



Appeal Decision

Site visit made on 28 November 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6 FEBRUARY 2025

Appeal Ref: APP/C9499/C/24/3346989

Old Dairy Barn, Rigg End , Newbiggin on Lune, Kirkby Stephen, Cumbria, CA17 4NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Rigg End Yorkshire Dales Ltd against an enforcement notice issued by Yorkshire Dales National Park Authority.
 - The notice was issued on 21 May 2024.
 - The breach of planning control as alleged in the notice is without planning permission, material change of use of land to use for residential purposes ancillary to the use of the dwelling house, and, the construction of a raised patio area, including the installation of a hot tub and erection of fencing to enclose the raised patio area on the land.
 - The requirements of the notice are to: 5.1. Stop using the raised patio area for residential purposes ancillary to the use of the dwelling known as the Old Dairy Barn. 5.2. Dismantle and remove the hot tub from the land. 5.3. Dismantle and remove from the land the fencing enclosing the patio area. 5.4. Demolish the raised the raised patio area and reconfigure the ground levels to the levels that existed prior to the unauthorised engineering operations.
 - The periods for compliance are: one month for requirement 5.1, and three months for requirements 5.2, 5.3 and 5.4.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) 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.
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Decision

1. It is directed that the enforcement notice is corrected by: the substitution of the word green for the word red in paragraph 2 which is headed “The Land To Which The Notice Relates”; and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice
2. Subject to the correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

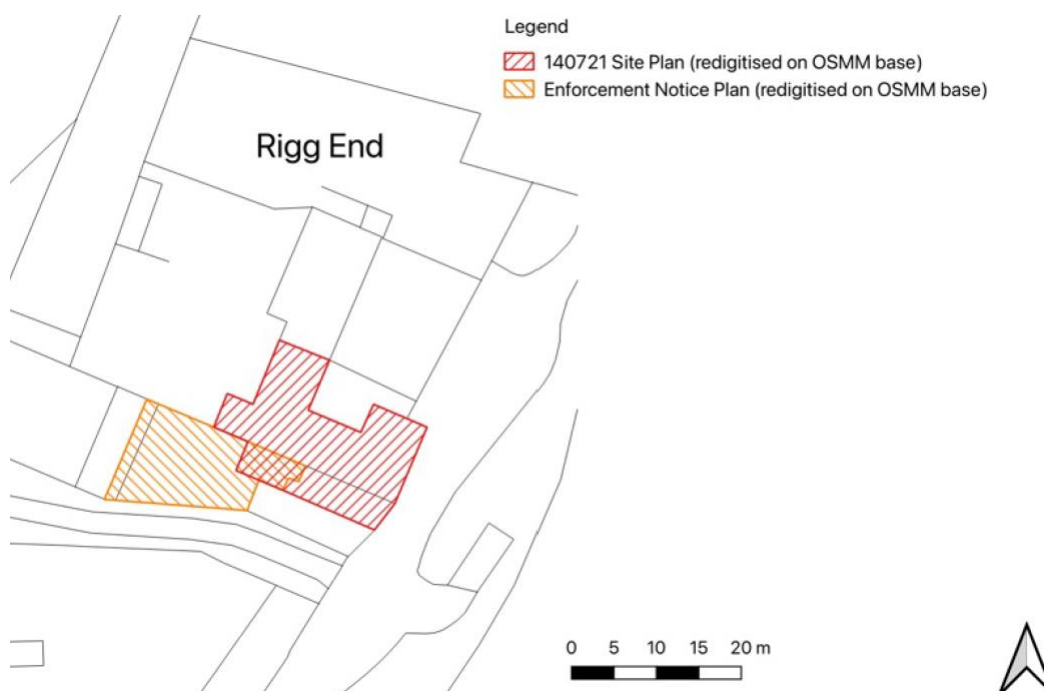
Preliminary Matters

3. The notice targets the material change of use of land adjacent to the dwellinghouse known as Rigg End Barn, and not the use of the house itself. Case law advises that whether the use of a dwelling for commercial holiday lettings amounts to a material change of use would be a question of fact and degree in each case and the answer would depend on the particular characteristics of the use as a holiday let.¹

¹ Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202

Site History

4. The most relevant planning history for the appeal site and adjoining house for the purpose of this appeal is the prior notification of intention of change of use of agricultural building to dwelling with associated building operations reference 14/0721 submitted in 2014, and to which there was no objection (“the 2014 Prior Notification”).
5. The plan below, which was supplied by the appellant, shows the area of land covered in the 2014 Prior Notification shown hatched red, and the area included in the plan attached to the enforcement notice hatched yellow. There is an overlap in the two areas.



Ground (b)

6. An appeal on this ground is on the basis that the matters alleged in the notice have not occurred as a matter of fact.
7. The notice alleges the change of use of the land for residential use ancillary to the dwellinghouse but the red line plan submitted with the 2014 Prior Notification includes part of the appeal site (as described above), which already had consent for residential use in association with the converted building. The allegation is therefore incorrect in relation to this part of the land, i.e. the overlapping part shown hatched red and yellow in the plan. As a matter of fact, there has not been a change to a residential use of this part of the land which required permission, and nor does it form part of the construction of the raised patio area which is also alleged in the notice. The access and steps are not specifically referred to in the notice.
8. The ground (b) appeal is therefore successful in relation to this piece of land. The notice plan can be corrected to show the remainder of the area hatched yellow and as this is reducing the area of land covered, I am satisfied that this can be done without causing injustice to the parties. Any concerns regarding unauthorised

operational development on this piece of land could be dealt with by a separate notice.

9. The allegation in the notice is clear and precise regarding the breaches of planning control being targeted on the remaining land, namely the residential use of it and the associated operational development including the engineering operations and the fencing as described in it. It is evident from the various photographs that the appeal land was not level prior to the works which form part of the appeal development. There was an overall slope towards the front of the site (the southern boundary) and the dwellinghouse, and away from the remaining more modern barn and its concrete apron. Whilst the concrete apron clearly pre-dates the alleged breach and covers part of the appeal land, it does not cover the whole of it.
10. During the site visit, several trenches had been dug alongside the southern boundary but these did not show that the whole of the appeal site had previously been of a uniform level similar to that existing now. The photographs show that the land sloped significantly and that there was a large pile of loose rubble towards the front of the site, but there was not a standard level across it all. The works undertaken to change the levels of land including the use of gabions to create the raised patio constitute engineering works as a matter of fact and degree, and are therefore development.
11. The appeal under ground (b) is therefore only partially successful, in relation to the area of the site which was part of the 2014 Prior Notification.

Ground (c)

12. This ground of appeal is that the matters stated in the notice, if they have occurred, do not constitute a breach of planning control.
13. Prior to the material change of use alleged in the notice the appeal site did not form part of the curtilage of the dwellinghouse now known as Rigg End Barn. The appeal site, and Rigg End Barn, were in the same ownership as Rigg End Farmhouse following its sale in 2007. However, there is insufficient evidence before me on the balance of probability taking into account the physical and functional relationship of the parts of the wider site overall to show that it was part of the same planning unit and used in association with the residential use of Rigg End Farmhouse.
14. The Town and Country Planning (General Permitted Development Order) 2015 ("the GDPO"), Schedule 2, Part 2, Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure but in this case must not exceed 2 metres above ground level.
15. Notwithstanding the appellant's argument that part of the wooden fence is somehow not a fence but only cladding applied to the pre-existing wall, the structure clearly falls within the ordinary meaning of the word fence and therefore would fall within this definition.
16. It remains higher in height than the wall behind it and was also higher again when originally constructed, as can be seen in one of the earlier photographs. The overall height of the fence from the original ground level is difficult to ascertain given the changes that have occurred but it does seem likely, when looking at the

photograph of the fence as originally built, that part of it probably did exceed 2 metres. As permitted development rights are not retrospective, and it is not therefore possible to rely of them by changing a development to meet the parameters of specific class at a later date, I am not satisfied that that the fence on the southern boundary as originally constructed would have benefited from the Part 2, Class A permission.

17. In any event, even if the fence to the southern boundary, or any other of the fences within the appeal site could be permitted development under Part 2, Class A, this operational development, along with the other works to create the raised patio area within the appeal land, has been undertaken to facilitate the material change of use, and as such can be required to be removed by the notice.

18. The appeal on ground (c) therefore fails.

Ground (a) and the Deemed Planning Application

19. The main issues are the effect of the development on the character and appearance of the area, and on the safe management of livestock on the neighbouring property.

20. The site was originally a farmyard which was part of a wider agricultural use and is located in the Yorkshire Dales National Park ("the National Park"). The appeal site is being used in association with the adjoining dwellinghouse known as Rigg End Barn. The development consists of the material change of use as well as the operational elements to create a raise patio (including a retained platform at a level higher than the original level and paving) and fencing. The requirements only apply to the land which is identified in the notice, and as corrected as set out above and shown on the plan annexed to the is decision.

21. The two purposes of National Parks are to conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for understanding and enjoyment of the special qualities of National Parks by the public. Where there is a conflict between the two purposes, greater weight is to be attached to the conservation purpose.

22. The Framework (at paragraph 182), which is a material consideration, advises that "Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and National Landscapes which have the highest status of protection in relation to these issues."

Character and appearance

23. The development is located on an open and elevated position on the hillside, and the main views of it from outside of the site are of the raised wooden fences which bound it on all sides. It is the southern and eastern elements that can be clearly seen and much of this is currently covered by the metal barrier erected by the adjoining owner (apart from the section adjacent to the outbuilding). This metal barrier is unauthorised and I have therefore disregarded it in my determination when considering the appearance of the appeal development

24. However, the raised nature of the development and height of the fences appear discordant and out of place when viewed within the cluster of the farmstead and buildings. The fence, even at the reduced height, meets the roof line of the one-storey outbuilding next to it and its additional height appears out of keeping with

the surroundings and clumsy. This incongruity is exacerbated by the domestic appearance of the light-coloured wood and closed board design which is very different to the predominantly traditional agricultural materials and structures in the vicinity.

25. Policy DEV5 of the Eden Local Plan 2014 – 2032 (“the ELP”), Design of New Development, requires that development shows a clear understanding of the form and character of the district’s built and natural environment, complementing and enhancing the existing area, and, protects and where possible enhances the district’s distinctive rural landscape. The appeal development is in conflict with this policy, due to the raised nature and domestic design of the boundary fences which looks out of place and therefore harms the character and appearance of the area. Paragraph 135 of the revised Framework also requires that development should be sympathetic to the local character and history, and this is not achieved by the appeal development.

Management of Livestock

26. The purpose of the appeal development is provide outdoor amenity space for the occupiers of the dwellinghouse which is being use as a holiday let. The raised patio is hard-surfaced with paving and loose stone chippings. It originally contained a hot-tub, barbeque area and garden furniture and there is evidence that it has been well-used. There was not a hot-tub on the patio during the site visit and the appellant states that they do not intend to put it back onto the appeal site.
27. The adjoining site to the south-west is the entrance to a working farm which is bounded by 2 metre high reinforced block walls and which is described as the farm’s sole livestock working area used for the management of sheep and cattle, and also to load and unload livestock onto the farm.
28. The livestock handling area abuts the southern boundary wall and fence of the appeal site, and is described as a strong and secure handling area. This means that the handling of the animals happens next to the boundary with the raised patio, but at a lower level. Concerns have been expressed regarding the fact that the raised patio means that the people on the appeal site are no longer fully segregated from the livestock behind the secure wall as it would be possible to see over the fence (although a corrugated metal barrier has been erected on top of the wall on the farm side to raise its height). Any noises from the appeal site are not only close in proximity as immediately abutting the handling area, but also coming from an elevated position compared to the livestock below. The fence which has been erected as part of the development is insufficient to fully screen the activities on the patio from the adjacent track and handling area.
29. The Health and Safety Executive document “Agriculture Information Sheet No 35”, which provides general advice for farmers on safe handling of adult cows, states that it is necessary to work calmly with cattle within proper handling facilities which includes that the sides a high enough to prevent animals from jumping over and that reducing visual disturbances helps to keep the cattle moving. Being able to work calmly with the cattle is clearly very important in terms of safety, and this would include disturbances coming from immediately adjacent to the site.
30. Unexpected loud noises or movements from the other side of the wall, or people leaning over it could lead to the cattle becoming scared which could lead to risk of injury to the cattle themselves as well as people working with the livestock or in the

vicinity. Aside from the noise associated with the use there is also evidence of waste and litter including glass originating from the appeal site which can in itself cause health and safety issues for the livestock and those working with it.

31. These two uses are not compatible in such close proximity to each other with the layout including raised patio. The development is therefore in conflict with RUR3 of the ELP which applies to the re-use of redundant buildings in rural areas, and applies to the former farmyard area and associated structures in this case including the concrete apron.
32. The Framework, which is a material planning consideration, advises that, planning decisions should ensure that new development can be integrated effectively with existing businesses. Any such development should be required to provide suitable mitigation before the development has been completed. No mitigation measures have been put before me, but given the proximity and specific layout including the raised nature of the appeal site, I am not satisfied that there are such measures that could be put into place which would be sympathetic to the local character and history, and which would not have unacceptable effects in term of the design and character and appearance of the area.

Other matters

33. Whilst parking and potential adverse effects on other rental properties in the area have been raised as a concern, these arise primarily from the use of the converted barn and not from the development alleged in the notice.
34. This appeal is only concerned with the development alleged in the notice on the appeal site, and any other breaches could be addressed through the service of additional enforcement notices.

Conclusion on ground (a)

35. For the reasons set out above, the development causes harm to the character and appearance of the area, and to the ability of the occupiers of the neighbouring farm to safely manage livestock. It is therefore in conflict with the ELP and the Framework, including in the consideration of the purpose of conserving and enhancing the landscape and scenic beauty of the National Park.
36. As there are not any other material considerations to indicate otherwise, the appeal under ground (a) fails and the deemed planning application is refused.

Ground (f)

37. This ground is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
38. The purpose of the notice is to remedy the breach of planning control in that it requires the material change of use to cease and all associated works to be dismantled and removed. As such it does not exceed what is necessary to achieve this aim.
39. The appellant sought to retain some of the elements of the development but I have already dealt with the planning merits of the appeal under ground (a), and concluded that planning permission should not be granted.

40. There is nothing further to consider under the ground (f) appeal and it does not succeed.

Conclusion

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Zoë Frank

INSPECTOR



Planning Inspectorate

**This is the plan referred to in my decision dated: 6 FEBRUARY 2025
by Zoë Franks Solicitor**

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Not to scale.

