land. In the absence of the required information, the development of the various structures and containers on the land conflicts with CDP Policy 10.
21. In terms of the visual effect of the development, the caravan, the structures, stored items and domestic paraphernalia appear as a notable intrusion on a rural site that was previously open and undeveloped. The pillars and gates are notably domestic in appearance, and are markedly out of character with the pastoral character of the surrounding area.

22. These elements undoubtedly add to the proliferation of development in the open countryside that the Council seek to resist. The track and the areas of hardstanding also change the open, pastoral quality of the land, and add to the intrusion of the unauthorised mixed use. These features are at odds with the open, verdant character of the site and the wider area. They have an urbanising quality that is out of keeping with the established landscape character of the surroundings.
23. It is the case that Plot 1 is not readily visible from the main road to the south. However, it is still visible to surrounding land users. In any event, paragraph 5.411 of the text below CDP Policy 39 is clear that the intrinsic character and beauty of the countryside are important both to the quality of life of local communities and the economic prosperity of the county as a whole. Therefore, although the site is in a relatively secluded position, the requirements of CDP Policy 39 remain applicable to the appeal scheme.
24. I acknowledge the concerns over the need for safe access to the plot, and the requirement to keep the access in good repair. However, no surfaced track is apparent in the screenshot of May 2020, and there is little evidence that the ground conditions could not be addressed through a more sympathetic intervention than laying down concrete on the land.
25. Furthermore, the site is located on the former Deaf Hill Colliery site and therefore there is the potential for 'made ground' and contamination to exist. The excavation of parts of the subject site may have inadvertently caused cross contamination of materials resulting in pollutants being released onto the land. In the absence of evidence to the contrary, this factor brings this element of the development into conflict with the aims of CDP Policy 31, which relates to amenity and pollution.

Other matters

26. The appellant states that the previous use of the land was for coal mining, which was unsightly and also polluting to the environment. However, as noted above, the evidence shows that just prior to the unauthorised development, the appeal site was open pasture land. The past existence of coal mining on the site can therefore have little bearing on my consideration.
27. The appellant refers to a plot of land close by where planning permission, ref: DM/22/00887/FPA, has been granted for an agricultural shed to accommodate livestock. However, in the absence of details about this development and the circumstances in which it was found to be acceptable, it is difficult to make any meaningful comparison with the case before me. The appellant also cites the Amazon development at Bowburn which was built on agricultural land. Again, I have no detail about that development, but the fact remains that each case is to be considered on its own merits.

Conclusion on ground (a)

28. Drawing these factors together, I conclude that the development unacceptably harms the character and appearance of the appeal site and the surrounding area. It therefore conflicts with CDP Policy 10, which restricts development in the countryside, and with CDP Policy 39, which protects the character and quality of the landscape.

29. The development conflicts with the development plan as a whole. Therefore, the appeals on ground (a) fail, and the deemed planning application is refused.

Ground (f)

30. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
31. The purposes of an enforcement notice are set out in section 173 of the Act. They are either to remedy the breach of planning control or to remedy injury to amenity. Since the notice requires the cessation of the mixed use of the site and the removal of the unauthorised development, the purpose is to remedy the breach.
32. The appellant feels that some of the steps required by the notice are excessive as any harm to the land is insufficient and she feels that she has only improved the area by creating a nature haven for a variety of wildlife and animals. Steps to increase biodiversity on the land are of course to be welcomed. However, there is little evidence to show that the development that is the subject of the appeal is necessary to achieve this aim.
33. I have also been referred to the presence of bats roosting in the barn and newts in the pond, and the appellant is concerned that laws are in place to protect these creatures. Wildlife protection falls under a separate regulatory regime, and it is the appellant's responsibility to ensure that any legal requirements are met in respect of bats and newts. However, this does not negate the need to comply with the enforcement notice. It will therefore be necessary for the appellant to liaise with the Council if the requirements cannot be carried out in the given time period because of a need to comply with other legislation.
34. The requirements are to cease the unauthorised mixed use of the site, and to remove all the physical items that facilitate the new mixed use. That being the case, and in the absence of any other obvious lesser steps that would remedy the breach, I find that the requirements of the notice are commensurate with its aims.
35. The appeals on ground (f) fail.

Ground (g)

36. Ground (g) is that the time given to comply with the notice, in this case 12 weeks, is too short.
37. The appellant previously requested an extension of time from the enforcement officers due to the postal system and not receiving the letters in good time, working away, work commitments and health issues, but the request was refused. However, the making of the appeals has stopped the clock in terms of the enforcement notice taking effect. The 12 week time frame will therefore come into force following the date of this decision, and is unaffected by any previous timescales discussed between the parties.
38. I note that Mr Tiffin works away and only returns home occasionally on a weekend. Miss Tiffin has health conditions, and Mrs Duddin is working three jobs full time and also assisting Miss Tiffin with her ongoing health conditions in work and personal life. Whilst I acknowledge these difficulties, the appellant

does not indicate a time frame that she considers would be more reasonable for the work to be done.

39. In practical terms, the majority of the requirements are to remove the unauthorised items from the site. This work should not be particularly complex or time consuming, and would not require any specialist skills. There is no indication that it would take more than 12 weeks for the making good and reseeded of the land.
40. Taking these factors into account, I find that 12 weeks is a reasonable time scale to allow the carrying out of the requirements.
41. The appeals on ground (g) fail.

Overall conclusion

42. Appeals A, B and C are dismissed, the deemed planning application is refused, and the enforcement notice, as corrected, is upheld.

Elaine Gray

INSPECTOR