



# Appeal Decision

Inquiry held on 5 and 6 January 2010  
Site visit made on 5 & 20 January 2010

by **A J Davison** BA(Hons) LLB(Hons) MSc  
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an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:  
8 February 2010

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

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

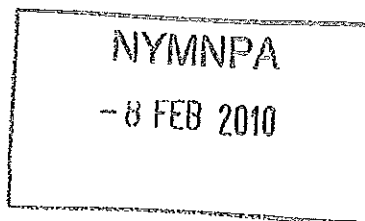
- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by J R Cussons and Son against the decision of the North York Moors National Park Authority.
- The application Reference NYM/2006/0532/CU, dated 26 June 2006, was refused by notice dated 23 October 2006.
- The development proposed is the change of use of the existing office/washroom/store to a dwelling for the accommodation of an additional agricultural worker.
- This decision supersedes those issued on 23 August 2007 and 20 August 2008. Those decisions on the appeal were quashed by order of the High Court.

### Decision

1. I dismiss the appeal.

### Main issues

2. The main issues in the 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 National Park.



### Planning Policy

3. The policy framework for the area has changed since the previous two Hearings into this appeal. In May 2008 the *Yorkshire and Humber Plan Regional Strategy to 2026* (RSS) was published and the Core Strategy and Development Policies of the *North York Moors National Park Authority Local Development Framework* (LDF) were adopted in November 2008. These two documents now constitute the development plan for the area and replace the North York Moors Local Plan referred to in the quashed decisions. These policies reflect national policy, as set out in Planning Policy Statement 7, *Sustainable Development in Rural Areas* (PPS7), which has not changed since the previous hearings.

### Reasons

4. The appeal building forms part of a farmstead in the North York Moors National Park. It is about 1 mile inland from Robin Hoods Bay and 1.2 miles to the east of the A171 road from Scarborough to Whitby. Howdale Farm is one of the three separate units that are included in the business, the others being Bridge Farm, a short distance to the north, and Woodside Farm further away on the other side of the A171.

5. The business is run by Mr Richard Cussons and by his son, also named Richard. Mr Cussons Jnr is based at Woodside Farm, where he lives in a caravan pending completion of a new farmhouse that is being constructed there. Mr Cussons Snr occupies the house at Bridge Farm with Mrs Cussons. The appellants displayed some uncertainty at the Inquiry with regard to the number of cattle owned by the business. These vary over time but it would appear that there are currently about 60 breeding cows at Howdale Farm, with a similar number at Woodside Farm and 26 bulls at Bridge Farm.
6. The enterprise is no longer involved in breeding sheep but a flock of lambs for fattening is kept at Howdale Farm. The Appellants would like to return to sheep breeding and to expand their activities by using their common grazing rights for sheep on the moor. However, these are at present aspirations and I have based my decision on the present situation and not on what has existed in the past or might develop in the future.
7. Howdale Farm contains a number of other buildings apart from the one that is the subject of the appeal. These are used for housing cattle and for storage. Adjoining them is the former Howdale Farmhouse, a substantial stone building which is now in separate ownership.
8. The appeal building has walls of natural and artificial stone, a concrete tile roof and Upvc windows. On the ground floor there is a fully equipped kitchen, a bathroom and two other substantial rooms used for office and storage purposes. There are three other rooms on the first floor, which are lit by roof lights. The building bears a close resemblance to a three-bedroom house and, indeed the Appellants stated at the Inquiry that the change of use could be effected simply by moving furniture in and without making any structural alterations.
9. It was erected in 1989, at which time the Appellants described it as a "chemical/fertiliser store/farm office/general purpose building". In 1997 it was the subject of enforcement action which required them to stop using it for residential purposes. An appeal against a subsequent planning application for a change of use to a dwelling was dismissed in 1999.

*Agricultural justification*

10. The two houses serving the business at present, at Bridge Farm and Woodside Farm, received planning permission on appeal, in 1988 and 2006 respectively, on the basis that there was an essential agricultural need for them. The original farmhouse at Howdale Farm was sold in 1989, shortly after the Appellants had obtained planning permission for the dwelling at Bridge Farm.
11. The practicality of managing the stock at Howdale Farm from Bridge Farm, which is some 700m away, has been a recurring theme throughout the various appeals. It is clear from his decision letter that the Inspector allowed the 1988 appeal relating to the house at Bridge Farm on the basis that it was required to meet the operational requirements of Howdale Farm. Mr Cussons also told the Inquiry that, when he was younger, he had no problems dealing with calving at Howdale Farm from the house at Bridge Farm. Leaving Mr Cussons' personal circumstances aside, it is clear that the house at Bridge Farm does provide suitable accommodation for a worker responsible for managing the livestock both there and at Howdale Farm.

12. Mr Cussons Jnr is now fully occupied with running Woodside Farm and the NPA says that there is a theoretical need for 1.8 full time workers at Howdale and Bridge Farms. The Inspectors who have previously dealt with this appeal accepted the need for another stockman and I see no reason to disagree with that conclusion. The question is whether it is necessary for this additional worker to live on the site. The test set in paragraph 4 of PPS7 Annex A is whether it is essential for the worker to be available at most times.
13. There is no dispute that, because of his advancing years and deteriorating health, it is becoming increasingly difficult for Mr Cussons Snr to carry out all the more physically demanding work on the farm. In particular it is difficult for him to cope with the arduous and potentially dangerous task of calving. Nevertheless, he told the Inquiry that he was not planning to retire from the business and indeed intended to expand it. He added that he would still be supervising the livestock and ensuring its condition and care. Following the arrival of the additional stockman the animals would, therefore, be well cared for during normal working hours.
14. The problem would arise during the winter months when the cows were calving. Cows can calve at any time during the day or night and typically go into labour only a few hours before delivery. It is unlikely that all of them would deliver their calves at night but, if they did, this would account for about sixty nights a year. However, because the farm relies on natural rather than artificial insemination delivery dates can not be accurately predicted and calving is likely to extend over a number of months. There is no dispute that someone would need to be available at short notice to tend to them over this period. Mr Cussons Jnr would be too far away at Woodside Farm and would be occupied with calving there. Because of the personal circumstances of Mr Cussons Snr this task would in future fall to the new stockman.
15. Mr Cussons told the Inquiry that, since he can no longer tend the stock at Howdale Farm from the house at Bridge Farm, he and his wife stay overnight in the appeal building during the calving season. The animals in calf are inspected at frequent intervals throughout the day until about 19:00. During the night they are inspected at about 23:00, 03:00 and 06:00, after which the normal daily routine is followed.
16. As Mr Cussons can not be in two places at once it follows that the animals at Bridge Farm must be unsupervised while he is staying at Howdale Farm. Those at Howdale Farm would be similarly unattended while he is at Bridge Farm. Despite this both he and his vet have confirmed that there are no animal welfare issues at the farm at present. I am not, therefore, persuaded by their assertion that the stockman would have to be permanently resident on site so as to be constantly available to attend to the animals. It is clear that, for the majority of the year, the animals can be left unsupervised over night and that the need for a continual presence on site is limited to the calving season. The proposal therefore fails the test in paragraph 4 of PPS7 Annex A.
17. The nearest settlement where the stockman might live, Fylingthorpe, is within easy commuting distance but in my view it is too far away to permit the level of close supervision needed during calving.

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18. The National Park Authority (NPA) has suggested two solutions to this problem, the first of which is that the stockman should lodge with Mr and Mrs Cussons at Bridge Farm. This was effectively the situation when Mr Cussons and his son ran Bridge Farm and Howdale Farm together but I consider that it would not be reasonable to expect Mr and Mrs Cussons to accommodate, in their family home, an employee who was not a family member.
19. The second NPA suggestion is that the stockman could live elsewhere and could use the appeal building as a temporary shelter while working with the cattle overnight during the calving season. The building has a bathroom and kitchen. I could see during my site visit that there was ample room in it and I am satisfied that the arrangement suggested by the NPA would not impinge upon its existing use for office, washroom and storage purposes.
20. The building is both suitable and available. This arrangement is, indeed, is the one that the Appellants have themselves adopted and the evidence indicates that it works satisfactorily. The Appellants say that it would be unacceptable because the stockman would be separated from his or her family on these occasions. I do not accept that argument because there are many occupations that involve working on night shifts or occasional periods away from home.
21. The Appellants say that it would be difficult to recruit a stock worker unless they could offer accommodation. However, it seems to me that this would depend on the personal circumstances and preferences of the individuals concerned. While some might well wish to live on the farm, the appeal building is not close to schools, shops or other facilities and workers with families might prefer to reside in an established community and commute to work. The Appellants have submitted a letter from a recruitment agency in support of their assertion but I can attach little weight to it in the absence of any actual attempt to recruit someone.
22. It is also apparent that, at the time of the first Hearing into the appeal, Howdale Farmhouse had been unoccupied for some time. The Inspector noted that there was no evidence that the Appellants had looked into the possibility of renting or repurchasing it. By the time the Inquiry began it had been occupied but there was still no evidence that the Appellants had tried to acquire it. In my view Mr Cussons' assertion that the current owner would not have agreed to let him have it because he did not like him is not an adequate explanation. I consider this lack of action to be inconsistent with the claim that there is an essential business need for a dwelling at Howdale Farm.
23. My conclusion, taking into account all of the above and all the other points raised, is that the Appellants have failed to demonstrate that there is an essential need for a further dwelling at Howdale Farm and that the proposed change of use would conflict with LDF Core Policy J3.

#### *Character and Appearance*

24. Although it would not require any physical changes to the building the change of use would result in domestic activities and the appearance of household paraphernalia around it. This would have an adverse effect on the rural character of the area.

25. I have taken account of the fact that the building is screened from many viewpoints by trees, by the steep bank immediately to the north of it and by the other farm buildings. It is, however, prominent in views from the public footpath leading down the track and through the farm yard.
26. There is provision, in Core Policy G and Development Policy 8 of the LDF, for the conversion of existing rural buildings to residential use under certain circumstances. However, both of these policies relate to traditional buildings of architectural or historic importance. The appeal building is relatively modern – it was built some twenty years ago – does not have a traditional appearance and is of no architectural or historic interest so those Policies are not applicable in this instance.
27. I consider that the appeal proposal would have an adverse impact on the character and appearance of the National Park. It would, therefore, conflict with RSS Policy ENV10 and would not be consistent with the approach in LDF Core Policy A.

*Conclusion*

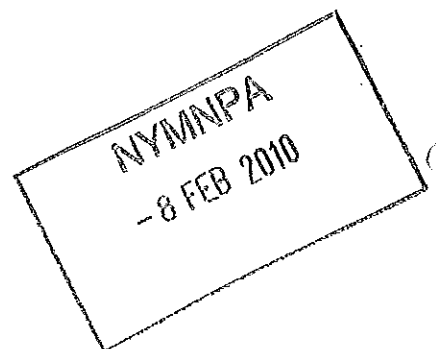
28. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Anthony J Davison*  
Inspector



DOCUMENTS

- 1 Statement of Common Ground
- 2 Copies of email exchanges on 22 September 2009
- 3 Statement by John Richard Stephen Cussons
- 4 Copy of Appeal Decision APP/W9500/A/08/2087370 (Rigg Hall, Whitby)



APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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