



The Planning Inspectorate

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Mrs F Farnell (Planning Administration Officer) North York Moors National Park Authority The Old Vicarage Bondgate Helmsley York YO62 5BP	Your Ref: NYM/2005/0317/LB Our Ref: APP/W9500/E/05/1189737 APP/W9500/A/05/1189727 Date: 31 January 2006
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Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990
PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990
APPEALS BY MR & MRS JONES
SITE AT BADGERS OAK, LOW ROAD, THROXENBY, SCARBOROUGH, YO12 5TD**

I enclose a copy of our Inspector's decision on the above appeals.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: Complaints@pins.gsi.gov.uk

Yours faithfully

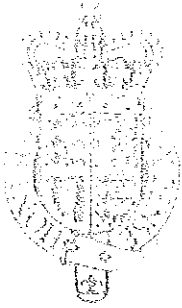
Ruth Daffee

p.p. Mr Mike Dixon

NYMNPA

- 1 FEB 2006

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Appeal Decisions

Site visit made on Tuesday 24 January 2006

by **Roger P Brown** Dip Arch ARIBA Dip TP MRTPI

an Inspector appointed by the First Secretary of State

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Date

30 JAN 2006

Appeal A Ref: APP/W9500/E/05/1189737

Badgers Oak, Low Road, Throxenby, Scarborough YO12 5TD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr & Mrs Jones against the decision of the North York Moors National Park.
- The application Ref NYM/2005/0317/LB, dated 28 April 2005, was refused by notice dated 23 June 2005.
- The works proposed are internal alterations and new rooflights to workshop area.

Summary of Decision: The appeal is dismissed.

Appeal B Ref: APP/W9500/A/05/1189727

Badgers Oak, Low Road, Throxenby, Scarborough YO12 5TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Jones against the decision of the North York Moors National Park.
- The application Ref NYM/2005/0316/FL, dated 28 April 2005, was refused by notice dated 23 June 2005.
- The development proposed is internal alterations and new rooflights to workshop area.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The appeal property is part of a range of former farm buildings which are listed Grade II. I am required by the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting.

Main Issue

2. This is the impact of the proposed works on the character and appearance of the listed building.

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Planning Policy

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3. The development plan comprises the Regional Spatial Strategy for Yorkshire and the Humber (RSS), the North Yorkshire County Structure Plan (SP), and the North York Moors Local Plan (LP). The Park Authority has not drawn attention to specific guidance within the RSS. However reference is made to SP Policy E1 which gives priority to the conservation of the landscape and general amenity of the North York Moors National Park, and LP Policies BE3 and BE14 which provide guidance regarding internal and external alterations to listed buildings, and the re-use and adaptation of traditional rural buildings, respectively.
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4. The Park Authority has also alluded to guidance within Circular 12/96: The Environment Act 1995; Planning Policy Statement (PPS)1 – Delivering Sustainable Development; Planning Policy Guidance (PPG)15 – Planning and the Historic Environment, and PPS7 – Sustainable Development in Rural Areas.

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The Appeal Proposal

5. Badgers Oak is located on the northern side of Low Road, in attractive rolling countryside to the south west of Scalby. It is the eastern half of a mid C18th 'U' shaped group of both single and two storey former farm buildings associated with nearby Raincliffe Farm. By 1999 these had fallen into disrepair, and in order to secure their survival planning permission and listed building consent was granted for conversion into two dwellings with ancillary workspace. In August 2004 retrospective approvals were granted for the rebuilding of a collapsed section, whilst in October of that year amendments were made to a condition relating to employment use.
6. The appeal property is at the southern end of a single storey wing some 22m long on the eastern side of the group. It is separated from the two storey dwelling to the north by two car ports. Existing accommodation comprises a garage and adjoining workshop. The appellant is seeking to increase the overall area of workspace by creating cloaks and office areas at first floor level within the existing roof space. Such accommodation would be lit by two Velux Heritage Conservation rooflights, 560mm wide x 980mm high, within the eastern roof slope. The building would remain open to the underside of the roof within both the new stairwell and the existing garage.
7. The Park Authority contends that the resultant horizontal and vertical sub division would destroy the character of the listed building by dividing the existing single double height agricultural space into a series of domestic scale and proportioned rooms. However, and whilst I was unable to enter the appeal premises, I agree with the appellants' agent that it had been substantially, if not completely, re-roofed with red clay pantiles. In such circumstances, I do not consider that the proposed first floor development (and which would only partially intrude upon the double height space) would be unacceptably harmful to the character of the listed building.
8. However, as stated two rooflights are proposed within the eastern roof slope, close to Low Road. These would be readily visible not only from this highway, but also in more expansive vistas from Red Scar Lane to the east. From this latter vantage point, the present extensive and uninterrupted roofscape to the eastern wing is an attractive feature of the former farm buildings, contributing to their pleasing setting within the landscape. Notwithstanding their sensitive detailing and relatively small overall size, I am of the opinion that the proposed rooflights would be visually disruptive elements which would intrude upon the present simple form and ambience of the buildings. As such, they would be harmful to the character and appearance of the listed building, and at odds with the main thrust and/or relevant criteria of SP Policy E1, and LP Policies BE3 and BE14. It is for this reason that the appeals fail. Indeed, such rooflights might well set a precedent for similar proposals which would inevitably dilute and distract from the sensitive nature of the earlier conversion works.
9. The appellants' have made reference to an existing rooflight within the northern roofslope of the two storey dwelling. However, because of its height and orientation, the appearance

of this feature is not directly comparable to the intrusive impact of the appeal rooflights as described above. I have given careful consideration to all other matters raised, but nothing persuades me from my conclusion with regard to this element of the scheme before me.

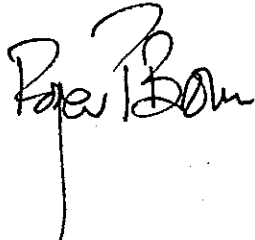
Formal Decisions

Appeal A Ref: APP/W9500/E/05/1189737

10. I dismiss the appeal.

Appeal B Ref: APP/W9500/A/05/1189727

11. I dismiss the appeal.



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Minister and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

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The Parliamentary Ombudsman

Office of the Parliamentary

Commissioner for Administration

Millbank Tower, Millbank

London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

E-mail: opca-enqu@ombudsman.org.uk



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Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms. We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under Section 56 of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report on our performance. APOS regularly examines the way we deal with complaints and we must satisfy it that our procedures are fair, thorough and prompt.



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Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

Further information

Every year we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with and how we plan to meet the targets which Ministers set for us. At the end of each financial year we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

Contacting us

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Website

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The Parliamentary Ombudsman

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Commissioner for Administration
Millbank Tower, Millbank
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Helpline: 0845 0154033

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E-mail: opca-enqu@ombudsman.org.uk