



# Appeal Decision

Site visit made on 6 April 2022

by **John Whalley**

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

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**Appeal ref: APP/P1045/C/21/3284484**

**Land North-west side of Manystones Lane, Brassington, Derbyshire  
DE4 4HF**

- The appeal is made by Mrs Sharon Birks under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Derbyshire Dales District Council.
- The notice was issued on 23 September 2021; reference No. ENF/21/00025.
- The breach of planning control was: Without planning permission: (para. 3 enforcement notice)
  - a) unauthorised building and engineering operations comprising a wider access, hard surfaced track to a newly created hardstanding area, the formation of a raised deck area and surfacing upon which children's play equipment has been sited on the land edged blue;
  - b) the material change of use of the land edged blue from agricultural to recreational use, and,
  - c) the use of the land edged red as a caravan and camping site.
- The requirements of the notice are: (para. 5 enforcement notice)
  - a) In relation to the alleged breach of planning control at a), (above), permanently remove the track, decking, play equipment and hardstanding areas, reinstate the access to its original 5m width with a drystone wall aligned parallel with the highway to marry in with wall either side and reinstate the land edged blue as grassland.
  - b) In relation to alleged breach of planning control at b) and c), (above), permanently cease the use of the land edged blue for recreational purposes and edged red for caravan and camping use.
- Time for compliance: 3 months from when this notice takes effect.
- The appeal was made on grounds (a), (b), (c) and (f) as set out in the amended Act. As the fee for the application for planning permission deemed to have been made in respect of the ground (a) appeal was paid, the application falls to be considered.

**Summary of decision: The enforcement notice is varied and upheld. Planning permission is not granted to retain the operational development or for the change of use of the land set out in the allegations in the enforcement notice.**

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## Procedural matter

1. Following concerns of possible shortcomings in the appeal consultation process, an extended period was authorised. That delayed the issue of this decision.

## Appeal site

2. The 1.2 ha enforcement notice land fronts the northern side of Manystones Lane, about 1km north of the village of Brassington. The site consists of 2 small pasture fields with an agricultural building at the north-eastern corner. A recently constructed stone surface track runs for the most of its length alongside the field dividing stone wall up from Manystones Lane, over the middle of the field, turning right to the agricultural building and the area of hardstanding.
3. Children's play equipment has been erected near the building, consisting of a climbing frame, short slide, sand pit and a trampoline dug in such that its bouncing surface is at ground level. All had a near permanent look, not as equipment that might be brought out and put back into storage immediately after use. There were small pens for pigs, sheep, alpacas and hens close to the agricultural building, together with a polytunnel raised upon timber decking. There was also a small caravan, several chemical toilets and a tent on site when I was there.

## The appeal on ground (b)

4. An appeal on ground (b) asserts that those matters set out in the enforcement notice have not in fact occurred. The enforcement notice sets out 3 alleged breaches of planning control.
5. First: it says unauthorised operational development has taken place, that is, the construction of a widened access from Manystones Lane, a surfaced track, a new hardstanding area and the formation of a raised deck area and surfacing. Whether that work required planning permission is a matter for the ground (c) appeal. It cannot be claimed the construction work did not take place.
6. Second: the notice alleges a material change of use of the land from agricultural to recreational use. The provision of a children's play area and equipment on the land was not denied. Whether its use is ancillary to a lawful use of the land is, again, a matter for the ground (c) appeal.
7. Third: the notice alleges a material change of use of the land from agricultural use to a use as a caravan and camping site. The Council appear to accept the statement made by the Appellant, Mrs Sharon Birks, that the appeal site had not been used as a caravan site, although a local objector said caravans and camper vans were on site at times. Mrs Birks said recreational tents had been put up on the land, but only for a short while in 2021. Again, the lawfulness or otherwise of the tent camping activity is more appropriately dealt with in the ground (c) appeal below. It cannot be said that no camping use of the land has taken place. With regard to the alleged use of the land as a caravan site, it appears any such use was inconsequential. That part can be deleted from the enforcement notice allegation. The appeal on ground (b) succeeds only to that limited extent.

## The appeal on ground (c)

8. Section 55 of the Town and Country Planning Act 1990 entitled *Meaning of "development" and "new development"*, says at (1) *Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other*

*operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

9. As set out in the ground (b) appeal above, the enforcement notice alleges 3 breaches of planning control.
10. First: – Allegation 3a) - The construction of a wider access from Manystones Lane; a hard surfaced track; a hardstanding and a raised deck area and surfacing.
11. Article 3, Part 6, Class B to Schedule 2 - agricultural development on units of less than 5 hectares, sets out development that is permitted by The Town and Country (General Permitted Development) (England) Order 2015, (the Order). Application of that part of the Order presupposes that Mrs Birks' holding is indeed an agricultural unit.
12. The Order concessions are subject to limitations and conditions. Development is not permitted by Class B if any part of the development would be within 25 metres of a metalled part of a trunk road or classified road. The widened access and a section of the track at its southern end are within 25m of the Class 3 road Manystones Lane. An area of the hardstanding area at the north-east corner of the appeal site is used for turning and manoeuvring vehicles at the end of the access roadway. It is part of the access road. If any part of a development is constructed in breach of planning control, the whole of the development is unlawful. The case of *Garland v MHLG [1968] 20 P&CR 93* is authority for that position. The access road and hardstanding construction amounted to development requiring planning permission.
13. Surfacing to facilitate the siting of children's play equipment amounted to operational development that required planning permission. It was not on such a small scale as to be de minimus, or inconsequential. It had no agricultural purpose or justification. Children's play equipment could not be considered ancillary or incidental to a lawful agricultural use. The construction of the raised deck area for the polytunnel was on a small scale and whilst it may have been built to provide a stable base, its construction again amounted to operational development not shown to have been reasonably necessary for the purposes of agriculture within the unit.
14. There is also an overriding problem of the lack of applicability of the agricultural concessions of Part 6, Class B of Article 3, Schedule 2 of the Order. That is because the use of Mrs Binks' holding appears to be not that of an agricultural unit with ancillary or incidental uses, but is used mainly for camping, as alleged at 3c) in the notice. Facilities such as the playing equipment and viewing and interacting with the animals are part of the camping experience, any agricultural use being subordinate or ancillary, (below).
15. Second: – Allegation 3b) - the notice alleges a material change of use of the land edged blue on the enforcement notice plan from agricultural to recreational use, (the access road and hardstanding area).
16. The Council said equipment close to the large agricultural building comprised permanently sited structures in the form of a decked area for the polytunnel, the play area containing a trampoline, a climbing frame, slide and swings. They were not facilities brought to the site from time to time. They were permanently sited.

17. Mrs Birks said there had not been a change of use of the land from agriculture to "recreational use." She made daily visits to the site in order to care for her livestock, frequently accompanied by 3 young children. The lightweight and moveable play equipment was to keep the children occupied during those visits. The equipment was incidental to the lawful use of the land.
18. Adults taking their children onto the land on most days and allowing them to play while tending to stock would not be an activity likely to bring about a material change of use of the lawful agricultural use of the land. However, where play equipment is brought onto land and fixed in place, especially when the land is used in association with non-agricultural purposes it becomes a matter of fact and degree to decide whether a change of use has taken place. I note that 'permanent' in the context of planning control does not necessarily mean everlasting, (*Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No. 2)* [2000] EWCA Civ 5569; [2000] JPL 1025). The play equipment in this instance has been in place for some time and is intended to be available for use at all times, not just by Mrs Birks' children, but also by the children of her camping customers. The degree of permanence of the play equipment, its extent and type of use has not added a separate unlawful recreational use of this part of Mrs Birks' land, but it is ancillary to the camping use of the entire appeal land. That change of use from agricultural use required planning permission.
19. Third: – Allegation 3c) - The third part of the alleged breach of planning control stated that an unlawful material change of use of the appeal site land from an agricultural use to a recreational use as a caravan and camping site had occurred, (the entire site).
20. Mrs Birks said that at the time of service of the notice the site was not, and is still not, in such use. It was used for tented camping for a short period during the summer of 2021 but, as far as she was aware, it had never been used as a caravan site. As I decided, above, in the ground (b) appeal, use of the appeal land for caravan use can be deleted from the allegation.
21. In respect of the camping element of the alleged breach of planning control, Mrs Birks said camping has been undertaken within the limits of the Town and Country Planning (General Permitted Development) (England) Order. That, exceptionally in that year, allowed for 56 days of usage of the land up to 31 December 2021. The Council accepted that would allow a temporary use but they found it hard to believe the play equipment would not have some association with that use. That would appear to be the case, especially as I note that the appeal site is advertised on the "Pitchup" web site as 'The Laurels' where the owners said: "*Barbecues, campfires and dogs are allowed at this traditional campsite, where families, single-sex groups, students and motorcyclists are all very welcome to pick a plot*". A contented customer put in a review that said: "*Nice small campsite with view, play area with trampoline, sand pit and lots of toys to move around for kids. Kids loved donkey, pigs, sheep and alpacas. Two drinking water pipes. Bbq allowed, campfire too*".
22. It may be that much of the camping during the 2021 season was carried out under the temporarily extended permitted development concessions, but the Pitchup web site shows that this is a campsite which is advertised as available throughout 2022, although Mrs Birks said the intention was only to open March to the end of September. However, although Mrs Birks' Facebook comment, (22 January 2022), said "*It's official we can now open all year*

*round. Last year we only did 56 days with lovely reviews and met some great people but this year we are pleased to announce we have got permission to open both fields all year round.*", appeared to relate to her application for a Freedom Camping Club certification, it showed an intention to offer camping all year round. Even if camping was limited to a March – September period, that would be well in excess of permitted development limits. I agree with the Council that there has been a material change of use of the land to a use for camping, a recreational use. Whatever agricultural use remains it is as an additional attraction for camping guests. The appeal on ground (c) fails in respect of the operational development and the alleged unlawful use of the land, (the caravanning use element is deleted by the ground (b) appeal).

### **The appeal on ground (a)**

23. Policy S4 to the adopted Derbyshire Dales Local Plan (2017) says that outside defined settlement development boundaries, new development should protect and where possible enhance the landscape's intrinsic character and distinctiveness, including the character, appearance and integrity of the historic and cultural environment and the setting of the Peak District National Park.
24. Policy PD1 to the Local Plan requires all development to be of high-quality design that respects the character, identity and context of the Derbyshire Dales townscapes and landscapes. Policy PD5 seeks to protect, enhance and restore the landscape character of the plan area recognising its intrinsic beauty and its contribution to the economic, environmental and social well-being of the Plan Area. Development is to have particular regard to maintaining the aesthetic and biodiversity qualities of natural and man-made features within the landscape, such as trees and woodlands, hedgerows, walls, streams, ponds, rivers or other topographical features. Development proposals are to be informed by, and are sympathetic to the distinctive landscape character areas as identified in 'The Landscape Character of Derbyshire' and 'Landscape Character of the Derbyshire Dales'.
25. Plan policy EC9 says, amongst others, proposals for new camp site developments will be permitted provided that the development would not have a prominent and adverse impact on the character and appearance of the immediate or wider landscape; the site is in a sustainable location within, or in close proximity to, an existing settlement.
26. The National Planning Policy Framework, (NPPF), says, (para. 174), planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.
27. The Council also said that the use of the site for recreational use and caravanning and camping use in this remote rural location, not served by public transport, meant that visitors would be wholly reliant on the private car to access the facility. The uses alleged at 3b) and 3c) constituted an unsustainable form of development contrary to Policies S1, S4 and EC9 of the Adopted Derbyshire Dales Local Plan (2017).
28. Mrs Birks said her ground (a) appeal related to the widening of the access, the provision of a hard surfaced track, the creation of a hardstanding area, the formation of a raised deck and the use of land as a camping site.

29. That broadly follows the wording of the notice allegation and which defines the application for planning permission deemed to have been made. The notice describes the material change of use of the land edged blue, (the track and hardstanding area), from agricultural to recreational use and the use of the land edged red, (the entire site), as a caravan and camping site. Even if Mrs Birks original intentions were to operate her holding as an agricultural unit with occasional camping, the deemed planning application is for it to be granted planning permission as a camping site, enhanced with play equipment and the viewing of, or interaction with, animals as an added attraction for visitors and for the retention of the operational development described above.
30. There had been a vehicular access to the north-east corner of the site from the track that runs from Manystones Lane north to Roundlow Farm. But it was not available to Mrs Birks. There had been an existing field access direct from Manystones Lane to the appeal site. Mrs Birks said it was unfit for use by agricultural machinery or even by a car with a trailer. It had been impossible to operate the farming regime without improving the entrance. The opening had been widened; the gates set back with matching stone walling built to the sides of the splays. An essential stone surfaced track was then built from the site entrance up to the agricultural building. The farm could not operate without a vehicular access to the building.
31. Although Mrs Birks said there had been no significant resulting harmful impact on the character of the landscape and that there was no conflict with the Local Plan policy or National guidance, I agree with the Council that the breach of planning control set out at 3a) in the notice constituted an unjustified form of development in the countryside that has resulted in considerable harm to the appearance and character of the local landscape. The new access splays and access track are visually intrusive, adding a widened access and a discordant and highly visible stone roadway running up from Manystones Lane, entirely out of scale with what purported to be a small agricultural holding. The contrast between the attractive rural pasture that existed before the notice works took place and the unsightly situation today is stark.
32. The extent of the site and the unauthorised use of the land as a camping field results in harmful encroachment into this open and prominent part of the local landscape. This harm does not respect the character and distinctiveness of the countryside, contrary to Policies S4, PD1 and PD5 of the Adopted Derbyshire Dales Local Plan 2017 and the guidance within the NPPF drawn up to protect against inappropriate new development.
33. The NPPF indicates that planning policies should support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. Mrs Birks drew attention to support for the camping business in policy EC9. But the preamble to policy EV9 says that camping, caravan and chalet development will need to be carefully controlled to ensure that they do not have an adverse impact upon the character and appearance of the landscape. Mrs Birks said tents have a limited impact in the open countryside compared to caravans. They may have a lesser impact, but, as the Council pointed out, tents can be brightly coloured and clearly visible in a landscape. Cars parked alongside tents add to the discordant intrusion. Whatever support for Mrs Birks camping site may be found in policy EC9, including proximity to Brassington and to local walks, the main concern is the harm caused to the

appearance of this part of the countryside. The site is open to views from Manystones Lane. Distant views available from the appeal site mean that conversely, the site can be seen from afar. I agree with the Council that the siting of tents, associated vehicles and paraphernalia, is unacceptably harmful to the character and appearance of this upland open countryside location, contrary to the essential requirement of policy EC9.

34. The appeal on ground (a) fails. Planning permission is not granted on the application deemed to have been made for building and engineering operations comprising a wider access, hard surfaced track to a hardstanding area, the formation of a raised deck area and surfacing upon which children's play equipment has been sited; nor is it granted for the material change of use of the land from agricultural to recreational use and the use of the land as a camping site.

### **The appeal on ground (f)**

35. The appeal on ground (f) asserts the requirements of the enforcement notice are too onerous and that something less should be substituted. Section 173(4) of the Act sets out the purposes of the requirements. They are:
- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
  - (b) remedying any injury to amenity which has been caused by the breach.
36. As I found the change of use of the land to a camping site unacceptable, it is reasonable to require its cessation. In seeking remedy of the injury to amenity, the Council said the deposited material was incongruous. The widened access, the roadway and the hardstanding parking and turning area detract from the character and attractive open countryside appearance of the area. The requirements do not exceed what is necessary to remedy the injury to amenity caused by the breaches.
37. The upheld enforcement notice does not preclude the right of the owner to use the land for tented camping in accordance with the rights granted by the Town and Country Planning (General Permitted Development) (England) Order. The appeal on ground (f) fails.

### **FORMAL DECISION**

38. The enforcement notice is varied by the deletion of the words "caravan and" in para. 3.c) on page 1 and in the second line of para. 5.1 b) on page 2 of the enforcement notice. Subject to those variations, the appeal is dismissed and the enforcement notice is upheld. Planning permission is not granted on the application deemed to have been made for building and engineering operations comprising a wider access, hard surfaced track and a hardstanding area, the formation of a raised deck area and surfacing upon which children's play equipment has been sited; or for the material change of use of the land from agricultural to recreational use and use of the land as a camping site at Manystones Lane, Brassington, Derbyshire DE4 4HF.

*John Whalley*

INSPECTOR