



## Appeal Decision

Site visit made on 6 January 2026

by **Andrew McGlone BSc MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> February 2026

**Appeal Ref: APP/Y2003/C/25/3364274**

**Land at Western Part of Fourways Fisheries, Gunthorpe Road, Gunthorpe  
DN9 1BG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeal is made by Mr Ian Ball against an enforcement notice issued by North Lincolnshire Council.
- The notice was issued on 13 March 2025.
- The breach of planning control as alleged in the notice is without planning permission and in contravention of condition 5 of planning permission reference PA/2003/0638, the erection of an animal house on a concrete base with an attached covered lean-to, fences, walls, pillars, gates, and the siting of a caravan with decked area.
- The requirements of the notice are to:
  - i) remove the animal shelter, its attached lean-to and its concrete base (shown positioned on Plan S1 attached to this notice and shown in PHOTO1 attached to this notice).
  - ii) remove the fences which enclose the animal paddock (shown positioned in Plan F1 attached to this notice).
  - iii) remove the caravan and the decking (shown positioned on Plan S2 attached to this notice and shown in PHOTO2 and PHOTO3 attached to this notice).
  - iv) remove all the fences, pillars and gates which enclose the caravan area (shown positioned on Plan F2 attached to this notice).
  - v) remove the walls, gates and pillars (shown positioned on Plan F4 attached to this notice and shown in PHOTO4 attached to this notice).
- The period for compliance with the requirements is: 3 months beginning with the date that this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Act. 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 appeal is allowed and the enforcement notice (EN) is quashed.

### Preliminary Matters

2. On reviewing the evidence submitted, I detected a hidden appeal on ground (c). Upon my invitation, the appellant made a formal request to add this ground to their appeal. The parties were given the chance to comment on the additional ground.
3. I have determined another appeal relating to the eastern part of Fourways Fisheries<sup>1</sup> at the same time as determining the appeal. I have considered each appeal on its own merits but, where relevant, considered common points.

### Reasons

#### The appeal on grounds (b) and (c)

4. An appeal on ground (b) is that those matters stated on the EN have not occurred. An appeal on ground (c) is that those matters (if they occurred) do not constitute a

<sup>1</sup> APP/Y2003/C/25/3367681

breach of planning control. I will consider these matters jointly due to the overlap in the case made by the appellant in respect of both grounds.

5. It is the appellant's case that the planning conditions attached to a planning permission granted in 2003 (the 2003 permission) have not been discharged (conditions precedent); that the development is not in accordance with the 2003 permission; and therefore, the planning conditions attached to the 2003 permission are not enforceable.
6. The Council granted the 2003 permission on 30 June 2003 for the "change of use of agricultural land to fishing lakes with associated excavations and landscaping." That planning permission was subject of five planning conditions. The land to which the 2003 permission relates was identified on the layout plan which accompanied that application. While the layout plan was not conditioned as an approved plan on the decision notice, it shows two lakes, each with an island in the middle. The lake closest to Gunthorpe Road was to be larger, with an access track between it and the smaller lake to the south of the site.
7. The five planning conditions imposed on the 2003 permission related to the commencement of development within five years of the decision (1); a scheme of archaeological investigation and work (2); a landscaping scheme and the implementation of that scheme (3 and 4); and a restriction on buildings, structures, fences, walls, equipment, caravans, containers or any other chattels (5). Condition 5 is the basis for the alleged breach of planning control in the EN, given the reasons why the Council issued the EN notwithstanding the allegation including 'and' between 'without planning permission' and 'in contravention of condition 5'.
8. From the four corners of the decision notice, the 2003 permission related to a change of use and operational development. Subsequent landscaping was required, and limitations were placed on what could be built on or brought onto the site due to the site being in an open exposed area of countryside which needed to be protected from inappropriate works or uses taking place. The description of development clearly sets out that more than one fishing lake was granted planning permission. This reflects the layout plan and the provision of two lakes, even though there was not an approved plans condition.
9. Conditions 2 and 3 on the 2003 permission both state "no development shall take place until...". Hence, they both prohibited the commencement of development until a requirement was met. Condition 2 goes to the heart of the planning permission because a written scheme of investigation concerning archaeology on the site needed to be approved by the Council and implemented before development could commence. This is a legitimate planning aim that needed to be resolved before works took place to avoid damage to or loss of archaeology on the site. Condition 3 also goes to the heart of the planning permission, as it requires protection measures for existing trees and hedgerows on the site for the duration of development. These measures needed to be secured before development started so the existing trees and hedgerows were not damaged.
10. A letter dated 22 September 2003 from the Council confirmed "that conditions 2 and 3 of the planning permission (2003 permission) have now been complied with. That letter was in response to a letter of 28 August 2003 presumably seeking the Council's approval that those conditions had been complied with. Conditions 2 and 3 could only have been 'complied with' after the actions required by them had been carried out. Although condition 3 also sought new planting, condition 4 stipulated when this was to be carried out by.

11. For the purposes of the Act, development of land is to be taken as initiated at the time when those operations are begun in the case of operations and when the new use is instituted for changes of use. If development consists of both operations and a change of use, it is the earlier of the times. S56(4) of the Act defines what a 'material operation' is. It is only necessary for 'material operation' to be begun to be carried out for whole development to be taken to be begun under s56(2). A material operation does not have to be completed. The meaning of a material operation is set out in s56(4) of the Act. It does not, however, as a matter of ordinary language, exclude the possibility that the development might in fact be begun in other circumstances.
12. The 2003 permission involved excavations to form fishing lakes. Work to achieve them does not fall within the wording found in s56(4), but the work was granted planning permission and given the scale of the lakes on the land, it was work that was more than de minimis.
13. Based on aerial images, work took place to excavate and form the lake that lies in the south-western corner of the appeal site. The lake created is more regular in shape compared to the layout plan, larger, and positioned closer to the southern and western boundaries. However, while there are differences, there are similarities in terms of the form of development carried out, its location and its use as a fishing lake, given that it was filled with water. Thus, I consider that, in forming the lake in the south-western corner, a material operation occurred. As that took place by 2007, the development in the 2003 permission had begun as per the time period stated in condition 1 of the 2003 permission.
14. Prior to the 2003 planning permission, the land relating to it was in agricultural use. The beginning of the 2003 permission brought about a new chapter and a new planning unit that was physically separate and distinct from the use of surrounding agricultural land. The extent of the planning unit reflected the layout plan associated with that application.
15. An aerial image from 2007 shows that the land to the east of the first lake was excavated to form a new lake. That land straddles the planning unit relating to the 2003 permission and land that lies adjacent but outside of it. The layout, position, size and form of this lake have not altered since 2007, although landscaping has developed around it. Crucially, aerial images confirm that this lake was formed and filled before the lake to the north of the appeal site even if the early stages of ground excavation had started to the north. There was, therefore, a clear sequence of events that took place, with a third lake excavated and filled later (2008) broadly in the location identified in the 2003 permission.
16. Although the description of development on the 2003 permission indicates more than one lake, the development that took place resulted in three fishing lakes with land outside the scope of the 2003 permission. Thus, despite the commencement of the 2003 permission for the purpose of s56 of the Act within the stated time limit, there was a clear deviation from the permitted works. There was also a change in the planning unit as the three lakes and the land around them formed part of the same physical and functional area that was separate from the surrounding land. It was occupied for the same purpose as a fishery.
17. So, while the 2003 permission was commenced, there was a subsequent development for which no planning permission was granted. This resulted in a change in the planning unit. While I note the Council's point about the lake in the

south-east corner, my findings mean that the conditions imposed on the 2003 permission do not apply to the development that has occurred.

18. I conclude that the 2003 permission was implemented within time, but then there was a clear deviation from the permitted works that involved additional land and a change to the planning unit. As there is no planning permission relating to this development, there is no condition which prohibits what has occurred and what is alleged by the EN has not in fact happened. The EN cannot be corrected without causing injustice to the appellant, so the appeal on grounds (b) and (c) succeed.

### **Conclusion**

19. For the reasons given above, I conclude that the appeal should succeed on grounds (b) and (c). The EN will be quashed. In these circumstances, the appeal on grounds (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

*Andrew McGlone*

INSPECTOR