



Appeal Decision

Site visit made on 30 March 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 14 April 2026

Appeal Ref: APP/C2741/C/25/3361643

Land to the east of Coneygarth Lane, Dunnington, York YO19 5LW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Gary Kay against an enforcement notice issued by City of York Council.
 - The notice was issued on 13 February 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission a material change of use of an agriculture building to a music events and performance venue and the creation of an associated hardstanding parking area.
 - The requirements of the notice are to:
 - i. Cease the use of the building on the Land referenced “The Barn” and shaded brown on Plan A as a music, events and performance venue.
 - ii. Remove all equipment and paraphernalia associated with the music, events and performance venue from the Land including waste bins, generators, cooking facilities and tables and chairs.
 - iii. Remove all hardstanding within the area highlighted in blue on the enclosed plan, titled Plan B from the Land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the allegation in the enforcement notice is corrected by the insertion of the words “mixed use of agriculture and a” after the words “to a” in paragraph 3.
2. Subject to the correction the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appeal was made on ground (b), that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. However, from the evidence before me it is also apparent that the appellant’s case is that the use of the Barn for occasional events does not require planning permission. There is thus a hidden ground (c), that there has not been a breach of planning control. The Council has been given the opportunity to make further representations in respect of the hidden ground (c) and so has not been prejudiced. I have dealt with the appeal on that basis.

Appeal on ground (b) and ground (c)

4. There is no dispute that an area of hardstanding has been created, and thus the main issues are whether as a matter of fact there has been a material change of use of the agricultural barn to a music events and performance venue and if there

has, whether that constitutes a breach of planning control. On these legal grounds of appeal, the onus of proof is on the appellant to make out his case and the test is the balance of probabilities.

The Appellant's case

5. The appellant states that the Barn was first erected in 2017 for agricultural use. In 2021 to diversify, he hosted one event for which he had a Temporary Event Notice (TEN) which was issued by the Council. During the next three years he hosted a small number of music events plus one or two weddings during the summer months, and for each of these he had the requisite TEN. He has also held a small number of private events. There has been a maximum of 15 events per annum.
6. In 2022, twenty tables, 20 chairs and 30 folding chairs were donated to the Barn for events. These are stacked in a corner of the Barn when they are not in use and stored there. A portable toilet is also stored on site during and immediately after events. Small fridges are used by bars that are hired by hosts at events.
7. It is the appellant's case that the Barn remains predominantly for agricultural use, being an agricultural store for up to six months between October and April. During the summer months when events are not being hosted, the Barn is used to store hay and straw and occasionally livestock, plant and machinery.

The Council's Case

8. The Council advise that planning permission was granted for the Barn in 2016 for the housing of livestock and agricultural storage. In July 2021 they became aware that the Barn was being advertised on social media as an events and performance venue under the name of "Kays Barn". Events advertised included music events, some scheduled over two days with weekend camping advertised. They are aware that TEN have been granted and advise that when Officers have visited the Barn they have not seen any evidence of livestock in the Barn, nor any agricultural use, with the exception of a few hay and straw bales. The Council consider that it is impractical for the two uses to be alternating for hygiene reasons and that the general cleanliness and condition within the Barn is not reflective of one in agricultural use but instead, one dedicated to event and hospitality use. They believe the primary use of the Barn is its event usage.
9. In support of their case the Council has provided a photograph of the outside of the Barn and car park dated June 2022, and a series of photographs taken during a visit on 2 March 2023. The March photographs show tables and chairs stored in the corner of the Barn alongside some straw bales, a mobile toilet trailer, a 21 birthday banner stuck to the Barn wall and outside some agricultural plant/trailers and a trade waste bin which appears to contain some drinks cans and other non-agricultural waste items. Two copies of extracts from a social media site have also been provided which show an event advertised at the Barn on July 29 & 30th 2022.

Reasons

10. There does not appear to be any dispute between the parties that the Barn is being used as a venue for music and performance events, including the occasional wedding and private function. It is also not disputed that when events are not being held, chairs and tables associated with its events use are stored in the Barn.

I observed on my site visit that there were tables and chairs stored in the Barn as well as several small fridges and a space heater. There were also posters associated with an event displayed on the inside of the barn walls. I also observed in the Barn a small number of straw/hay bales and a couple of flatbed trailers. Outside on the hardstanding there were two Portaloo's, a skip full of party debris and some silage bales.

11. From the evidence available, I see no reason to dispute the appellant's assertion that he has held events in the Barn on no more than 21 days in each year since 2021. Furthermore, the Council has not provided any substantive evidence to demonstrate that it has been used for more events than are detailed in the appellant's submitted Witness/Statement of Truth, dated 15 May 2025. Indeed, the Council has only provided evidence of one event which was advertised in the social media extract in 2022 and photographs of event equipment storage in the Barn on the 2 March 2023. It is also not disputed by the appellant that when the Barn is not being used for events, he continues to use part of the Barn to store event equipment.
12. Having regard to the number of days a year the appellant has held events and the evidence before me, including the absence of any substantive evidence to dispute the appellant's assertion that during the winter months and between events the Barn is utilised for agricultural storage, it seems to me that on the balance of probabilities the Barn is in a mixed use for agriculture and holding music events and performance venue.
13. S176(1)(a) of the Town and Country Planning Act, 1990, as amended (the Act) provides that on appeal under section 174 the Secretary of State may correct any defect, error or misdescription in the enforcement notice if he is satisfied that the correction will not cause injustice to the appellant or the local planning authority. Use of agriculture is the lawful use of the building and thus there would be no injustice to my correction of the allegation to include agriculture as part of a mixed use. I shall therefore correct the allegation to "Without planning permission, a material change of use of an agricultural building to a mixed use of agriculture and a music and performance venue and the creation of an associated hardstanding parking area." The ground (b) succeeds to the extent that the allegation has been corrected to allege a mixed use.
14. The lawful use of the Barn is for agriculture. The issue in the ground (c) appeal is whether as a matter of fact and degree there was a material change of use on the Land such as would amount to development requiring planning permission¹. A main consideration is whether there is a significant difference in the character of the activities from what has gone on previously.
15. I have found that the Barn is in a mixed use of agriculture and as a music event and performance venue. The events have been a regular occurrence during the summer months of the year. When those events take place a significant number of people congregate in the Barn, often travelling by car and parking at the premises. Amplified music is played, on-site catering and drinks bars are provided and the building is heated. The general level of activity and character of that use is significantly different from its lawful agricultural use where the building is used just for storage with little activity associated with it.

¹ In the terms of S55 (1) of the 1990 Act.

16. I therefore find that, as a matter of fact and degree, the mixed use of the Barn has resulted in a use quite different in character from that of an agricultural barn. This difference amounts to a definable change in the character of the use and is therefore a material change of use. Development took place for which no planning permission was granted by the local planning authority and the change of use is not permitted under any provision of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended.
17. The appeal on ground (c) fails.

Other Matters

18. I have had regard to the appellant's contention that the hardstanding has been in place for over four years and is thus lawful. However, there is no ground (d) appeal, and I have not been provided with any substantive evidence that would demonstrate that it is lawful.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Elizabeth Pleasant

INSPECTOR