



# Appeal Decision

Hearing held on 22 July 2008  
Site visit made on 22 July 2008

by **Dannie Onn** RIBA IHBC

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

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Decision date:  
20 August 2008

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## Appeal Ref: APP/W9500/A/06/2029811

### Howdale Farm, Fylingdales, Robin Hoods Bay, Whitby, YO22 4UL

- 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 J R Cussons and Son against the decision of North York Moors National Park.
- The application Ref NYM/2006/0532/CU, dated 26 June 2006, was refused by notice dated 23 October 2006.
- The development proposed is change of use of the existing office/washroom/store to a dwelling for the accommodation of an additional agricultural worker.
- This decision supersedes that issued on 23 August 2007. That decision on the appeal was quashed by order of the High Court.

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### Costs application

1. At the Hearing an application for costs was made by J R Cussons and Son against the North York Moors National Park Authority. That application is the subject of a separate Decision.

### Decision

2. I dismiss the appeal.

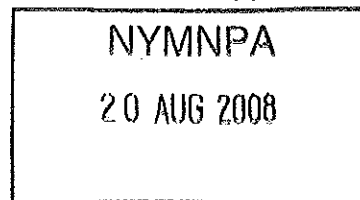
### Main issues

3. The main issues at this appeal are firstly, whether the proposed change of use is justified by the essential need for an additional worker to live at the farm; and secondly the effect on the character and appearance of the surrounding National Park landscape.

### Reasons

#### *Agricultural justification*

4. The appeal site is within a farmstead on the edge of the moors within The North York Moors National Park. The National Park is of high natural beauty and the appeal site is in an area of rugged open moorland, valley pastures and woodland. Its protection and conservation are given high priority under local and national Policy.
5. The farm business consists of three separate areas. At Howdale Farm, there is a collection of agricultural sheds used for housing sheep and cattle at various times as well as for storage. There is also the office/washroom/store building



subject of this appeal. Further land lies to the north, where a recent house, Bridge Farm, was constructed in around 1990 within sight of a simple home-built shed and concrete yard for housing bull beef cattle. At some distance from these is Woodside Farm, where there are modern agricultural sheds and a temporary residential caravan. Planning permission has been granted for a new agricultural worker's dwelling at this part of the business.

6. Housing in the countryside is restricted by Policy H4 of the North York Moors Local Plan, with exceptions which include agricultural workers' dwellings subject to the detailed criteria of Policy F1. These criteria are broadly in line with the guidance at Annex A of Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7).
7. There is no dispute that the appellants' farm business is both well-managed and financially viable. It is also clear that at most times of the year there will be a need for someone to be on hand day and night to provide essential care to the animals at short notice. That constitutes a functional need in the terms of Local Plan Policy F1 and the advice of PPS7.
8. The existing dwelling, Bridge Farm, is near the bull beef shelter. Although handy for supervision of the young bulls, the house is some 700m or so from the main buildings at Howdale. Here the monitoring of calving, lambing and livestock in general requires a more intensive presence than the bull beef. In that sense, the farm house is in the wrong place. Nevertheless, it was permitted on appeal in 1988 to meet the operational requirements of Howdale Farm and on the basis that it would provide the necessary management and supervision of the livestock; the security required to prevent vandalism, trespass and theft; and would facilitate the economic development of the farm. The location alongside the disused railway provides an alternative access in winter weather, which supported the decision to allow that appeal.
9. The single track between the house at Bridge Farm and the farmyard at Howdale is steep in places. It is on the edge of the slope down to Howdale Beck and with drainage across it, has suffered partial collapse in the past. The area is also prone to significant snowfall in winter months. Nevertheless, it is a key access to the farmyard and, with modern agricultural machinery, I consider that it would rarely be completely impassable. Under severe weather conditions, the business and house could continue to be serviced at Bridge Farm by the alternative route along the disused railway.
10. The appeal building provides heated, comfortable space from which to operate at the farmyard. On that basis, I consider that it would be practicable to continue to provide essential livestock care at short notice with a worker living at Bridge Farm, supplemented by shelter at the office/washroom/store building during working hours or in an emergency. Thus the functional need is fulfilled by the existing house. There is no essential need for an additional agricultural worker's dwelling.
11. Furthermore, the original farmhouse at Howdale Farm was sold shortly after construction of the Bridge Farm dwelling around 1989. Criterion (1) of Policy F1 and the advice at paragraph 5 of Annex A to PPS7 include that such circumstances could be evidence of a lack of need. I heard that the land at Howdale Farm was to have been sold soon after the farmhouse; but it remains

unsold and the enterprise continues to be run from Bridge Farm. These factors add weight to my findings on functional need. Based on the needs of the enterprise, the proposed change of use would thus be contrary to Policy F1 of the Local Plan and the advice of PPS7.

12. Of course, circumstances have changed over the years. The enterprise has expanded with the addition of Woodside Farm and I am told that Mr Cussons junior is relocating there permanently. It is clear that the running of the farm business, as it is, supports a requirement for around three full-time workers. However, the functional requirement to be on hand does not relate to all workers. It would be possible for the worker living at Bridge Farm to raise further help should an emergency arise outside the working hours of others.
13. Since the construction of Bridge Farm, the health of Mr Cussons senior has deteriorated. Medical advice is that looking after cattle and calving on an upland farm, where urgent action is sometimes required, is beyond his current capabilities and that working in cold damp conditions at night should be avoided. I have also taken into account Mr Cussons' intention to continue to manage the farm business. However, such personal preferences and circumstances are discounted within paragraph 1 of Annex A to PPS7. Whilst of utmost concern for those involved and whatever sympathies one might have, these are matters for the business itself and they do not provide sufficient justification for a further new dwelling.
14. I note the judgement in *Keen v Secretary of State for the Environment and Aylesbury Vale District Council* ([1996] JPL) reiterated in the High Court judgement on the original appeal decision in this case. My attention is also drawn to the judgement at *Ford and another v Secretary of State for Communities and Local Government and others* ([2007] EWHC 252). I do not suggest that Mr Cussons senior should be required to move or share a house. The position contemplated in *Ford* would apply here, namely that the new dwelling would meet the same need that justified Bridge Farm. Any unavailability due to the current occupier remaining in his home would be a temporary situation, whereas the proposed change of use would be permanent. To allow otherwise could result in further new dwellings if the work is taken on by others; and existing dwellings where the restrictions on occupancy are no longer justified. That should not be countenanced in the face of strong Policy restrictions on new housing in the National Park.

*Character and appearance*

15. The appeal building appears as a domestic bungalow with rooms in the roof. The windows are domestic in scale and form. There are gardens about the building with an area for parking cars. The whole presents a suburban feature out of character with the rural tradition of the moorland farm. It is sheltered from wider views by the other farm buildings, the steep bank behind and surrounding trees, but is prominent from the public footpath down the track and through the yard. The change of use would inevitably increase domestic activity at the building with additional house, garden and play equipment. That would diminish the rural character of the farmyard and its contribution to the landscape character of the National Park, contrary to Policy F1 of the Local Plan and the advice of PPS7.

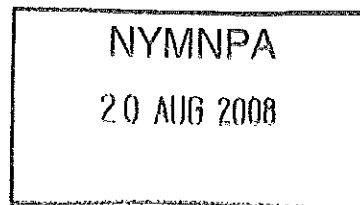
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*Other matters*

16. I note that the continued successful management of the enterprise is a valuable part of the maintenance of the National Park landscape and that assisting the economic and social well-being of those who live in the National Park is supported by Policy GP1 of the Local Plan. However, my findings on the first issue are that this profitable enterprise could continue to be so without the proposed dwelling.
17. I have taken into account the previous planning decisions relating to this building and at the appellants' business in general, as well as other permissions nearby. No additional considerations arise which affect my decision overall.

*Dannie Onn*

INSPECTOR



**APPEARANCES**

FOR THE APPELLANT:

Mr Timothy Hartley of counsel	Park Court Chambers, Leeds
Mr James Stephenson	Stephenson and Sons, York Auction Centre, Murton, York, YO19 5GF
Mr and Mrs Richard Cussons	Howdale Farm, Whitby, YO22 4UL

FOR THE LOCAL PLANNING AUTHORITY:

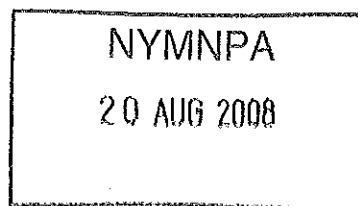
Mr Patrick Sutor	Westmorland Cottage, Hutton le Hole, York, YO62 6UD
Miss Gillian Dawson	Legal Services, North Yorkshire County Council, County Hall, Northallerton, DL6 2QX
Mr Andrew Purkiss	Mouchel Consulting, York House, Standard Way, Northallerton, DL6 2QX

**DOCUMENTS submitted at the hearing**

- 1 Letter of notification of the time and place of the hearing

**PLANS**

A1-A3 Application plans





# Costs Decision

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## Costs application in relation to Appeal Ref: APP/W9500/A/06/2029811 Howdale Farm, Fylingdales, Robin Hoods Bay, Whitby, YO22 4UL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by JR Cussons and Son for a full award of costs against North York Moors National Park.
- The hearing was in connection with an appeal against the refusal of planning permission for change of use of the existing office/washroom/store to a dwelling for the accommodation of an additional agricultural worker.

**Summary of Decision: The application fails and no award of costs is made.**

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### The Submissions for J R Cussons and Son

1. This application is made because of the Council's continued resistance in the light of new evidence since the High Court Judgement in February 2008. This amounts to unreasonable behaviour leading to the unnecessary expense of the hearing.

2. If the appeal is allowed it should follow that costs should be awarded.

### The Response by North York Moors National Park

3. Agricultural circumstances have not changed and the proposals are not in accordance with the Policies of the Local Plan and PPS7.
4. The Council first had sight of the May 2008 appraisal and the additional medical information too late for it to be taken into account. The new information arrived after the deadline for the Council's Hearing statement.
5. The Council is not aware of any formal approach to consider new information. It is believed that a request to an officer regarding the likelihood of a different outcome received a negative response.
6. The Council's position is wholly reasonable. The protection of the National Park is in the public interest.

### Conclusions

7. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
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8. The Council maintains its reasons for refusal and is entitled to do so. It has provided evidence to substantiate each of them.
9. Paragraph 27 of Annex 3 to Circular 8/93 includes that if the planning authority have refused the appellant's request to discuss the planning application, an award of costs may be made against them if a more helpful approach would have enabled the appeal to be avoided. Whilst not directly applicable to this re-determination, it does indicate that authorities should be prepared to consider new material. However, in this case it is clear that the appellant's new evidence was produced in support of the appeal and the Council did not consider it would make any difference. The appellant should not be entitled to expect the Council to concede on the introduction of new evidence once the authority for the decision has passed to the Secretary of State.
10. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

**Formal Decision**

11. I refuse the application for an award of costs.

*Dannie Onn*  
INSPECTOR

