



Appeal Decision

Site visit made on 23 January 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/U2750/C/23/3330068

Harrogate Riding Centre, Spring House Farm, Rudding Lane, North Rigion, North Yorkshire HG3 1PW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Antoni La Pilusa (A & A COACH TRAVEL LTD) against an enforcement notice issued by North Yorkshire Council.
- The notice was issued on 21 August 2023.
- The breach of planning control as alleged in the notice is Without planning permission the unauthorised material change of use of the land from a Horse Riding and Language Centre to a mixed use as a Horse Riding and Language Centre together with a bus and coach travel company operating centre.
- The requirements of the notice are to:
Cease the mixed use of the land as a Horse Riding and Language Centre and bus and coach travel company operating centre and re-instate the use of the land to a Horse Riding and Language Centre only.
- The period for compliance with the requirement is:
1 month.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Formal Decision

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

At section 5 of the Notice 'WHAT YOU ARE REQUIRED TO DO' the deletion of the words "*and re-instate the use of the land to a Horse Riding and Language Centre only.*"

2. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. The notice's requirements are clear in requiring the cessation of the mixed use of the land in the manner set out in the notice, and as repeated in the banner heading, above. However, the notice also actively requires the use of the land as a horse riding and language centre to be re-instated.
4. Although an appeal has not been made under ground (f), and therefore no case has been advanced by the appellant that the steps required exceed what is necessary to remedy the breach of planning control, an enforcement notice cannot actively require that another use is carried out. Rather, a notice should merely require that the use being enforced against should cease. I have therefore deleted reference to the reinstatement of the horse riding and language centre from the notice's requirements and have corrected the notice accordingly. It should be noted however that the requirement to cease the

alleged unauthorised mixed use does not prevent the appellant from resuming the horse riding and language centre use.

Preliminary Matters

5. The appeal was initially submitted on the grounds set out in sections 174(2)(a) and (c) of the Town and Country Planning Act 1990 (as amended) (the Act). An appeal made under ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Under such provisions, an application for planning permission is deemed to have been made under section 177(5) of the Act provided that the required fee has been paid.
6. However, the fee required to accompany the ground (a) appeal was not paid and the appeal therefore proceeds on ground (c) only. In setting out the ground (c) case the appellant raises arguments relating to the planning merits of the appeal scheme. Further planning matters have been set out in the appellant's Final Comments¹ and by the Council which, whilst acknowledging that the appeal is no longer proceeding on ground (a), then proceed to consider the 'planning harm' arising from the alleged breach of planning control. In the absence of payment of the requisite fee, the ground (a) appeal cannot proceed and thus these planning matters do not fall to me to consider within the bounds of the appeal before me.
7. Nor can planning matters be considered as part of a ground (c) appeal. Thus, taking these factors into account, it does not fall to me to consider further those planning matters which include the nature of the use in a Green Belt location, the effect of the parking and storage of buses and coaches on the character and appearance of the appeal site and surrounding area and the effects of such vehicles, as well as large agricultural and equestrian vehicles, accessing the site via the local road network upon highway and pedestrian safety. Nor is it necessary for me to consider the appellant's references to other coach companies operating locally at nearby farms, the details of which I have not been supplied with in any event.
8. Nevertheless, notwithstanding the initial grounds upon which the appeal was submitted and that upon which it now proceeds, the appellant makes reference to the operation of an 'operating centre' for coaches at the appeal site for 'over 10 years'. Whilst not explicitly made, this nevertheless amounts to a 'hidden' ground (d) appeal; that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. As with an appeal under ground (c), in a ground (d) appeal whether 'hidden' or not, the onus is on the appellant to make out their case to the standard of the balance of probabilities.

The appeal on ground (c)

9. An appeal on ground (c) is that those matters, if they have occurred, do not constitute a breach of planning control. No case has been advanced under ground (b) by the appellant that the matters alleged have not occurred, and thus I must consider whether or not those matters, it having been agreed that they have occurred, amount to a breach of planning control.

¹ E-mail dated 5 January 2024 timed at 14:55

10. The appellant's case set out under ground (c) is somewhat vague, and what is set out therein is more akin to a ground (d) appeal than one made under ground (c). It is suggested by the appellant that an operating centre for buses and coaches is not a new use and that it has been accepted by the Council in the past with no conditions upon its operation. However, no evidence of a planning history that refers to the operating, parking or storage of coaches and buses has been provided, nor is there any obvious reference thereto in the planning history outlined in the Council's officer reports.
11. There is no dispute between the parties that some vehicles have operated from the appeal site in the past in connection with the operation of the Harrogate Riding Centre and language centre (HRC). In this respect, it is also agreed that this level of activity amounted to the operation, and parking and storage, of 3 vehicles. The appellant explains, in the response to the Planning Contravention Notice (PCN), that these purposes included use for language school students and riding lesson groups in connection with the HRC. However, also referred to in the PCN response are the use of vehicles from the appeal site for airport transfers, rail replacement services, school trips and private hire. No further information has been provided to me to directly or explicitly link the latter activities to the HRC itself. Nor have I been presented with any evidence regarding the intensity or extent of any such activity.
12. The concept of a 'material change of use' is not defined in statute or statutory instrument. Rather, it is a question of fact and degree and there must be some significant difference in the character of the activity or activities from what has taken place previously.
13. The appeal site appears from its planning history to have a number of elements of use, of which the operation of a small number of vehicles largely to support the HRC has been part. I am led to understand that the appeal site has been licensed as an operating centre for one coach, prior to the HRC's limited number of buses and coaches which, at three vehicles, the Council considered to be incidental to the use of the site in the manner described as the HRC.
14. It is common ground that the site has previously had some buses and coaches parked within it, varying between 2008² and 2001³. However, the level and intensity of that use has not subsequently been more fully explained or expanded upon. Thus, I have no further evidence to support these claims, or in relation to the number of vehicles or drivers that might have used the site for these purposes. As such, I am not persuaded that it has been demonstrated to the required standard that the level and intensity of those operations amounted to a material change of use the nature of which the notice alleges, prior to the agreed September 2022 date.
15. Thus, the parking and storage of additional vehicles, up to twelve based upon the response to the PCN, and their operation from the appeal site as a registered operating centre for the appellant's business, represents a step-change from the previous manner of operation of the appeal site for parking and storage of vehicles used in connection with the HRC. Nor is it disputed that that increase in numbers of vehicles unrelated to the operation of the HRC, began in September 2022.

² Response to Planning Contravention Notice question 4 x

³ Response to Planning Contravention Notice question 4 viii

16. It is clear to me from the evidence available therefore, that the number of vehicles operating from the appeal site, and the nature of the range of uses and activities associated with those vehicles and their operation, is materially different to that of the HRC, and to that which has gone before in relation to the operation of a small number of coaches principally in connection with the HRC. What is enforced against therefore amounts to the introduction of a new primary use at the appeal site and the material change of use of a site already in a mixed use with a further use. The appellant has not therefore demonstrated to the required standard that there has not been a breach of planning control and thus, the appeal on ground (c) fails.

The 'hidden' appeal on ground (d)

17. An appeal on ground (d) is made, whether 'hidden' or not if, at the date when the notice is issued, no enforcement action may be taken in respect of any breach of planning control. In order to succeed on this ground, in accordance with s171B(3) of the Act, it would be necessary for the appellant to show, on the balance of probabilities, that the alleged change of use of the site had occurred at least ten years before the notice was issued. In this instance, that is by 21 August 2013, and had continued over at least a ten-year period.
18. It must then be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity. If this cannot be shown then the use would not be immune from enforcement action.
19. I have concluded above that the material change of use occurred following the formation of the operating centre for the appellant's business with its 12 associated vehicles. It is undisputed that this occurred in September 2022. It has not therefore been demonstrated to the required standard that at the date at which the notice was issued no enforcement action could be taken in respect of the breach of planning control set out therein. The hidden ground (d) appeal fails as a consequence.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

G Robbie

INSPECTOR