

Planning Inspectorate

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Longlands

DALTON IN FURNESS

Cumbria LA15 8JF

Your reference

Our reference

T/APP/C/91/M0933/600531/P6

T/APP/M0933/A/90/169711/P6

T/APP/M0933/A/90/171998/P6

Council reference

2410/2432/2474/JD/JR

Date 15th October 1991

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 174 AND 78 AND SCHEDULE 6
APPEALS BY YOURSELF AND ROBINSON BUILDERS LTD
LAND AND PREMISES AT OS PARCEL 0142 SKELL HILL FARM KIRKBY IN FURNESS
CUMBRIA

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above appeals, which are against an enforcement notice issued by the South Lakeland District Council and against the refusal of planning permissions/ by that Council concerning the above-mentioned land and premises. I held an inquiry into the appeals on 13 August 1991, after which I inspected the site and surroundings. At the inquiry you made an application for a partial award of costs against the local planning authority, and the Council made an application for a partial award of costs against yourselves. These matters are the subject of a separate letter.

2.
 - a. The date of the enforcement notice is 12 December 1990
 - b. The breach of planning control alleged in the notice is the carrying out of building, engineering, mining or other operations on the land without the grant of planning permission, namely the construction of a permanent hardstanding for the storage of silage bales
 - c. The requirements of the notice are 1. where the level of the deposited hardcore is less than 6

ins below the natural ground level of the land, remove sufficient hardcore to ensure that the level of any remaining hardcore is not less than 6 ins below the natural ground level of the land, 2. cover any remaining hardcore with 6 ins of topsoil and raise the level of the land on which the hardcore was deposited with topsoil, to ensure that the level of the land on which the hardcore was deposited is brought level with the natural ground level of the surrounding land, and 3. level the surface and sow with grass seed

- d. The period for compliance with the notice is one calendar month
- e. The appeal was made on the grounds set out in Section 174(2)(a), (b) and (h) of the 1990 Act, but at the inquiry ground (g) was added.

3. The development for which planning permission was refused is:

- 1. outline application for the erection of 8 dwellings; and
- 2. hardstanding for silage bales.

4. Evidence was taken on oath.

5. The Councils' reasons for instituting enforcement action in this case state that they "consider it expedient to serve this notice because the construction of a permanent hardstanding for the storage of silage bales without any overriding need on this prominent open site would be detrimental to the visual amenities of the area which is recognised as being of great landscape value and which the local planning authority wish to safeguard." The reasons for refusing the application for residential development refer also to the Area of Great Landscape Value location of the site and to policy provisions in both the Cumbria and Lake District Joint Structure Plan and the Cartmell and Furness Local Plan; reference is also made to the terms of an earlier appeal decision dated 26 March 1990 in respect of this site in which the land was described as possessing important visual amenity characteristics. The reason for refusing the application for a permanent hardstanding refers to similar matters to those outlined in the reasons for instituting enforcement proceedings.

Site and Surroundings

6. OS Parcel 0142 is an agricultural field, lying to the south of Askewgate, to which it enjoys a total frontage of some 80 m. Askewgate is a minor classified road without continuous footpaths, which runs between the main A595 road at Four Lane Ends and Sand Side on the Duddon Estuary to the west. At the time of my inspection most of this field was overgrown with grass but otherwise uncultivated, and unused, the exception being its easternmost part to which the enforcement notice is directed.

7. This field is adjoined to the east by a single storey telephone exchange, beyond which on the main road corner is The Commercial Inn. To the west there is a substantial fairly modern 2-storey house, beyond which is another older house and surgery, "Highfields". On the northern side of Askewgate at a slightly higher level there is a line of houses and bungalows, generally long-established but also with some more recent additions, including a bungalow under construction nearest the junction with the A595. To the south of the parcel the land falls away and then rises again, and comprises agricultural fields also within your control.

8. The settlement at Four Lane Ends is irregular in pattern. However the principal part appears to me to lie to the north of this immediate vicinity, and mostly on the eastern side of the main road. Similar small settlements exist at Sand Side to the west and Beck Side to the east, both of which are separated from Four Lane Ends by open land.

9. The appeal site the subject of the 2 planning appeals comprises only a small part of OS 0142, ie its easternmost extent. The area concerned measures about 30m on the frontage by 40m in depth, but is not delineated on the ground so far as the westernmost boundary is concerned. The area the subject of the enforcement notice encompasses the whole OS parcel, but the development which is complained about has only taken place within this same smaller part of the field. As agreed between the parties on the day, I therefore intend to correct the plan attached to the enforcement notice to reflect this position. As a result the land the subject of each of the 3 appeals will be identical.

10. At the time of my inspection much of this area had been excavated to a lower level compared with the land adjacent to the west within the remainder of the OS parcel. The resultant surface was hard, being either formed from sizeable pieces of irregularly shaped stone, or from smaller and smoother bits of stone rubble. Soil was stored alongside in a low heap. There is also an open gateway to this area from the road at a point alongside the telephone exchange.

11. The southernmost part of this site was covered with bales of silage, enclosed in black plastic, and placed one upon the other over plastic sheeting covering the ground. You said that there was a total of 175 bales present at the time; this number was not contested. Also on the land was a tracked excavator fitted with a bucket which is used to lift bales over the intervening stone wall into the next field, where your cattle are fed.

The Housing Appeal

12. You confirmed during the inquiry that the most important appeal so far as you were concerned related to the housing development. This application was entirely in outline and you wished to delete any reference to numbers of units. I will therefore proceed on this basis.

13. I consider the main issues to determine in this connection to be:

1. bearing in mind the aims of relevant planning policies, the impact of the development on the character and amenities of the area; and
2. the weight to be attached to any changes in circumstances since the last appeal was determined.

14. On the first issue this land lies within a defined Area of Great Landscape Value and outside any allocated built-up locality. The principle of housing development here has been examined in detail at least 3 times in the recent past; ie in the preparation of the Local Plan over the period up to 1990, and on 2 previous planning appeals decided in April 1989 and March 1990 respectively. On each occasion residential development on this land was found to be unacceptable for environmental reasons.

15. I see no reason to disagree with these conclusions. The erection of even a limited number of well designed houses on the present appeal site would be very apparent and visually intrusive especially in the southern approach to Four Lane Ends along the A585, from Askewgate itself, and from the residential properties which exist nearby. As such housing development here would in my opinion be incongruous and represent an extension of development into the surrounding countryside. Accordingly fundamental policy aims as set out in the approved Structure Plan at Policies C3 and H8 would not be met.

16. You argue that development here should be regarded either as "infilling" or "rounding-off", both of which are recognised as potentially acceptable in the adopted Local Plan. However you accept that even if consent should be forthcoming as requested, the rest of the OS parcel would still remain open at least for the time being. In these circumstances I do not consider that either description could be said to apply in this instance. Infilling and rounding-off are both precisely defined in the Local Plan and neither definition would as I see it be applicable in this case. This would not be building on a vacant plot in an otherwise built-up street frontage, nor would the development you propose amount to a logical completion of an incomplete group of buildings in such a manner as to finalize the definition of that group on the ground.

17. Consequently I consider that the tests set out in the Local Plan in these respects would not be met. As such any permission here would be inconsistent with the objectives of Policy A3 in this up-to-date and pertinent document. So for these reasons there are strong and compelling grounds not to allow this development to proceed,

18. I conclude on the first issue that there are clear-cut and convincing amenity reasons against the grant of any permission. Hence in this context this appeal should not succeed.

19. On the second issue, you claim circumstances to have changed since the last appeal was determined early in 1990. It is clear that there have been some alterations. The site area is different, and somewhat larger. So even if 8 units could not be accommodated satisfactorily, the local planning authority do not dispute that a certain amount of new development could be physically fitted onto the land. You also agree that the housing situation has changed and you do not suggest today that the land availability picture is in any way adverse. Indeed you generally accepted the present overall position as set out in the Council's table at Document 8. Thus contrary to the arguments canvassed at the last inquiry, no case has been put before me to the effect that residential development is needed on this particular site so as to meet general housing requirements.

20. You do however strongly contend that an exception should nevertheless be made now to meet local needs for affordable housing. In this connection you indicated that you were aware of at least 6 couples who fell into this category at the present time. You referred to the advice contained in Circular 7/91, and described in some detail how you envisaged low-cost units might be provided on this land.

21. In brief you acknowledged that a Housing Trust or Housing Association would need to be involved. This organisation would have the status of a charity, and would have the benefit of a long lease on the land at advantageous nominal terms; the freehold would remain within your control. Your own firm would construct the development and the houses would then be offered to local people to rent.

22. You expected costs to be kept low because there would be no element of land value in the eventual rental levels, whilst expenditure on building works should be minimised - your estimate of construction costs alone was just £25,000 per dwelling. In addition you anticipated that some form of subsidy from public funds might be available so as to further reduce eventual prices. Further information could not however be detailed yet, because a planning permission was needed prior to formulating a comprehensive scheme together with the appropriate legal and financial arrangements.

23. In principle this concept could be described as commendable. Indeed the local planning authority say that they fully recognise the need, as demonstrated by the recent formulation of a specific policy statement concerned with this topic which has now been incorporated into the adopted Local Plan. In addition the Council is engaged on other sites elsewhere in the District in seeking to achieve an element of low-cost units in discussions with the developers involved in those instances. However in all such cases the suitability of the individual site still needs to receive careful scrutiny.

24. I note that in presenting your submissions on these points you indicated that you had not actually had the opportunity to read Circular 7/91. As I see it, the guidance in that document, which is a material consideration in this case, relates principally to sites which have already been identified as suitable for development by the relevant local planning authority. It also envisages that where a need to provide affordable housing exists, and there is a demonstrable absence of such accommodation in the local area, then the Council involved might reasonably take the initiative to remedy that situation, either by formulating appropriate planning policies or in negotiations with developers. In my opinion none of these circumstances apply entirely on this occasion. So I do not consider that your proposals could be regarded as on all fours with Central Government advice in these particular aspects.

25. There are admittedly references in the Circular to the provision of such housing within rural areas, and the possible development of otherwise unallocated land to this end. However paragraph 10 in the Circular indicates that the case for releasing such sites would essentially be a matter for local judgement. Local opinion in this case, as expressed by the local planning authority, the relevant Parish Council, and also several nearby residents, is strongly to the effect that consent should not be granted, even on the basis of meeting a local need which all concerned appear to accept does exist, although perhaps not to the extent which you have postulated. Furthermore no representations have been put before me either in writing or during the proceedings from other parties to support your case in this regard, nor did you provide any specific evidence from disinterested sources about these matters yourself. So I consider from this that the arguments which you have presented have not been fully endorsed by other people or organisations.

26. Finally, and probably most importantly, paragraph 16 in the Circular states "the exceptional release of land for low-cost housing should take full account of environmental considerations". In this connection you sought to argue that a small group of houses on this particular site would have little if any impact. However I do not agree with this assessment. As I have indicated previously, to my mind a residential development of this land, even if limited in extent and very carefully designed and landscaped, will be unduly prominent in the landscape, detrimental to the qualities of this Area of Great Landscape Value, and hence open to strong criticism. So on this basis there are sound reasons to resist the permission you seek.

27. Moreover in this connection I am concerned at the possible implications of a consent on this particular piece of land. Should permission be forthcoming here, notwithstanding the objections which

I have outlined, then I consider it would be very difficult in practice to prevent the residential development at some stage of the remainder and larger part of OS Parcel 0142 to the west. Indeed your own comments on the day recognised that this may well be so. In those circumstances the end result would be a sizeable addition to the settlement, and constitute undesirable urbanization. The intention of the Local Plan to only allow very modest further development within Four Lane Ends, in the form of infilling or rounding-off, would not then be met. Likewise visual amenity would be compromised to an even greater extent, to the overall disbenefit of the pleasant and essentially rural character of this protected locality. Consequently there are additional compelling reasons arising from these considerations which indicate that this appeal should not succeed.

28. My conclusions on the second issue are that any local need for affordable housing which may exist is not sufficiently well-demonstrated, nor of such importance in itself, as to override the very clear-cut and soundly-based policy and amenity objections against the issue of any consent. Even though you have presented rather more evidence on this occasion about these factors, I still share the views of the last Inspector in 1990 who found in this connection that there were no exceptional circumstances which would outweigh the objections to the grant of planning permission. Accordingly this appeal fails.

The Hardstanding

29. Both the Section 174 and Section 78 appeals in this connection relate to the same site and to the same development. Accordingly I will deal with these 2 disputes together.

30. So far as the Section 174 ground (b) appeal is concerned, you claim that no hardstanding has in fact been formed. Some excavation works have been undertaken, with a view to the provision of such a facility, but in the event the resultant natural surface is sufficiently robust not to require any further treatment. You say that in practice the present position is adequate for your agricultural purposes, so you simply request that, should permission nevertheless be required, the existing arrangements should be allowed to stay.

31. When I inspected the appeal site I was not able to see the condition of much of its surface due to the presence of the silage bales. However I could perceive that a clear difference in levels compared to the rest of the parcel to the west had been formed. I also noted the presence not only of natural stone on the surface, but of some smaller rounded fragments around the bales themselves.

32. You agreed during the proceedings that in all probability some material had been brought onto this land in the fairly recent past. This would have included stone waste from excavations in your own farmyard. You also indicated that in addition other like materials might well have been deposited here by others, without your consent. Whatever the background, the resultant land surface constitutes a slightly inclined but level parcel of land, with a hard rocky finish, and at a different level compared with adjoining land to the west and east.

33. As a result of the above, and taking into account also the evidence of the submitted photographs provided by the Authority and others, I consider that operational development has occurred here as alleged by the Council. This development consists partly of excavating this part of the former field down to a lower level, which is an engineering operation, and partly the laying down of some materials to form a hardsurface. Taken together I am of the opinion that these works are sufficiently extensive as

a matter of fact and degree as to constitute development requiring planning permission. As no such consent has been obtained a breach in planning control exists. Consequently the ground (b) appeal fails.

34. Turning now to the question of merit, I consider the main issue to determine in both appeals to be the effect of retaining the development in dispute on the character and appearance of this locality.

35. OS Parcel 0142 in its present state is not a pretty site. You claim to have complied with the terms of the previous enforcement notice, which was upheld but varied. This may be so, but still the field remains overgrown and unused. The former stone boundary wall to Askewgate has not been rebuilt; it remains partially demolished, but surmounted by a wire strand supported on concrete posts, and from which old tyres have been hung. As a result the present scene is far from an attribute to these otherwise very pleasant and well-tended surroundings.

36. In this context to allow a hard standing or hardsurface to remain on the western part of the OS Parcel would only serve to aggravate and perpetuate the present unsatisfactory situation, to the serious detriment of visual amenity. Indeed the extent of this undesirable impact would become all the more apparent from points to the north due to the absence of most of the boundary wall, which you have clearly stated you have no intention to replace. It may be that if silage storage was to continue, then the presence of the hardstanding itself would not be particularly apparent. But this would only be for part of the year; at other times the hardsurface would be visible. Accordingly I find that, even given these factors, to agree to the retention of this development would be quite out of place in this setting and hence unacceptable.

37. You say that whatever the outcome of these appeals you would still continue to store silage bales on this site, and that no planning permission would be needed to use the land in this way. The Council do not dispute these statements. Given the adverse impact arising from storing these bales in their present prominent position, and the proximity of residential dwellings, to continue to store silage bales here would to my mind be very regrettable. But even if this did occur, it would most likely only take place during part of the year. Moreover it must at least be open to doubt that if as a result of upholding this notice a hardsurface is no longer available here to facilitate such activities, then from an operational point of view you might find the situation less than satisfactory. In those circumstances you might consider alternatives, such as implementing the outline permission which you already possess for the erection of an agricultural building elsewhere on the holding, which includes the formation of a concrete apron suitable for and designed to include the storage of silage bales.

38. My conclusions on merit in this connection are that there are entirely valid reasons not to issue any consent, which are not outweighed by any considerations to the contrary. The ground (a) appeal fails and the deemed application for planning permission which also arises will be refused; for the same reasons the Section 78 appeal also fails.

Grounds (g) and (h)

39. Under these heads in respect of the Section 174 appeal you contend that the specified steps are excessive, and that in the event that the notice should be upheld, more time should be allowed for compliance.

40. On the first point you complain in particular about the requirements to topsoil the land and to sow with grass seed. You argue that if the land is topsoiled it will make it less satisfactory for the storage of silage bales, and that in wet weather mud would in all probability be created which would be transported on to the public road. Sowing with grass seed would you say be unreasonable, because if in the event you have to return this land to agriculture, this need not necessarily entail cropping with grass.

41. I have no sympathy at all with any of these representations. A breach in planning control exists here which should be remedied by taking appropriate steps. In my opinion those steps should aim to return the affected land as nearly as possible to its condition before the breach in control occurred, and suitable for agricultural cultivation. As such topsoil, which you acknowledge is readily to hand, should be returned. Furthermore in all the circumstances of this case, grass should be sown consistent with the present condition of the rest of the parcel, since to do otherwise would result in an unfinished appearance which would not be satisfactory. If in the event the implementation of these steps should make the use of this land for the storage of silage bales less attractive, then hopefully that might serve to encourage you to make other more satisfactory arrangements in this respect. I therefore intend to endorse the requirements as stipulated in the notice. Hence the ground (g) appeal fails.

42. With regard to the question of time, you indicated the possible disadvantages which might follow, in terms of disturbance, traffic and potential smell, if you have to move all the silage bales presently on this land within a very short period. I appreciate these points. I note that in evidence¹ you said that there were a total of 175 bales here which are being used at a rate of 8 bales per week. Consequently some 22 weeks supply exists, equivalent to a period of about 6 months.

43. If the notice should be varied to reflect this arithmetic, this would mean that the specified steps need not be fully implemented until the early spring of 1992. This would roughly tally with your own suggestions in this respect. I appreciate that the Council and others would prefer that the present unsatisfactory state of affairs should be remedied as speedily as possible. Even so I conclude that it would be reasonable to allow rather more time in this connection, and that a period of 6 months should be a fair compromise between opposing interests. I will therefore amend the notice to this extent. The ground (h) appeal therefore succeeds accordingly.

44. I have taken into account all other matters raised, including your claims about unfair treatment and double standards, your references to other developments elsewhere including in Becksid, the absence of any specific highway objections to your proposals, the Parish Council's concern about drainage matters, and your agreement should permission be granted for the residential scheme to the imposition of appropriate conditions and the completion of a legal agreement, but none in my judgement detract from the reasoning which gives rise to my conclusion.

FORMAL DECISION

Section 174 Appeal under Reference T/APP/C/91/MQ933/600531/P6 by Richard Robinson Snr Esq

45. For all the above reasons and in exercise of the powers transferred to me, I hereby:

1. correct the enforcement notice by substituting the plan attached to this letter for the plan annexed to the enforcement notice; and

2. vary the enforcement notice by deleting from its operative part the words "one calendar month" and substituting therefore the words "six months".

46. Subject to these corrections and variations I hereby dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made pursuant to the provisions of Section 177(5) of the Act.

Section 78 Appeals under References T/APP/M0933/A/90/169711/P6 and T/APP/A/90/171998/P6 by Robinson Builders Ltd

47. I hereby dismiss both appeals.

RIGHTS OF APPEAL AGAINST THE DECISION

48. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant

ARTHUR LEMON BA(Hons) DipTP MRTPI
Inspector