

Appeal Decision

Site visit made on 19 August 2014

by **John L Gray DipArch MSc Registered Architect**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 August 2014

NYM/NPA

28 AUG 2014

Appeal Ref. APP/W9500/A/14/2212850

South Moor Farm, Langdale End, Scarborough, YO13 0LW

- 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 R Walker against the decision of the North York Moors National Park Authority.
- The application, ref. NYM/2013/0435/FL, dated 27 June 2013, was refused by notice dated 24 September 2013.
- The development proposed is the change of use of land for the formation of an airstrip including two grass runways, a storage building and pilot/restroom facilities.

Decision: the appeal is dismissed.

Application for costs

1. An application for costs was made by the North York Moors National Park Authority against Mr Walker and is the subject of a separate decision.

Main Issues

2. There are two main issues in the appeal:
 - whether noise and activity caused by the proposed use would be detrimental to the amenities of local residents and the experience of visitors to the area, including users of the public rights of way within the site;
 - whether the proposed storage building would be appropriate in terms of its location, size and design;

Reasoning

3. Policy is to be found in the North York Moors Local Development Framework (LDF), specifically adopted Core Strategy Policies A, C and H and adopted Development Policies 3, 12, 13, 14 and 23. Policy A sets out the intention to conserve and enhance the special qualities of the National Park, this case relating to clauses 1 (providing a scale of development and activity consistent with the quiet enjoyment of the Park), 3 (maintaining and enhancing the natural environment and conditions for biodiversity) and 7 (strengthening and diversifying the rural economy and providing opportunities for tourism). Policy C elaborates on clause 3 and Policy H on clause 7. Development Policy 3 looks for the design of new development to maintain and enhance the distinctive character of the National Park; Policy 12 permits new agricultural buildings subject to criteria; Policies 13 and 14 set criteria to be met by rural diversification and tourism/recreation proposals respectively; and Policy 23 seeks to reduce the environmental impact of traffic on the National Park.

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First main issue – noise and activity

4. The Authority considers that flying activity from the proposal would have a harmful effect on the peace and tranquillity of the locality, to the detriment of the character of the area, the amenities of local residents and the enjoyment of the area by visitors, all of which would conflict with National Park purposes.
5. The appellant submitted a noise study with his appeal statement. In summary, it concludes that the noise levels of light aircraft taking off from the site would be insignificant if limited to the numbers proposed (the appellant suggests a condition limiting movements to no more than 20 a day, in effect 10 flights).
6. The study found, unsurprisingly, that ambient noise levels were low – 34-47dB L_{Aeq} and 26dB-37dB L_{A90} , both 1 hour – and that one take-off and one landing would make little or no difference to the hourly level at the nearest noise-sensitive dwelling, about 500m away. It is the noise from the specific take-off or landing event that is going to cause disturbance to local residents. The appellant's aircraft flying over the site was recorded at 58dB-70dB L_{Amax} with events lasting 2-5 to 3 minutes. Take-offs and landings would last a similar period (until out of, or from coming into, earshot), with take-offs being noisier because of the powered acceleration. Measurements noted around 70dB L_{Amax} for take-offs. That is noisy – but not unduly so.
7. One must remember also that the suggested conditions would mean, in effect, only 10 take-offs a day, with a cumulative noise duration of less than 30 minutes, and with the noise decreasing for parts of that time. The 10 landings would last a similar period of time but be less noisy. There would also be what the study terms 'fly-pasts', again lasting similar periods of time, less noisy than take-offs and more dispersed over the area. Lastly, there would be no night flying, when receptors would be at their most sensitive. The Council is unconvinced that a restriction on night flying would be enforceable but that would require lighting, which would presumably require planning permission (or else, if it occurred and caused disturbance, could be expected to be reported).
8. There is then the question of the bridleway and public footpath within the site (the bridleway along the southern boundary, parallel with the proposed auxiliary airstrip, the footpath crossing that airstrip) and walkers, cyclists and riders on the road to the north-west and west or beyond that, within Dalby Forest. The noise study considers the rate of rise in noise levels; typically, that would be between 2dB and 11dB per second, which it finds not high enough to cause what it calls "startle effects" in humans and substantially below the rate caused by military low flying. With ten take-offs in a day, the likelihood of a walker or horse-rider being on one of the rights of way at the same time is relatively small and, even if it occurred, the likelihood of either the horse or the rider being startled is also fairly small; and people or horses further afield would be still less likely to be startled.
9. In similar vein, the likelihood of an accident is very small indeed. Anyone on the bridleway or public footpath would easily be able to see if there was an aircraft about to take off and could take action accordingly. An incoming aircraft would be more difficult to spot – but appropriate warning signs would encourage walkers to look before crossing the auxiliary airstrip (which, of course, would not be the one commonly used).
10. There is also the highway *ratione tenurae*. Its line was explained to me but there is now no real evidence on the ground. Thus, while it may exist in law, the likelihood of anyone wishing to use it is so low as to be immaterial.

11. It is debatable whether the experience of an aircraft taking off or landing by walkers, cyclists or riders would be considered as a disturbance or as an interesting, if perhaps unexpected, event. It is true that one of the important characteristics of the National Park is its tranquillity – but that does not mean that an event having nothing to do with the character or tranquillity of the National Park must automatically be considered a disturbance.
12. To sum up, the Authority's fears are understandable, particularly in the absence at the application stage of the noise study, but the technical evidence shows no real likelihood of noise levels that would be harmful to residential amenity or the enjoyment of the area by visitors. Neither does it suggest activity that would pose a serious threat to public safety. Accordingly, in relation to this issue, there is no undue conflict with Core Policies A or H or Development Policies 3, 14 and 23 (though it is unclear precisely how Policy 3 can apply, unless walkers or riders crossing the site can be described as "users of the development").

Second main issue – the proposed storage building

13. The phrase "storage building" in the application does not, on its face, indicate that what would be stored would be up to ten aircraft. It would be 36.7m long, 10.0m wide and 3.35m-4.57m high. It would be a large building in any rural context, more so in terms of the style and character of the agricultural buildings generally to be found in the National Park. It would have a monopitch roof, rather than a double pitch, and so would not look particularly like an agricultural building – and the character of the wider area is such that one would not expect to see other than agricultural buildings of one sort or another. The walls and roof would all be clad with profiled steel sheeting, giving more of an industrial than agricultural character.
14. No attempt has been made to reduce the visual impact of the mass of the building (for example, by an L-shaped plan, though there is no guarantee that that would be effective). No landscaping is proposed that might mitigate against the size of the building. In addition (and also a reason why a different form of building might not be acceptable), it would stand some 80m from the existing farm building, which is itself about 90m from the farmhouse, further reducing any tenuous visual impression of an agricultural building.
15. It may be noted that the building in its proposed location would be virtually unseen, save by fliers, bed and breakfast customers at the Farm and users of the public rights of way within and adjacent to the site. That, however, cannot automatically render acceptable an otherwise inappropriate proposal. The design fails against Development Policy 3 because its characteristics are not compatible with surrounding buildings (meaning buildings typically to be seen in the National Park, there being none that are obvious in close proximity to the appeal site), it would appear utilitarian, rather than being to a high design standard, and there would be no associated landscaping. The proposal also fails against Policy 12 because the site is not physically related to the existing buildings (the Policy is aimed at agricultural buildings but its principles must apply equally to buildings for the diversification of farm businesses).

Other matters

Ecology

16. Although it is the fourth reason for refusal, there is no mention of ecological matters in the officer report. The update sheet to the report notes Natural

England's further comments that there is insufficient information to determine the likely effect of the proposal. The reason for refusal is, in effect, that it has not been demonstrated that there would be no adverse effect on the adjacent North York Moors Special Protection Area (SPA) and Site of Special Scientific Interest (SSSI). The appeal statement takes a different line; it says that flights "could potentially" cause disturbance to SPA birds, goshawks or nightjars in particular, and that there is insufficient information, particularly on the number and direction of flights, to be able to judge. However, the Authority says no more than that the birds are known to be in Dalby Forest and are known to be sensitive to noise; there may or may not be a threat but it offers no assistance in determining if there is one, let alone whether there might be a serious one.

17. There are two SSSIs, about 2.4km and 2.6km from the appeal site – which hardly qualifies for the adjective "adjacent"; and the nearest boundary of the SPA is some 6km away. The area is already subject to low-level military aircraft activity, which must clearly cause disturbance when it occurs. Other than in the immediate surroundings of the proposed airstrip, where the noise from take-offs and landings would be more regular, and apparent, the noise from the sorts of aircraft flying from the appeal site would be highly unlikely to cause any significant disturbance. The suggested condition would limit movements at the airstrip to no more than 20 a day; the duration of flights is an unknown, presumably limited only by fuel capacity, but the small number of movements itself suggests that any disturbance caused could not be significant. If there would be no unduly harmful effects for human beings or horses, it seems highly unlikely that there would be such effects for goshawks or nightjars. In short, the proposal raises no material conflict with Core Strategy Policy C.

Archaeology

18. A glance at the OS Map for the area shows a significant number of archaeological features. There are no obvious indications of any archaeological remains on the appeal site. Nor does the nature of the proposal raise any need for investigation other than, perhaps, where the building would stand. Even then, it appears that the only excavations would be for stanchions (assuming that the floor of the building would, like the airstrips, remain as grass); on that basis, a 'watching brief' condition would suffice, were the appeal to succeed.

Conclusion

19. Dalby Forest, within which South Moor Farm is located, is promoted as a place for non-motorised recreational activity which furthers understanding of the National Park's special qualities
20. I have borne in mind that it would be possible as permitted development to fly from the appeal site on 28 days of the year. That, though, is a small proportion of the year. Also, irrespective of how much flying took place, the building, which requires planning permission in its own right and which I have found to be inappropriate, would be permanent. I have taken all other matters into account but have found nothing to outweigh my conclusion on the second main issue, which has led me to my decision.

John L Gray

Inspector



Costs Decision

NYMNP/PA

28 AUG 2014

Site visit made on 19 August 2014

by **John L Gray DipArch MSc Registered Architect**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 August 2014

Costs application in relation to Appeal Ref. APP/W9500/A/14/2212850 South Moor Farm, Langdale End, Scarborough, YO13 0LW

- The application is made under the Town and Country Planning Act 1990, sections 78 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the North York Moors National Park Authority for a full award of costs against Mr R Walker.
- The appeal was against the refusal of planning permission for the change of use of land for the formation of an airstrip including two grass runways, a storage building and pilot/restroom facilities.

Decision: the application for an award of costs is refused.

Reasons

1. The application was made on the basis that the proposed development was clearly contrary to adopted and up-to-date policy in the North York Moors Local Development Framework, that the appellant had not submitted any substantial grounds of appeal and that, while reference to one had been made, no noise assessment had been submitted to support the appeal.
2. The planning appeal is dismissed on the basis that the location, size and design of the proposed storage building conflicts with adopted Development Policy 3. The nature of the building is not, however, so clearly contrary to what the policy seeks that the appeal could be considered unreasonable. The other main issue in the appeal is the impact of the noise and activity generated by the proposal. The conclusion on that issue is that there is no conflict with policy so great as to warrant dismissal of the appeal. Again, therefore, the appellant did not act unreasonably in lodging his appeal against the Authority's decision.
3. The application for an award of costs is at Appendix D to the Authority's appeal statement, submitted on 13 March 2014. The noise assessment was appended to the appellant's statement, submitted on 12 March. Both statements were forwarded to the other party on 18 March. The Authority wrote to the Inspectorate on 27 March 2014 that it was "... extremely unreasonable for [it] to be expected to make comments in such a short period of time, on such a large amount of additional information, which has been submitted after the deadline of 14 March 2014".
4. In fact, the appellant's statement was submitted to the Inspectorate before the deadline date, though it was not forwarded to the Authority until after it. The letter of 27 March comments on certain aspects of the statement and the noise assessment; and the Authority's final comments, dated 4 April 2014, make further reference to the effect of noise, though not specifically to the

assessment. The site visit took place on 19 August 2014. Thus, there was ample opportunity, had it so wished, for the Authority to seek to submit a more detailed response to the information contained in the noise assessment; no such submission appears to have been made.

5. On this aspect of the application, it cannot be said that the appellant acted unreasonably. Moreover, had the assessment been submitted earlier, the Authority would, in effect, have been in the same position; accordingly, it cannot have incurred unnecessary expense.

Conclusion

6. Government advice is that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. The design of the proposed storage building and the likely effects of noise and activity are not so clearly contrary to policy that it was unreasonable to lodge an appeal against the Authority's refusal of the application. The appellant's appeal statement and appended noise assessment were submitted two days before the deadline date, which is not to be considered unreasonable. In terms the costs of responding to the noise assessment or other representations, the Authority would have been in broadly the same position whenever they had been submitted. Accordingly, the appellant did not act unreasonably and the Authority did not incur unnecessary or wasted expense in the appeal process. The application for an award of costs is therefore refused.

John L Gray

Inspector

