



The Planning Inspectorate

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The National Park Officer
N Yorks Moors N P Authority
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YO6 5BP

Your Ref: NYM/029/543A/PA
Our Ref: APP/W9500/A/04/1137002
Date: 7 April 2004

Dear Sir/Madam

**TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY MR & MRS P BEEFORTH
SITE AT MIDDLEWOOD FARM, ROBIN HOOD'S BAY, WHITBY, N YORKSHIRE, YO22 4UF**

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:

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Phone No. 0117 372 8252

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

Yours faithfully

Mr Tim Mather

COVERDL1



Appeal Decision

Site visit made on 30 March 2004

by **Paul Taylor** BSc (Hons) DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date

07 APR 2004

Appeal Ref: APP/W/9500/A/04/1137002

Field OS 2625, Middlewood Farm, Robin Hood's Bay, Whitby YO22 4UF

- 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 P Beeforth against the decision of the North York Moors National Park Authority.
- The application (Ref.NYM/29/543A/PA), dated 17 May 2003, was refused by notice dated 8 September 2003.
- The development proposed is the creation of a pair of fishing lakes and an ancillary car park.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. An unaccompanied site visit was arranged for this appeal. When I arrived at Middlewood Farm I saw a notice asking all visitors to report to Reception. It was also apparent to me that I would need to go off the public highway and onto the appellants, land. So I called at Reception and obtained permission to go on the land. I did not discuss the appeal with anyone and I carried out the site inspection unaccompanied. At the time of this visit it was foggy and I was unable to see the site and its setting clearly from nearby land. I returned to the locality later in the day when I was able to complete the site inspection satisfactorily.

Planning Policies

2. Policy R1 of the North Yorkshire County Structure Plan (approved 1995) says that provision will be made for the development of recreational and leisure facilities in locations accessible to both public and private transport where this is not detrimental to local interests. Policy E1 says that priority will be given to the conservation of the landscapes and general amenity of certain specified areas including the North York Moors National Park. The appeal site is within the National Park. The policy says that within these areas there will be a presumption against new development except where it can be shown to be necessary in that location. Policy R2 indicates that in areas such as the North York Moors National Park provision will only made for new recreational developments which are considered to be compatible with the need to preserve the landscape. Such development, including the provision of car parks, will only be permitted on a scale related to the ability of the site and its surroundings to absorb visitors without suffering environment damage.
3. Policy R1 of the North York Moors Local Plan (adopted 2003) supports specialist recreational development which promotes understanding and enjoyment of the special qualities of the Park, subject to a range of criteria. Those criteria include a requirement that development is not visually intrusive in the landscape, and is compatible with the conservation and enhancement of the special qualities of Park. Policy GP3 indicates that

development which accords with other relevant policies in the plan will be permitted where the design of the scheme respects or enhances the character, special qualities and distinctiveness of the locality and wider landscape. Policy TM10 says that proposals for the development of small-scale visitor attractions will be permitted if they help to provide opportunities for visitors to increase their understanding and enjoyment of the special qualities of the National Park. Policy F5 states that proposals for farm diversification enterprises will be permitted subject to a range of criteria. One of these is that the proposal should not be detrimental to the character and appearance of the locality and should be compatible with the 2 statutory National Park purposes. The text supporting Policy NE8 states that rivers, streams, ponds and wetlands make a significant contribution to the quality, character and appearance of the built and open landscapes of the National Park.

4. Planning Policy Guidance Note 7, The Countryside, sets out relevant Government policy. The Government regards National Park designation as conferring the highest status of protection as far as landscape and scenic beauty are concerned. Conservation of the natural beauty of the countryside must be given great weight in development control decisions in National Parks. The 2 statutory purposes of National Parks are to conserve and enhance their natural beauty, wildlife and cultural heritage, and to promote opportunities for public understanding and enjoyment of their special qualities. Where it appears that there is a conflict between these purposes greater weight shall attach to the first.

The proposal

5. The appeal site is a 1.6ha grass grazing field in the coastal plateau south of Fylingthorpe village. The land slopes downwards gradually from south to north, towards the sea. To the west of the site there is considerably higher land around Fyling Hall. The site is mostly surrounded by other fairly flat fields in the coastal plateau. To the north of it, however, there is a 2ha touring caravan and camping field operated by the appellants. This has a vehicular access on to Middlewood Lane. Opposite the access is Middlewood Farm and, close by, there is a 30-van static holiday caravan site operated by the appellants.
6. The proposal is the creation of 2 recreational fishing lakes occupying most of the site. Some change to the landform would be necessary and there would be extensive new indigenous screen planting around the site. Vehicular access would be from the camping and caravan field. A new car park with 4 parking spaces would be provided in the northeast corner of the site. Paths would be provided allowing pedestrian and wheelchair access.
7. The proposed car park would be very small because the appellants' intention is that the fishing lakes would be mainly used by campers and caravanners already on holiday at Middlewood Farm. There is, however, no intention to prevent use by local people. It is also hoped that local clubs would be able to hold competitions occasionally.
8. The applicants suggested a planning condition restricting use of the lakes to people staying at the caravan/camping site, and by up to a maximum of 20 people at any one time not residing on the caravan/camping site, unless otherwise agreed by the local planning authority. The chief planning officer's recommendation was for approval of the proposed development subject to a similar condition but limiting use of the lakes to a maximum of 30 anglers at any one time, no more than 10 of which, should be anglers who are not staying at the caravan park.

Main Issues

9. I consider that the main issues raised by this appeal are the impact that the proposed development would have on the natural, scenic beauty of this part of the North York Moors National Park, and, if harmful, whether the benefits of the proposed development would outweigh that harm. I have also considered precedent, a matter raised by both main parties.

Impact on the natural scenic beauty of the locality

10. At my site inspection I viewed the site from the higher land to the west, around Fyling Hall, and, and in particular, as requested by the Authority, from the public right of way viewpoint adjacent to buildings at Sunnyside. This viewpoint is, in my view, an important one. It gives an excellent panoramic view of the coastal plateau, the sea, and the rugged cliffs to the south. It encapsulates many of the special, distinctive qualities of the National Park. It is a very pleasant point from which the natural, scenic beauty of the landscape can be enjoyed. I do not accept the appellants' opinion that the viewpoint gives only a relatively distant view of the appeal site or that it would only provide glimpses of water through substantial areas of trees.
11. The view is predominantly "natural", that is, lacking man-made features such as buildings, roads, vehicles or parks. The plateau is an attractive patchwork of agricultural grass fields. The appellants' static caravan park and caravan and camping field detract from the natural beauty of the view. The village playing field and cricket pitch cause little harm.
12. The proposed development would result in a significant inland extension of man-made development away from the village. I do not believe that the lakes would look natural. There is nothing similar in the locality. They are not a characteristic feature of the coastal plateau. There would be no clear, natural, geomorphological reason for their presence. The lakes would not be small-scale ponds but would be relatively large (up to 100m long), one with an island, filling almost the whole of the field concerned. Paths would be constructed and there could be other structures such as fishing jetties. The development would look like an informal country park.
13. I note that minimal parking facilities are proposed so as to encourage use of the site by people on foot. This is in line with general Government policy to reduce journeys by car. It seems unlikely to me, however, that, in this particular case, a car park with only 4 spaces would work, given that 10 or 20 anglers could be local residents. They might well want to drive to the lakes, due to the need to carry equipment or due to disability. In practice it seems very likely to me that there would be overflow car parking on the area around the proposed car park site or close by in the camping and caravan field. I think it would be very difficult and unreasonable to seek to prevent such overflow parking.
14. New landscape screening could, eventually, screen the proposed development to some extent but that can often be argued in defence of proposals that cause harm. I note that officers of the Authority originally considered the proposed new landscaping to be poor and a previous application for the proposal was withdrawn. In my view the revised proposals are not such as to make a significant difference to visual impact.
15. My conclusion is that the proposed development would be very likely to have a harmful impact on the natural, scenic beauty of the locality. It conflicts with Policy R2 of the Structure Plan in that it is not compatible with the need to preserve the landscape. It

conflicts with Policy R1 of the Local Plan in that the development would not be compatible with the conservation and enhancement of the special qualities of the Park. It conflicts with Policy GP3 in that the scheme does not respect or enhance the character, special qualities and distinctiveness of the locality and the wider landscape.

Benefits of the proposed development

16. The proposed development would bring clear benefits in terms of tourism and recreation. The fishing provided would, no doubt, bring enjoyment to some visitors and local residents. Some holidaymakers might well stay longer on site because of the lakes. The attractiveness of Middlewood Farm as a holiday destination would increase. The proposed development could have ecological benefit in that it could enable the creation of new habitats for flora and fauna not currently found in the locality. I acknowledge the substantial support for the proposal. It might help foster the economic and social well-being of the communities in the locality.
17. The development would also help the appellants further diversify the use of their land holding. There already has, however, been significant diversification at Middlewood Farm in the form of camping and caravan development. In addition, consent has been granted to convert some redundant buildings to high quality holiday accommodation. There is, in my view, no demonstrated need for further diversification. In fact the proposal conflicts with Policy E1 of the Structure Plan which has a presumption against development except where it can be shown to be necessary in that location.
18. It is argued that the proposed development would add significant beauty and enhance the appearance of the character of the area. I do not accept this. In my view the appeal site already contributes very positively to the scenic beauty of the landscape as a grass field, an integral part of the attractiveness of this agricultural coastal plateau. Change is not necessary and would not be scenically advantageous.
19. Thus, I consider that the major benefit arising from the development would be the enjoyment of fishing in attractive surroundings that it would bring for certain members of the public.

Precedent

20. The National Park Authority maintain that the proposal would be likely to encourage other similar applications for the creation of substantial lakes and associated works in inappropriate locations which would become more difficult to resist, if this proposal were allowed, so leading to a decline in the landscape character of the National park. On the other hand, the appellants point out that the Authority have previously taken a positive view of such developments on many occasions, appreciating the benefits they can bring in terms of biodiversity, landscape and local economy.
21. In my view this is clearly a proposal that needs to be determined on its own particular merits. I have assessed its impact on the natural, scenic beauty of this particular part of the coastal plateau of the National park having regard to particular viewpoints. This is the main consideration. Previous approvals for fishing lakes by the National Park Authority do not mean that these particular fishing lake are acceptable. Nor would approval here establish a compelling precedent for the rest of the National Park.

Other Matters

22. There is a concern by some local residents about highway congestion, inconvenience and road safety because the roads leading to Middlewood Farm are difficult, especially for cars towing caravans. I do not consider, however, that any extra traffic generated by the proposed development would be so great as to lead to a significant increase in highway problems. There is no objection from the Highway Authority on highway grounds.
23. There is also a concern about the safety of children and the possibility of drowning accidents, particularly as there is a camping and caravan site next to the appeal site. This matter has, however, been considered by the police who have no fundamental objections in respect to safety.

Conclusion

24. There is a classic conflict here between the need to conserve the natural beauty of the National Park and the need to promote opportunity for public enjoyment. I believe that, in this particular case, the quality of the landscape is such that greater weight should attach to the need to conserve its natural, scenic beauty for the enjoyment of the general public, both for now and for posterity, rather than to the enjoyment gained by one particular sector of the public. This is, in my view, what the general thrust of development plan policies and the specific advice in PPG7, as referred to above, expect.
25. I conclude that the proposed development would have a harmful impact on the natural, scenic beauty of this part of the North York Moors National Park, and that the benefit of the proposed development does not outweigh that harm.
26. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

Formal Decision

27. I dismiss the appeal.

Information

28. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

Paul Taylor

Inspector



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 we cannot amend or change them once they have been issued. Decisions are therefore final unless 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.

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/using_courts/guides_notices/notices/divis/

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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INVESTOR IN PEOPLE