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The Planning Inspectorate

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Mrs F Farnell
North Yorkshire Moors National
Park Authority
Development Control Support
Officer
The Old Vicarage
Bondgate
Helmsley
York
YO6 5BP

Your Ref: NYM/2006/0552/OU
Our Ref: APP/W9500/A/07/2037652/WF
Date: 10 July 2007

Dear Mrs Farnell

**Town and Country Planning Act 1990
Appeal by Dr A J Houghton-Moss
Site at First Peter Field, Station Road, Hawkser**

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

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
4/09 Kite 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 sincerely

NYMNPA
10 JUL 2007

Nathan Lumber

COVERDL1



You can now use the Internet to submit and view documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button

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The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

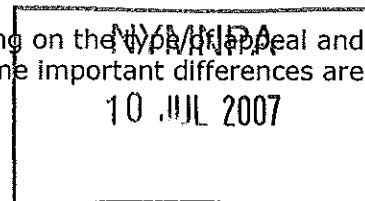
Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider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

Contacting us

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Website

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General Enquiries

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Complaints

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E-mail: complaints@pins.qsi.gov.uk

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: wales@pins.qsi.gov.uk

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:

pinso.enquiries@ombudsman.org.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.

Further information

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

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.



The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

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.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint 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.

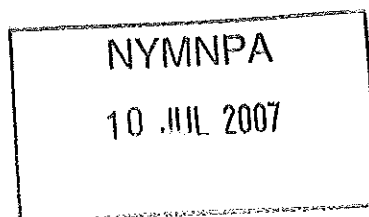
What we will do if we have made a mistake

Although we aim to give the best service possible, we know that 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 the terms 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.



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.

"If you cannot change a decision, 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.

"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

Quality Assurance Unit
The Planning Inspectorate
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Website

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The Planning Inspectorate

Room 1-004

Cathays Park

Cardiff CF1 3NQ

Phone: 0292 082 3866

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

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:

phso.enquiries@ombudsman.org.uk



Appeal Decision

Site visit made on 3 July 2007

by **Philip Major** BA(Hons) DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
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Date: 10 July 2007

Appeal Ref: APP/W9500/A/07/2037652

First Peter Field, Station Road, Hawsker, Whitby YO22 4LA.

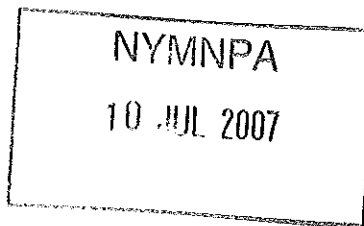
- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Dr A J Houghton-Moss against the decision of North York Moors National Park.
- The application Ref: NYM/2006/0552/OU, dated 30 June 2006, was refused by notice dated 18 September 2006.
- The development proposed is the construction of a pair of 2-storey dwellings with accessibility and renewable energy features incorporated.

Decision

1. I dismiss the appeal.

Reasons

2. The application is in outline, though I note that relatively detailed drawings have been submitted. I will take these as an indication of the form of development intended, but am mindful that the proposals may be subject to change at the detailed stage.
3. The fact that the site has been used as a certified caravan site does not, in my view, mean that it falls within the definition of previously developed land. There were no caravans present at the time of my visit. It is clearly separate from and does not form part of the curtilages of surrounding buildings. There appears to be no structure on the site and the degree of fixed infrastructure and hardstanding is so minimal that I do not consider, on a reasonable interpretation, that it falls within the definition set out in Planning Policy Statement 3 - *Housing* (PPS3). To accept it as such on the basis suggested would give previously developed 'status' to numerous certified caravan sites, and I do not consider that this is the intention of the guidance in PPS3.
4. The appeal site is clearly located outside the main part of the village of Hawsker (which has 2 main parts - High and Low Hawsker) and some distance from it. Despite it being close to the village school, church, and a residential/nursing home I agree with the National Park Authority that the immediate locality is in effect a sporadic group of buildings set apart from the village as an outlier, and which is in the countryside. As such the proposal must be judged against policies and guidance which apply to countryside locations.



5. Of relevance here are development plan policies and national guidance. Priority is given to the protection, enhancement and conservation of landscape character in a raft of policies, including Regional Spatial Strategy (RSS) Policy N3, North Yorkshire Structure Plan Policy E1, and North York Moors Local Plan Policy GP3. These accord with national advice. Local Plan policies dealing with housing are permissive of local needs development on infill plots within settlements, including High and Low Hawsker. However, I have already determined that the appeal site is not within the settlement, and so the proposal cannot gain support from this policy even were it to be for local needs housing (though no such argument is advanced). Outside settlements, as here, Local Plan Policy H4 requires justification for development, such as that which is for an agricultural enterprise, or requires a countryside location, and I am not aware of any such justification in this case. Local Plan Policy BE6 requires any development to respect or enhance the character of the surrounding streetscape or landscape, and be of a high standard of design.
6. In essence, therefore, the proposed development is located in an area where restrictive policies apply, and in this instance there is no special justification advanced for the buildings. I agree with the National Park Authority that development of the site would remove an important open space which helps to identify this as a countryside location. The proposed dwellings would be highly visible on the approach from Whitby, and would be perceived as consolidating and urbanising the sporadic development outside the village. In my judgement this would be harmful to the character and appearance of the locality notwithstanding that it would be proposed to construct dwellings of traditional design in traditional materials. I therefore find conflict with the policies noted above which were included in the Authority's reasons for refusing planning permission, and with the advice of Planning Policy Statement 7 *Sustainable Development in Rural Areas*, which seeks to restrict new residential development in the countryside.
7. I note that it would be intended to include sustainable building techniques and facilities in the dwellings, such as solar rooms, solar panels, use of grey water and the like. Whilst this may make the dwellings more sustainable in themselves, I am not satisfied that the location itself can be regarded as sustainable. Although Hawsker has some amenities and facilities it is almost inevitable that residents of the proposed dwellings would look to Whitby for many of their needs, and it is likely that they would use private transport to reach the town, notwithstanding a bus service which serves the village, and a cycle route to Whitby. Therefore, though I accept the sustainable intentions for the buildings, which follow government guidance in Planning Policy Statement 22 – *Renewable Energy*, I do not regard the location as inherently sustainable.
8. I have no doubt that the dwellings would find occupants and in that respect supply a demand. However, there is nothing before me which indicates that they would be materially supportive of the local community. The adjacent building is of a different character, and although it has planning permission for extension I do not consider that this adds any weight to arguments for developing the appeal site. Therefore, taken as a whole I am not satisfied that any of the factors advanced in favour of the proposal, either individually or cumulatively, are sufficient to outweigh the fundamental policy objection to

Sustainable
NYMIPA
10 JUL 2007

development, and the harm to the character and appearance of the landscape that would ensue, which I have set out above.

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

Philip Major

INSPECTOR

