

Appeal Decisions

Hearing held on 9 October 2024

Site visit made on 9 October 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Butterwick Alpaca Retreat, Boynton Lane, Butterwick YO17 6PS

Appeal A: APP/U2750/C/23/3334207

Appeal B: APP/U2750/C/23/3334208

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mrs Anna Ramsey (Appeal A) and Mr Christopher Ramsey (Appeal B) against an enforcement notice issued by North Yorkshire Council.
- The notice was issued on 24 October 2023.
- The breach of planning control as alleged in the notice is the siting and residential use of a mobile home.
- The requirements of the notice are:
 - (i) Cease the use of the mobile home for residential purposes.
 - (ii) Remove the mobile home from the Land.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) [Appeal A only], (f) and (g) 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 C: APP/U2750/W/24/3343211

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr C and Mrs A Ramsey against the decision of North Yorkshire Council.
 - The application Ref is 23/00223/FUL.
 - The development proposed is described as 'Use of the agricultural enterprise with alpaca trekking and the erection of a general purpose agricultural barn and kennel (retrospective)'.
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Decisions

Appeals A and B

1. The enforcement notice is quashed.

Appeal C

2. The appeal is dismissed insofar as it relates to the erection of a general purpose open fronted agricultural barn to include the housing of livestock and the erection of a dog kennel.
3. The appeal is allowed insofar as it relates to the change of use of land for alpaca trekking and visitor experience activities in conjunction with the agricultural enterprise, and planning permission is granted for the change of use of land for alpaca trekking and visitor experience activities in conjunction with the agricultural enterprise at Butterwick Alpaca Retreat, Boynton Lane, Butterwick, Malton YO17 6PS in accordance with the terms of the application, Ref 23/00223/FUL, and the plans submitted with it, so far as relevant to that part of the development hereby permitted, subject to the conditions in the attached schedule.

Applications for costs

4. Applications for costs were made by both main parties. These are the subject of separate decisions.

Preliminary Matters

5. The description of the Appeal C proposal is as set out in the heading to this decision on the planning application form but is different on the Council's decision notice and on the appeal form. At the hearing, both parties considered that the appeal should proceed on the basis of the description on the decision notice, which is *Change of use of land for alpaca trekking and visitor experience activities in conjunction with the agricultural enterprise, together with the erection of a general purpose open fronted agricultural barn to include the housing of livestock and the erection of a dog kennel (retrospective)*. I have considered the appeal on that basis.
6. A draft list of conditions was provided in the Statement of Common Ground, and these were discussed at the hearing. At the hearing I invited the Council and the appellants to draft and submit specific wording for relevant conditions. Detailed wording for 2 conditions, which sought to control parking and turning facilities and vehicle numbers was provided in response to my request. I subsequently sought and received further comments on the wording of the conditions from both parties.

The Enforcement Appeals

The notice

7. Prior to the hearing I raised some concerns regarding the enforcement notice. There was further discussion at the hearing, and I sought the views of both parties regarding what was taking place at the site (now and at the time the notice was served). The matters raised were:

- Whether the allegation accurately reflects the change of use that has taken place on the site;
- Whether the correct planning unit has been identified; and
- Whether the requirements of the notice are sufficient to achieve its intended purpose of remedying the breach of planning control (in accordance with section 173(4)(a) of the Act).

The allegation and the planning unit

8. The breach of planning control alleged in the notice is 'the siting and residential use of a mobile home'. The Council suggested that this could be amended to read 'the use of the land for the siting and residential use of a mobile home'. To the extent that this would clarify that the allegation concerns a use of land, that would be an improvement in the wording in my view.
9. However, from the submissions made, the clarification of certain matters during the hearing and what I saw on my site visit, I am not satisfied that this is a proper reflection of the actual use of the site, because other uses are also taking place there, and were apparently doing so when the notice was issued.
10. The starting point for considering the question of the use of land is to identify the correct 'planning unit'. The leading case relating to planning units is *Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207*, in which three broad categories of distinction were suggested:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit that is in a composite use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
11. The plan attached to the enforcement notice shows an area of land at the northern end of the appellants' holding. When I saw the site, this area contained:
 - The mobile home
 - A barn¹, which was being used for storing items associated with agriculture, such as feed and machinery
 - The dog kennel
 - A grassed, fenced-off area containing small animal pens/hutches and some picnic tables
 - The access and vehicle circulation area.

¹ Planning permission for this was granted in 2021 – Ref 21/00460/FUL

12. As described in *Burdle*, the starting point for defining the planning unit is the unit of occupation. Here, the appellants' holding comprises the land targeted by the enforcement notice and adjoining land, amounting to about 2.5ha in total. The land is in a single block which is owned by the appellants, occupied by them (in that they live there in the mobile home) and used by them for farming and for the alpaca experience and trekking business. Thus, I regard it as a single unit of occupation.
13. It is clear that the activities taking place on the land are interlinked. The alpacas are bred, kept and grazed on the land. The same animals are used for the trekking/experience business. The appellants plainly have a wish to live on the site to care for the animals. Those visiting the site for the alpaca experience use the same access as those living there and will arrive to be greeted within the area targeted by the enforcement notice.
14. There are distinct areas within the appellants' land holding, separated by fencing. There is also some variation in that the area targeted by the notice has a rather more 'built up' character than the rest of the land, which is largely used for grazing. Nevertheless, even the area targeted by the notice includes a grassed area where animals are kept and a barn. Viewed as a whole, and as a matter of fact and degree, it appears to me that the whole of the 2.5ha of land within the appellants' ownership is a single planning unit. It is not possible to say that physically separate areas of the land are occupied for different and unrelated purposes. I therefore consider that the whole site is in a mixed (or 'composite') use comprised of agriculture, alpaca experience/trekking and the siting of a mobile home for residential occupation.
15. There is no requirement for an enforcement notice alleging a material change of use to be addressed at the whole of a planning unit. Nevertheless, it is important that it accurately captures the use. By citing only a single element of the mixed use (the mobile home), that has not been achieved in this case. Even if I had concluded that the planning unit was just the area targeted by the notice, it is still clear that that area is used to a significant extent in connection with agriculture and the alpaca experience.

The requirements of the notice

16. If the notice had alleged a mixed use of the land the requirements of the notice would also have needed to reflect that wider mixed use. But even if I had been satisfied with the allegation in the notice as served, or as modified in accordance with the Council's suggestion, I would still have regarded the notice as flawed due to the requirements set out at section 5. These are:
 - (i) Cease the use of the mobile home for residential purposes.
 - (ii) Remove the mobile home from the Land.
17. It seems to me that requirement (i) should have required the use of the land, rather than that of the mobile home, to cease. Taken at face value, it appears to seek to control the use of the mobile home itself, even though it is to be removed from the site, which goes beyond the scope of the notice.

18. Furthermore, by wrongly referring to the use of the mobile home, the notice failed to impose any requirement regarding the use of the land. Section 173(11) of the Town and Country Planning Act 1990 states that:

Where—

(a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and

(b) all the requirements of the notice have been complied with,

then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

19. Here, it seems to me that the notice, certainly if modified as suggested by the Council, could have required the use of the land for the siting of the mobile home for residential purposes to cease, since it is clear that that was at the heart of the breach of planning control alleged. By failing to have any corresponding requirement concerning the use of the land, the notice risked effectively granting permission for the very thing it sought to control once the requirements were complied with. The removal of the particular mobile home currently on the site would not have controlled the ongoing use.

Whether the notice can be corrected

20. From the above, it is clear that there are significant problems with the notice. In accordance with s176(1) of the Act, I am able to (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice, if satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
21. Here, it would be necessary for me to add additional elements into the breach of planning control alleged. That would be a different matter for the appellants to respond to. The alpaca experience use is agreed to amount to a breach of planning control and is opposed by the council. That said, I am mindful that the appellants have set out a case on that matter in relation to Appeal C, and so would not be faced with an entirely new set of issues.
22. Nevertheless, if the allegation were widened out it would be necessary to amend the requirements of the notice to reflect that. If this were not done, then planning permission for the alpaca use would be effectively granted by virtue of section 173(11) of the Act. Although I have granted permission for that use as a result of Appeal C, that is subject to conditions, and does not warrant an unconditional grant of permission as a result of the enforcement appeals. Such an approach would cause injustice to the Council. Furthermore, as I have already discussed, the notice would also need to require the residential/caravan use to cease. Widening out the breach and requirements would make the notice more onerous and thereby cause injustice to the appellants.
23. For these reasons, I conclude that the enforcement notice does not adequately define the alleged breach of planning control and the

requirements set out at section 5 of the notice would not remedy the breach of planning control alleged. It is not open to me to correct the errors in accordance with my powers under section 176(1) of the Act, since injustice would be caused were I to do so. Consequently, the enforcement notice is invalid and will be quashed.

24. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) do not fall to be considered. Quashing the notice leaves the Council in a position where it is able to consider whether a revised notice can be issued, using the powers available under section 171B(4)(b) of the Act.

The Planning Appeal

The Proposal

25. There are 3 elements to the proposal – the alpaca use, the barn and the kennel. Although there is clearly a functional link between the barn and the alpaca use, they are distinct elements and capable of separate consideration at appeal. The Kennel relates to the residential use rather than the other elements of Appeal C. Consequently, I have considered the individual elements of the scheme separately below.
26. The appellants' statement suggests that the alpaca use is not a primary use of the land but rather is ancillary to its agricultural use. However, at the hearing, the appellants accepted that it was a primary use. In any event, regardless of how the land has been used to date, permission is now sought for an alpaca trekking/visitor experience use, in conjunction with the agricultural enterprise, and that is what I have considered. The use allows people to interact with the alpacas, including walking them.
27. At the hearing there was some clarification regarding the level/intensity of the proposed use. I was told that the business will operate on the basis of visits to the site by groups of people and also events where the alpacas are taken from the site to other locations. The balance of these will vary throughout the year and is very weather-dependent but would be a maximum of 2 off-site visits and 5 group visits to the site each week. The groups visiting the site would be of a maximum of 8 people. The control of this level of use with planning conditions was discussed, a matter I return to later.
28. A plan intending to show a walking route for the alpacas within the appellants' site (Drawing No CRJH-01) was withdrawn during the hearing and I have not had regard to it.

Main Issues

29. The main issues are:

- The effect of the alpaca use and the kennel on the character of the area.
- Whether the roads and access leading to the site are satisfactory for the proposed use.

- Whether the barn is justified and in accordance with local and national policies relating to flood risk and development in the countryside.
- Whether any harm is outweighed by other considerations sufficient to justify the developments.

Reasons – the Alpaca use

Character

30. The appeal site is in a plainly rural location within the Vale of Pickering (National Character Area 26). I saw that the area is largely farmland, the nearest settlement of Butterwick comprising just a handful of dwellings. A public footpath runs along Boynton Lane and a separate footpath runs to the west of the site.
31. The Council's case focuses on the potential effect of a use that encourages visitors to the site on the tranquil character of this rural area. Plainly, a use generating large numbers of visitors and vehicles could have an impact on such a character due to such things as vehicle movements, noise and general disturbance. However, the clarification given at the hearing regarding the scale of the activities suggests that numbers would be very limited. It appears to me that it would be possible to control the intensity of the use with planning conditions, and I have been provided with planning conditions agreed by the parties which would seek to achieve that.
32. It is, of course, important that any condition imposed would be enforceable. Here it is proposed that there would be a requirement for a record of visitors to the site and their vehicles to be kept for inspection by the local planning authority. In this way I am satisfied that the number of visiting vehicles could be monitored. Any breach significant enough to harm the character of the area would be obvious to those living nearby.
33. Queries have been raised as to whether the low level of activity now proposed is consistent with the 'essential need' case made out in respect of Appeal A, or with the level of activity that has taken place in the past. However, there is no substantive evidence to show that visitor numbers have been excessive to date, and planning conditions could control the intensity of the use in the future. The evidence before me does not suggest that having the alpaca experience based at this site is likely to affect the character of the wider area as a result of the alpacas trekking nearby. Whether or not the use proposed could provide a justification for the mobile home is a separate matter.
34. For these reasons I am satisfied that, subject to appropriate planning conditions, the use would not harm the character of the area. Consequently, there is no conflict with policies SP13 or SP20 of the *Rydale Plan – Local Plan Strategy* (the Local Plan), which are concerned, amongst other things, with landscapes, character and tranquillity.
35. The Council refers also to Policy SP1, which is concerned with the general location of development and the settlement hierarchy. However, the policy recognises that development which is necessary to support the rural economy and communities may be appropriate in the countryside.

Consequently, I do not consider that this use, which is part of a rural enterprise, plainly linked to agricultural activity, is contrary to SP1.

Access

36. The site is reached via Boynton Lane, a narrow country lane which runs through the small hamlet of Butterwick. The lane, which has no footways or lighting, peters out to form a muddy track, which leads to the site.
37. Following the discussion on visitor numbers and the scale of the use at the hearing, the Council was content that the development should not be opposed on the basis of impacts arising from the roads and access serving the site. I agree with that view. A planning condition suggested by the main parties would limit the number of vehicles visiting the site in connection with the proposed use to just 14 per week. The evidence before me suggests that the largest type of vehicle visiting the site would be a minibus, but that cars would be more usual. This would not add materially to the traffic which already uses Green Lane and Boynton Lane to reach the dwellings at Butterwick.
38. The appellants do not have ownership or control of a short section of the final part of Boynton Lane leading up to the site. A public footpath runs along that section of the lane. Thus, the question arises as to whether those visiting the site could be committing an offence by driving a vehicle on a public footpath². I have considered this matter carefully, in the light of the written submissions and points made at the hearing.
39. However, the Council does not oppose the development on that basis, regarding it as a private legal matter. Furthermore, the grant of planning permission does not affect other legal rights or constraints that may exist over land. It remains the appellants' responsibility to ensure that the implementation of any planning permission would not conflict with other legislation or cause any offence to be committed. Even if no legal right of access for the proposed use currently exists, the evidence before me does not clearly show that such a right could not be secured in the future. Thus, withholding permission on the sole ground that there is no current legal right of access might unnecessarily frustrate a use capable of taking place without any offence being committed.
40. It does not appear to me that the safe use of the public footpath would be compromised. It is clear that there is some use of Boynton Lane by motor vehicles, both up to and beyond the appeal site, as a means of accessing some of the surrounding farmland. Within that context, I am not persuaded that the very limited level of additional traffic associated with the use proposed would create undue conflict with users of the short section of public footpath that is affected. Thus, in all the circumstances of the case, I do not consider that planning permission should be refused due to the effect on the public footpath.
41. For these reasons I conclude that the roads and access leading to the site are satisfactory for the proposed use. Consequently, I find no conflict with

² See Section 34(1) of the Road Traffic Act 1988

Policy SP20 of the Local Plan insofar as it is concerned with access and road safety.

Need/benefits

42. The evidence before me indicates that the use provides benefits for people visiting the site – including young people and people with particular needs. The economic benefits are very limited, given the scale of the use, although I appreciate that it is important for the appellants, for whom it supplements the income derived from farming the land.

Conclusion – the alpaca use

43. I conclude that there is no material harm to the character of the area, that the access and roads serving the site are satisfactory for the scale of the use proposed, and there is compliance with the development plan as a whole. There are also benefits arising from the use, although these are quite limited.

Reasons – the barn

44. The flood risk sequential test, as set out in the National Planning Policy Framework (The Framework) and Planning Practice Guidance (PPG), does not apply to the change of use. However, it is common ground that the barn fails the sequential test. It lies within Flood Zone 3, meaning that there is a high risk of flooding. Other areas of the appellants' land with a lower flood risk are available. Annex 3 of the Framework classifies agricultural buildings as 'less vulnerable'.
45. The Framework advises that 'The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.....The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.'
46. Thus, there is conflict with the Framework and the related advice in the PPG on this issue. There is also conflict with Local Plan Policy SP17, which seeks to manage flood risk. Failure of the sequential test is an important material consideration.
47. As the appellants point out, the building is not for human habitation and is categorised as 'less vulnerable'. Moreover, its open-fronted design is such that the animals could not be trapped within it. Changes in elevation across the appellants' holding are limited and there is no indication that flood waters would be channelled through the site of the barn. These factors limit the harm arising from the location of the building within Flood Zone 3. The appellant also says that the site does not flood regularly and that a sustainable drainage system is in place.
48. Nevertheless, the building is within a fenced-off area where alpacas and chickens are kept. Thus, there is some concentration of animals in this high flood risk part of the site, and the barn is a part of that. While the appellants report a discussion with a flood expert, I have not been provided with direct expert evidence to clearly establish the implications of the building in this

location in terms of the safety of the animals or the people who care for them.

49. As to the question of need/justification, there is another barn on the holding, which was built close to the mobile home following the grant of planning permission in 2021. However, irrespective of any past use of that building, the barn subject to this appeal is of a very different, open fronted design, plainly intended to provide shelter for animals rather than the enclosed storage space the other barn provides. Accordingly, I am not persuaded that the existence of the other barn means that the open-fronted barn is not needed, or is indicative of conflict with Local Plan policies SP1 and SP9, which seek to control unnecessary developments within the countryside.
50. But even if there is a need for a structure of this kind, it is not clear, on the evidence before me, why it has to be located where it is, within an area at high risk of flooding. In the absence of a more detailed and specific justification, I am not persuaded that there is sufficient reason to set aside the very clear policy requirements of the sequential test.
51. I conclude that the barn fails the sequential test, placing it in conflict with the Framework and Local Plan Policy SP17. The conflict with this important policy leads me to the view that there is conflict with the development plan as a whole. Insufficient justification has been put forward to lead to a decision contrary to the development plan.

Reasons - the kennel

52. The kennel is addressed in the Statement of Common Ground as follows:

The kennel is for personal use and the application for the temporary rural workers dwelling was refused. The main parties agree that if the Inspector is minded find the temporary rural workers dwelling to be acceptable that this reason for refusal falls away. The Appellant's consider the kennel to be a chattel that does not need permission but the LPA disagree with this view, as outlined in the LPA's Statement of Case.

53. Thus, the kennel is something of an anomaly, actually more relevant to the mobile home than the other elements of Appeal C.
54. The site is within an area of countryside, and it is common ground that residential uses are not routinely permitted here. Indeed, the case made out in relation to Appeal A, ground (a) recognises that the mobile home needed specific justification.
55. As I have already indicated, I will quash the enforcement notice without considering the appeal on ground (a). It follows that there is no lawful residential use for the kennel to relate to. Given the policies that apply to this countryside area, it would not be appropriate to grant permission for the kennel as a stand-alone development in these circumstances. Indeed, there is no case made out that I should do so. Without any associated residential context, the kennel would appear as an alien structure within this rural location, harmful to the character of the area and contrary to the aims for landscape character within Local Plan policies SP13 and SP20. There is conflict with the development plan as a whole and no material considerations

to indicate that planning permission should be granted. Accordingly, this element of the development is dismissed.

Conclusion and conditions

56. For the reasons set out above I conclude that the appeal should be allowed insofar as it relates to the alpaca use but dismissed insofar as it relates to the barn and kennel. I am satisfied that a split decision is appropriate in this case, since it has not been shown that these particular buildings are essential to the operation of the alpaca use.
57. I have imposed conditions to control the daily number of alpaca events at the site, the number and size of vehicles visiting the site and the hours of use, to reflect the scale of the proposal as outlined at the hearing, to ensure that the tranquil character of the area is not harmed and that the use of Boynton Lane by other vehicles and pedestrians is not compromised. A separate condition requires a register of visitors/vehicles to be kept, to enable the monitoring of this. At the hearing I raised the prospect of controlling the number of visitors, but both parties consider that the intensity of the use would be more effectively controlled by limiting vehicle numbers.
58. I have attached a condition concerning a plan for the parking and turning of vehicles to ensure that the use does not have any harmful effect on users of Boynton Lane. I have modified the wording of the condition suggested by the parties but, as I explained at the hearing, the wording of such conditions needs particular care where it concerns a retrospective development, and I have to be satisfied that the condition is enforceable.
59. I have not imposed a condition specifying the approved plans, since the permission I will grant does not relate to any of the structures shown on them. Given the low numbers of trips proposed, the suggested condition relating to passing places is not necessary, as the Council accepted at the hearing. The suggested condition concerning a walking route for the alpacas can no longer apply, given the appellants' withdrawal of the plan showing the route, and is not necessary anyway in my view.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Marc Willis

Stuart Anderson

Peter Williams

Anna Ramsey

Christopher Ramsey

Caroline Shepherdson

FOR THE LOCAL PLANNING AUTHORITY:

Elana Kaymer

Martin Macbeth

Niamh Bonner

Michael Cleary

Peter Jones

Kay Dawson

INTERESTED PARTIES:

Lorna Hope

Philip Tate

Jan Wigglesworth

Ian Garfitt

Tim Prestwich

Stuart Ponting

Susan Brown

DOCUMENTS ACCEPTED AT OR AFTER THE HEARING

1. Emails from North Yorkshire Council to the Planning Inspectorate dated 3 and 8 October 2024
2. Letters from Willis and Co to the Planning Inspectorate dated 7 and 8 October 2024
3. Email from Kevin Hollinrake MP dated 1 October 2024
4. Photographs of the site September 2024
5. Email dated 11 October setting out agreed wording for planning conditions
6. Email from Willis and Co, dated 26 November 2024, commenting on proposed planning conditions.
7. Email from North Yorkshire Council, dated 27 November 2024, commenting on proposed planning conditions.

CONDITIONS

- 1) The site shall not be open to visitors for the alpaca trekking/visitor experience outside the hours of 10am to 4pm.
- 2) No more than 1 alpaca trekking/visitor experience event shall take place on any day.
- 3) No more than 3 vehicles, and none with a capacity greater than 17 seats, shall enter the site on any day in association with the alpaca trekking/visitor experience, up to a maximum of 14 vehicles per week.
- 4) The operators of the alpaca trekking/visitor experience shall maintain an up-to-date register of all visitors to the site, to include the name and address of a lead member of each group, the total number of visitors forming that group, their vehicles and their time of arrival and departure. This register shall be maintained at all times and shall be made available for inspection to an officer of the local planning authority on request.
- 5) Within 8 weeks of the date of this decision, a scheme showing parking and turning facilities for visitors to the alpaca trekking/visitor experience, together with a timetable for its implementation, shall be submitted in writing to the local planning authority for approval. The approved scheme shall be implemented in accordance with the timetable and the area identified for parking and turning shall thereafter be kept clear and available for the parking and turning of vehicles at all times when the alpaca trekking/visitor experience is taking place.

If no scheme in accordance with this condition is approved within 16 weeks of the date of this decision, the use of the site for the alpaca trekking/visitor experience shall cease until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or a legal challenge or appeal made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge or appeal has been finally determined.