



Appeal Decisions

Hearing held and site visit made on 17 December 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Appeal Refs: APP/C2741/C/24/3350280 and 3350281

Land on the East Side of Manor House, 584 Huntington Road, York YO32 9QA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeals are made by Mr Stephen Massey and Ms Amy Warner against an enforcement notice issued by City of York Council.
- The notice was issued on 24 July 2024.
- The breach of planning control as alleged in the notice is (i) unauthorised operational development comprising the construction of a greenhouse and brick base, the construction of a brick wall and the laying of hardstanding areas and footpaths; and (ii) the material change of use from agricultural use to a domestic use in association with the residential use of Manor House.
- The requirements of the notice are: (a) Cease the use of any part of the land for domestic residential use; (b) Demolish and remove the building comprising a greenhouse and brick base from the land as shown in its approximate position edged black on the site plan; (c) Remove all hardstanding and paved areas from the land as shown in the approximate position in blue on the site plan; (d) Demolish and remove the brick wall as shown in the approximate position in yellow on the site plan; (e) Remove from the land the laurel hedge laid to facilitate the material change of use as shown in its approximate position in green on the site plan; (f) Remove from the land any other paraphernalia associated with the domestic residential use of the land; and (g) Remove from the land all materials and debris associated with compliance with steps (a), (b), (c), (d), (e) and (f) above.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Act and the appeal by Mr Massey is also proceeding on ground (a). 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.

Decision

1. The enforcement notice is corrected by the deletion of 'Farm' in section 2 of the notice.
2. The enforcement notice is varied by:
 1. The deletion of the second breach of planning control as set out in section 3;
 2. The deletion of requirements (a), (b), (d), (e) and (f) as set out in section 5; and,
 3. The deletion of 'steps (a), (b), (c), (d), (e) and (f)' in requirement (g) as set out in section 5 and the substitution instead of 'step (c)'.

3. Subject to the correction and the variations the enforcement notice is upheld to ensure compliance with requirement (c) and varied requirement (g), and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the construction of a greenhouse and brick base and the construction of a brick wall as shown on the plan attached to the notice and at Land on the East Side of Manor House, 584 Huntington Road, York.

Procedural matters

4. The address of the land to which the enforcement notice relates, as stated in section 2 of the notice, is incorrect; it refers to 'Manor Farm House' rather than 'Manor House'. The notice has been corrected accordingly and the address given above accords with the corrected notice.

5. The Council has made an application for costs against the Appellants and the Appellants have made an application for costs against the Council. These applications are the subjects of a separate Decision.

Reasons

Background information

6. Manor Farm, which comprised a farmhouse, farm buildings and farmland, ceased to be an agricultural business in 1997. Subsequently, the farmhouse was subdivided to become two dwellings, Manor House and Manor Farm, and farm buildings to the south were demolished and replaced by a terrace of three dwellings, Manor Farm Cottages. Vehicular access to Manor House and Manor Farm is off Huntington Road; the access passing through the Manor House property to a parking area in front of Manor Farm.

7. To the east of the dwellings is a paddock, with a north frontage to Huntington Road and an east frontage to New Lane. The paddock was originally one area of land but has been subdivided to create two smaller paddocks of roughly the same size. The north area is part of the Manor House property, and is the land that is the subject of the enforcement notice, whilst the south area is part of the Manor Farm property. The Manor Farm property was purchased by its current owners in 2016 and it was a condition of sale that they erect a stock proof fence to subdivide the original paddock.

The ground (e) appeals

8. Nothing mentioned by Mr Massey in support of the ground (e) appeals is relevant to the appeals. There is no evidence to indicate that the enforcement notice was not properly served in accordance with the provisions of Section 172 of the Act. The ground (e) appeals thus fail.

The ground (b) appeals

9. All elements of the first alleged breach of planning control can be seen on site so it can be concluded that the operational development detailed in the breach has occurred as a matter of fact. The second breach of planning control alleges the change of use of the land from an agricultural use to domestic use. The Appellants purchased Manor House and the enforcement land in 2022. Nothing that occurred prior to the purchase changed the use of the land from an agricultural use, which was established when Manor Farm was an agricultural business. In this regard, the

Appellants purchased a planning unit in a mixed use; the residential use of the dwelling and the agricultural use of the part paddock.

10. A material change of use will have occurred if the lawful agricultural use has been replaced by a domestic use of the land. In 2020 a previous owner of Manor House applied for planning permission to erect an 'agricultural storage building with integral canopy in paddock to rear of Manor House' on the land that is the subject of the enforcement notice. Permission was granted and implemented. The owner at that time understood that the land was, given its history and previous association with Manor Farm, a paddock in agricultural use. Condition 3 of the planning permission restricts storage to be "...for equipment to be used in the maintenance of the paddock only..."; the reason given is "...The building is located outside the curtilage of the dwelling...".

11. Whilst maintaining that "...the appeal site is not agricultural land..." the Appellants also maintain that "...the appeal site is used for agriculture...". On this confused basis they contend that "...no change of use has occurred...". If no change of use has occurred then the lawful use of the land is its last known use, which is agriculture. So it is safe to conclude that the alleged change of use from agricultural use to a domestic use is a reasonable allegation.

12. The Appellants are using the land principally for horticultural purposes, whether inside the greenhouse or outside where there is a group of fruit trees. Agriculture, as defined in the Act, includes horticulture and fruit growing. It also includes the use of land as grazing land, which is consistent with the last known use of the land as a paddock. Nothing in the definition of 'agriculture' indicates, to be so defined, that the agricultural activities must be related to a business or enterprise. Occasional domestic activity on the land does not affect the conclusion that the change of use of the land from an agricultural use to domestic residential use has not occurred as a matter of fact.

13. The first alleged breach of planning control has occurred as a matter of fact whilst the second alleged breach of planning control has not occurred as a matter of fact. The ground (b) appeals thus part succeed and part fail. The enforcement notice has been varied by the deletion of the second breach of planning control as set out in section 3 and the deletion of requirement (a). Requirements (e) and (f) as set out in section 5 require the removal of items that are associated with the domestic residential use of the land. As a change of use to this use has not occurred these requirements have been deleted. Reference to these requirements has also been deleted from requirement (g).

14. It must be clearly understood that deletion of the second breach of planning control is based on the lawful use of the land being agriculture. All other grounds of appeal to be considered relate only to the first breach of planning control set out in section 3 of the enforcement notice.

The ground (c) appeals

15. The Appellants maintain that the operational development carried out on the land is development permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). But to be permitted development the erection of the greenhouse and the laying of hardsurfacing areas and footpaths, under Class E and Class F of Part 1 of Schedule 2 of the GPDO, must be development within the curtilage of a dwellinghouse and must be for a purpose incidental to the enjoyment of the dwellinghouse.

16. The appeal land has been in the same ownership as Manor House for some considerable time, it is not fenced off from land on the east side of the vehicular access that is used for parking associated with Manor House, it is used for purposes incidental to the dwelling house, and use of the land is reliant on a water supply from the dwelling. However, Manor House has a front and side garden area that is defined by a brick wall. In visual terms the defined garden areas, together with a rear yard, are the curtilage of the dwelling. Furthermore, the vehicular access is shared with Manor Farm and is another significant defining feature that separates the enclosed curtilage from the open land to the east of the access.

17. Whether or not land is curtilage is a matter of fact and degree, given the specific circumstances of each case. Case law offers guidance but is not conclusive. As a matter of planning judgement, and as a matter of fact and degree given the specific circumstances of this case, the appeal land is not part of the curtilage of Manor House. The operational development carried out on the land is not therefore development permitted under the provisions of the GPDO. The ground (c) appeals thus fail.

The ground (d) appeals

18. The enforcement notice, and a previously issued but withdrawn notice, was issued after 25 April 2024 so the provisions of Section 171B(1) of the Act are effective. To be immune from enforcement action the alleged breach of planning control must have begun more than ten years before the date of issue of the notice. The critical date is therefore 24 July 2014. The operational development that has occurred on the land began in 2023 so the ground (d) appeals fail.

The ground (a) appeal

19. The main issue is the effect of the operational development on the character and appearance of the Huntington Conservation Area (HCA) within which the land and Manor House are situated.

20. The Development Plan includes the Huntington Neighbourhood Plan (HNP). HNP policy H15 designates local green spaces; one of which is 'Land next to Manor House', the appeal site and land to the south. The supporting text to the policy states that individually and collectively these areas make a significant contribution to the distinctive and attractive character of the Parish, and the policy states that development proposals that would affect the designated local green spaces will only be supported in very special circumstances.

21. The draft City of York Local Plan (LP) was published in 2018. It has been the subject of a consultation process and has been examined by an Inspector. The draft LP is therefore afforded some weight. LP policy D4 states that development proposals within the setting of a Conservation Area will be supported where they preserve those elements which contribute to its character and appearance.

22. Along the road frontages of the appeal site is a metal fence and a beech hedgerow. The hedgerow in particular screens the site in views from Huntington Road. The site was undeveloped, other than by the agricultural storage building with integral canopy that has been built pursuant to the planning permission granted in 2020. Nevertheless, the site is relatively open when compared with its surroundings. The storage building is uncharacteristic of the area and is visually intrusive, particularly in views across the site from Ash Lane.

23. The greenhouse is close to the frontage to Huntington Road and only the top of its glazed roof is visible in the street scene; though it will be more visible in winter. It is also visible in views across the site from Ash Lane from where it is seen to the right of the storage building, with the traditional building that is Manor House and Manor Farm in the background. The greenhouse is large but is not unattractive. It is complimentary in style to the residential building in the background and its horticultural use continues the agricultural use of the land.

24. The greenhouse is tucked away in a corner of the site and does not unduly undermine the general openness of the overall local green space. Given its size the greenhouse is not, as alleged by the Council, "...more typical of what would be found within the grounds of a large domestic residential property". The greenhouse does not have a porch but a projecting gable feature on its long south-east elevation. This feature does not alter the conclusion that the greenhouse is typical of buildings found in a horticultural situation. The brick wall is a minor feature and the bricks match those of Manor House. It is inconsequential.

25. The views of local residents and the Parish Council have been taken into account but they do not alter the conclusion that the greenhouse and the wall do not affect the designated local green space and do not harm the character or appearance of the HCA. The greenhouse and wall do not conflict with HNP policy H15 or draft LP policy D4.

26. The hardstanding areas and footpaths can only be glimpsed from outside the site but they are extensive and are visually intrusive, mainly because the grey stone is wholly different in character to the red brick of the nearby dwellings. This element of the development causes harm to the character and appearance of the HCA and does affect the designated local green space. The hardstanding areas and footpaths conflict with HNP policy H15 and draft LP policy D4.

27. The ground (a) appeal succeeds in so far as it relates to the greenhouse and the wall but it fails in so far as it relates to the hardstanding areas and footpaths. Planning permission has thus been granted for the construction of a greenhouse and brick base and the construction of a brick wall. The enforcement notice has been varied to reflect the grant of planning permission but has otherwise been upheld to secure the removal of the hardstanding areas and footpaths.

The ground (f) appeals

28. The ground (f) appeals relate only to the laying of hardstanding areas and footpaths. The only remedy to this element of the first breach of planning control is the removal of the hardstanding areas and footpaths, which is requirement (c) in section 5 of the enforcement notice. The ground (f) appeals thus fail.

The ground (g) appeals

29. The ground (g) appeals relate only to the laying of hardstanding areas and footpaths. The compliance period of three months is ample time to remove the hardstanding areas and footpaths from the site. The ground (g) appeals thus fail.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr R Massey Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Harrison Principal Planning Officer

INTERESTED PARTIES:

Dr J Buckles Local resident

Councillor K Orrell Ward Councillor