



Appeal Decision

Site visit made on 30 January 2025

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/Y2003/C/24/3339213

Land adjacent to Holly Lodge, West Hann Lane, Barrow Haven, Barrow upon Humber, DN19 7HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Michael Matthews against an enforcement notice issued by North Lincolnshire Council.
- The notice was issued on 23 January 2024.
- The breach of planning control as alleged in the notice is *Without planning permission the erection of a stable block and haybarn, a collection of structures and siting of containers and the use of land for storage of building materials and other non-agricultural materials.*
- The requirements of the notice are to: (i) demolish the stable block; (ii) demolish the hay barn; (iii) demolish all structures (within an area edged red on Plan 4); (iv) cease using the land for the storage of building materials, storage containers and other non-agricultural materials and remove from the land all such containers and materials; and (v) where the stable block and hay barn are removed, ensure the land is returned to its natural land level with clean soil.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Application for costs

1. An application for costs has been made by the appellant against the Council, which is the subject of a separate decision.

Preliminary Matters

2. The notice suffers from some imprecision in drafting, although I do not understand the parties to be in any doubt about what is alleged and what is required by it. The appellant is professionally advised and has not raised any concerns. My doubt arises in respect of the allegation of 'a collection of structures and siting of containers'. It is unclear on the face of the notice whether this 'collection of structures' constitutes an allegation of unauthorised operational development. Having regard to the definition of a 'building' in section 336 of the 1990 Act ('any structure or erection') and the requirement of the notice to 'demolish' those structures, I understand the relevant allegation to be of the erection of buildings to the front of the site in the positions delineated on Plan 4.
3. As to the 'siting' of containers, the mere 'siting' of an object on land does not generally disclose any allegation of development (whether of operational development or a change of use) but the context here is the related allegation of the use of land for the storage of building and other non-agricultural materials. I understand the Council's position generally to be that free-standing storage containers are facilitative of (and integral to) the use of the land for storage for

unauthorised purposes. I do not understand the Council to allege that such storage containers themselves are buildings.

4. The site is subdivided into smaller fields (or paddocks) and the northernmost field contains a polytunnel and various items including several water containers. I do not understand the requirements of the notice to include removing anything from that northernmost field that is presently there, and the Council were unable to enlighten me on this point at the site visit.

Main Issues

5. The notice essentially comprises two components: the construction of a stable block and associated hay store; and the use of the land for non-agricultural storage purposes which has included the erection of additional buildings (the 'collection of structures') to the front of the site. I shall deal with these matters separately where relevant, because if permission is granted for the stable block then the use of the land will inevitably change with any such permission. Section 75(3) of the 1990 Act provides that, if no purpose for which any building for which permission is granted may be used is specified in the grant of permission, the permission shall be construed as including permission to use the building for the purpose for which it is designed. The buildings here are evidently designed for equine purposes, and other land within the planning unit can be expected to reflect that permitted use.
6. I have not referred back to the parties on the question of severability, but it appears plain from the appellant's case that he seeks permission for the buildings and to put them, together with the remainder of the site, to an equine use in the form of a commercial livery. That inevitably engenders separate consideration from the question of the use of the site for the storage of non-agricultural items.
7. The notice identifies a number of reasons for its issue and the questions arising from consideration of the relevant planning policies for the area are, first, whether each of the developments is necessary for the functioning of the countryside or is otherwise appropriate to the open countryside; secondly whether it would be detrimental to the character or appearance of the open countryside; and finally whether it would be detrimental to residential amenity. These are the main issues in the appeal under ground (a) which considers the deemed application for planning permission.
8. If permission is not (wholly) forthcoming on the ground (a) appeal then further grounds for consideration are ground (f) which contends that the steps required by the notice are excessive and ground (g) which seeks more time within which to remedy the alleged breach of planning control.

Reasons

The appeal on ground (a): the deemed planning application

Background and the 'fallback' position

9. Before turning to the main issues, it is necessary to consider the appellant's 'fallback', or baseline, position which is a matter of dispute between the parties and the correct answer to which will inform the consideration of the main issues. The crux of the issue is whether or not the site continues to carry the benefit of a previous planning permission for a stable block, granted in 2017 and largely

unencumbered by planning conditions including as to the number of horses which may be kept and the form of livery that might take place. A second issue, if that permission is no longer extant, concerns the weight to be given nonetheless to that earlier permission as establishing the principle of the development now sought.

10. The relevant permission was for a stable building of somewhat different dimensions and in a different, albeit overlapping, location. The external enclosed area as built is 170 square metres, rather than the 149.5 square metres approved. The net internal area differs by some 18 square metres, producing variations of around 15% and 12% respectively. The appellant's case is that the permission was begun by the ground breaking works and the laying of foundations, albeit that a different building came to be constructed. I do not consider this to be the case. The foundations laid have transpired to relate to a different building, namely the one that is there now.
11. This position appears to have been accepted by the appellant insofar as no appeal is brought against the notice on the ground that the allegation (of development without planning permission, as opposed to development undertaken without complying with the 'plans' condition of the 2017 permission) is wrongly made. He describes the building as 'unauthorised'. I am also informed that an application made in 2022 for a lawful development certificate regarding the building was withdrawn, although full details of that have not been supplied.
12. Whether works that differ from the permission granted in some way are nonetheless comprised in the development for which permission was granted for the purposes of section 56(2) of the 1990 Act have received judicial consideration in a number of cases, most recently in Southwood v Buckinghamshire CC [2024] EWHC 71 (Admin). It is a question of fact and degree for the decision maker having regard to the significance of the differences between what was permitted and what was constructed. Here although there is some overlap of the foundations there is a significant discrepancy. The building is a different shape from that permitted, both in terms of its floor plan and of its roof design. The number of horse bays is different. Although the building lies on the same parcel of land and is designed for essentially the same purpose, I do not consider that the 2017 permission remains extant as a result of the building works that were carried out, which were comprised in a different development.
13. Thus I do not consider the appellant to have the 'fallback' position of constructing that earlier building (because the 2017 permission appears now to have expired).
14. The 2017 permission may nonetheless be said to mark an important step in the planning history of the site. Permission was granted for a stable building upon the Council's consideration of the same development plan policies that are now said to apply. The planning history of a site and the need for consistency in decision making are both matters attracting weight, and hence I should need good reasons now to depart from the principle of the development.
15. Contrary considerations include that when granting the 2017 permission the Council do not appear to have fully grappled with the Inspector's reasons for dismissing an earlier appeal for the construction of a general purpose agricultural building and adjoining multi-use loose boxes. The Inspector then pointed out that no specific details of an agricultural business or other use essential to the functioning of the countryside had been provided, meaning that a rural requirement

for the building had not been demonstrated. The officer's report on the subsequent 2017 application merely records that the size of the stable building then proposed would be more commensurate with the size of the parcel of land. It appears from that report that environmental health officers were not consulted on the application.

16. Applications have more recently been made to retain the building and the hay barn that has been erected alongside it. Those applications have been refused largely for reasons consistent with the Council's reasons for now issuing the notice including that the development is inappropriate in the open countryside.

Appropriate or required in the countryside

17. Policies CS2 and CS3 of the North Lincolnshire Core Strategy of 2011 say that only development which is essential to the functioning of the countryside will be allowed to take place on a site such as this one, outside settlement areas. Policy RD2 of the North Lincolnshire Local Plan, adopted in 2003, also provides that development in the open countryside will be strictly controlled, but does not require that it is 'essential' in all cases. Development which is employment related development appropriate to the countryside, or essential for the provision of countryside recreation, is in principle acceptable.
18. A livery business is on the face of it an appropriate use in the countryside and requires a countryside location. However, the policy requires rather more than that to be demonstrated. The appellant's willingness to limit the number of horses to be kept on site to eight in itself suggests that the building is oversized for any business needs. As it is, the appellant has not explained any need for this particular building at all, or why a livery business for eight horses is required.
19. The appellant informs me that the stable was previously put to a livery use for four horses but that this ceased in September 2021. It is unclear why the use ceased then, as no enforcement notice was issued until April of the following year, although I accept that investigations by the Council may have resulted in some uncertainty. It appears from this history that a livery use for four horses might be viable but this is not what is sought by the appellant. The appellant points to the popularity of horse riding in this rural area and the availability of other equestrian centres and small liveries, but does not provide any business case to demonstrate any need or demand for this additional one. In the absence of any understanding of how the livery would work in practice, I am unable to find that it would amount to employment related development. Nor, in the absence of any demonstration of need, am I able to find that it is essential for the provision of countryside sport or recreation. The same considerations apply in respect of the hay barn. With the appellant's proposed restriction on the number of horses kept in the stable building to eight, a number of the existing horse bays would be kept otherwise vacant, or available for the storage of hay and fodder, and so it is not clear why a separate hay barn would be needed.
20. As to the 'collection of structures' and the use of the land for the storage of building and like materials, those are said to be required in part for maintenance and repair of the principal livery buildings. Without those, there is no need for them. The appellant adverts to a history of thefts and the need to keep machinery under lock and key. A different building might be appropriate for such a purpose, or the storage containers require removal insofar as they facilitate only an unlawful land use. I do not find that the need to secure a tractor or meadow cutter, even for

agricultural purposes, warrants retaining the current suite of buildings, or any of them, on the site. Nor is there any justification for using the land for the storage of building and other non-agricultural materials.

21. Therefore on this issue I do not have sufficient information before me to find that the justification for the buildings and other development that is required by policies CS2, CS3 and RD2 exists.

Character and appearance

22. The stables and hay barn are generally low-key buildings consistent with their location and no resulting detriment to the character of the area has been identified by the Council. The collection of structures and the non-agricultural materials around the site do serve to clutter up the site and unnecessarily detract from the openness of the site, contrary to the proviso of policy RD2(c). On this issue I do not find any conflict with policy in respect of the stable building or haybarn, although subject to the obvious proviso that I have not found their provision to be justified at all, but in respect of the other elements I find them to be detrimental to the character and appearance of the countryside in conflict with policy RD2 and with the general requirements of policy DS1 for development to reflect or enhance the character and appearance of the area.

Effects on residential amenity

23. Detailed objections to the development have been submitted by the adjoining neighbours at Holly Lodge, principally for reasons of odour and noise. Particular complaints are made, in relation to noise, of a borehole pump for water which is located close to the property's boundary, an electricity generator used to provide power to the stables and for the operation of machinery, and of horses neighing or fighting.
24. Whilst some animal noises are to be expected from the site if it returned to an agricultural use, I consider that the borehole pump or electricity generator would be unlikely to be used as extensively as would be required by a livery stables. Consideration of these matters therefore appears to fall within the scope of this appeal. The principal odour consideration appears to arise from the manure heap having resulted in insect intrusions into the adjoining neighbour's property.
25. The site itself is of a size that might produce sufficient grazing for perhaps two horses. There are no details before me of the feeding or exercise arrangements for all eight horses, or of any measures that would be taken to avoid or mitigate adverse odour or noise impacts arising. The adjoining objector has submitted acoustic reports of his own but more pertinently has supplied copies of the consultation responses from the Council's own environmental health officers to the recent applications. They have raised objections to all applications on which they have been consulted, pointing out that the haybarn is in close proximity to a residential property and there is therefore the potential for adverse impact due to activities in the barn, such as odour from animals or storage of feed/hay, noise from comings and goings, machinery used to move, deliver feed/hay &c.
26. The officers have recommended that if permission is granted, then conditions should apply to prevent any commercial use, to restrict the keeping of horses on the site to no more than four, to use the hay barn only for the storage of hay and

feed, and to require a scheme for the collection, storage and disposal of manure and foul bedding to be approved and implemented.

27. To any such conditions I would add a requirement for a scheme for noise insulation and mitigation measures to be developed and approved. There is no mains power or water to the site, with the power supply relying on a generator and the water supply relying on a borehole pump situated in close proximity to the boundary with Holly Lodge producing, according to the objector, noise readings in excess of 80dbA.
28. However, the conditions sought by the environmental health officers would produce a result that significantly departs from the use that is sought here by the appellant. I have not received any information as to the need or demand for a private stable block for no more than four horses. Understandably so, because this is not what is sought by the appellant, but it does mean that I have no other basis on which to conclude that the provision of any of the buildings would be consistent with the relevant policy requirements of RD2, CS2 and CS3 for any other use, or less intensive use, than that now sought. Whilst the retention of one or more of the buildings in some form might be consistent with a use that receives policy support and protects the amenity of the adjoining neighbour, that is not the proposal before me.
29. Although the stable building is itself some 50 or 60 metres from the house at Holly Lodge, the manure heap is outdoors and the water borehole pump lies close to the property boundary. The environmental health officers' assertion that keeping eight horses on this small site, without mains utilities and without any proposals to arrange for the disposal of waste or bedding, may give rise to detriment to the neighbours appears to me incontrovertible. Although some such matters may be resolved by imposing relevant planning conditions, this is not universally the case and I find that the development would conflict with the provisions of the development plan, namely policy DS1 and RD2(d) that require developments to avoid detriment to residential amenity.

Conclusions on ground (a)

30. I accept the force of the appellant's argument that there has been no material change in circumstances since the Council determined to grant permission for a stable block in 2017 applying the same development plan policies as are now relevant. Ordinarily one expects to find consistency in decision making, and the planning history of the site is a material consideration attracting weight.
31. However, in the absence of any evidenced justification for the development or any reason to be confident that unacceptable impacts on the neighbour can be avoided, it is clearly contrary to the development plan. It contravenes countryside protection policies in these two important respects.
32. I have carefully considered whether the planning history and the need for consistency are matters of sufficient weight to overcome these conflicts with the development plan and, on the basis of the proposal before me, conclude that they are not. Most importantly, I find that the 2017 permission has expired without implementation and so cannot constitute a realistic fall-back position. I am not informed of any permitted development rights that might apply to construct any other buildings, whether or not the land is put to an agricultural use. Although agricultural uses may sometimes produce unpleasant effects on neighbours, I am

not told what the alternative use of the land might be here and am unable to conclude that any other lawful use would be likely to result in similar detriment.

33. Additionally, although not determinatively, I find there are good reasons not to adopt the reasoning of the Council when granting permission for the 2017 building. The officer's report was a single page long. It did not report any consultation with environmental health officers. It failed to consider at all whether the building was justified or necessary for the functioning of the countryside and in this it did not engage with a previous Inspector's reasoning on an earlier proposal, albeit a somewhat different one. It did not consider whether any change of use in the associated land would or might result from granting a permission.

The appeal on ground (f)

34. Alternative schemes are put forward by the appellant for a smaller building or to alter it to bring it in accordance with the 2017 planning permission. These are put forward under ground (a) although neither of them appears to me in reality to constitute "part of" the matters alleged in the notice but in either case to result in a different building albeit one that is at least partly on the same footprint.
35. As set out above, there is no information before me upon which I might conclude that a smaller building (suitable for eight horses, or otherwise) is needed for the functioning of the countryside or for any reason permissible by policy RD2. A building used as envisaged by the environmental health officers (namely for the private stabling of not more than four horses) is not countenanced by the appellant. I am unable to find that either alternative scheme put forward by the appellant would comply with the development plan for the area for the same reasons as those given above.
36. As to requiring the removal of only those parts of the building and foundations that are incompatible with the 2017 permission, as I have explained I do not consider that 2017 permission to have been lawfully implemented or to remain extant. It follows that the demolition and removal of the buildings is required in order to restore the land to its condition before the alleged breach occurred. Therefore the appeal on ground (f) will fail.

The appeal on ground (g)

37. The appellant seeks six months in order to comply with the requirements of the notice for reasons of difficulties in procuring contractors and in the appellant's financial position.
38. The substantive appeal is dismissed primarily for the want of information to justify the retention of the buildings, and I do not discount the possibility that a scheme for the use of those buildings might come forward that is compatible with the development plan for the area. The stable and hay barn buildings in themselves, if they are needed, are not harmful to the character or appearance of the area. The site is presently under-used and I do not understand it to be causing any existing harm to the neighbours. I shall therefore extend the period for compliance to the six months sought in order that any other options for the use of the buildings can be explored before demolition takes place. The appeal on ground (g) succeeds to that extent.

Conclusion

39. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a varied period for compliance and refuse to grant permission on the deemed application.

Formal Decision

40. It is directed that the enforcement notice be varied by substituting “six” for “3” in paragraph 6 of the notice. Subject to that variation the appeal is dismissed and 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.

Laura Renaudon

INSPECTOR