



Appeal Decisions

Site visit made on 15 October 2007

by Alan Upward BA(Hons) MCD MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

0117 372 6372
email:enquiries@pins.gsi.
gov.uk

Decision date:
2nd. November 2007

Appeal A: Enforcement Notice 1: Ref. APP/HO738/C/07/2038786 The Stables, r/o Greencroft, Drovers Lane, Redmarshall, Stockton-on-Tees

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by David Holmes against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The Council's reference is 23.0.1.27.
- The notice was issued on 9 February 2007.
- The breach of planning control as alleged in the notice is:
without planning permission the erection of two structures consisting of wooden frames with wire mesh covers in the approximate positions marked with crosses on the attached plan marked Plan B
without planning permission the construction of an access track/driveway on the land edged in blue on the plan marked Plan A attached to this notice
- The requirements of the notice are to:
 - Remove the wooden framed structures from the land and reinstate the land to the condition it was in prior to the breach occurring**
 - Remove from the land edged in blue on Plan A all imported materials, including stone chippings or gravel and any sub base and associated kerbing used to create the gravelled access track**
 - Reinstate the land edged in blue on Plan A to its condition before the breach took place, including filling any holes left from the removal of the access track and kerbing, reinstating the land to the ground level before the breach took place and reseeding with grass seed**
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.

Appeal B: Enforcement Notice 2: Ref. APP/HO738/C/07/2038787 Land at The Stables, r/o Greencroft, Drovers Lane, Redmarshall, Stockton-on-Tees

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by David Holmes against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The Council's reference is 23.0.1.27.
- The notice was issued on 9 February 2007.
- The breach of planning control as alleged in the notice is **the material change of use of the Land from agricultural use to residential garden without planning permission.**
- The requirements of the notice are to:
 - Cease the use of the Land as residential garden**
 - Cease mowing and maintaining all grassed areas of the Land and allow the Land to revert back to the agricultural condition it was in prior to the breach occurring.**
 - Remove the five ornamental beech trees from the Land (3 Betula jaquemontii and 2 Betula youngii) and restore the land from which they are removed to its former condition before the breach occurred.**
 - Remove the gravelled pathway leading across the Land from the access track/driveway to the doorway and restore the land where the path has been removed to the condition it was in prior to the breach occurring**
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) & (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

**Appeal C: Ref. APP/HO738/A/07/2039280
The Stables, r/o Greencroft, Redmarshall, Stockton-on-Tees**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by conditions of a planning permission.
- The appeal is made by David Holmes against Stockton-on-Tees Borough Council.
- The application, dated 19 May 2004, sought approval of details pursuant to conditions Nos "06, 08, 09, 10, 11 & 12" of an approval of reserved matters Ref 03/2705/REV granted on 8 April 2004.
- The development proposed is **resubmission of reserved matters for the erection of a detached dormer bungalow and installation of a private treatment plant at The Stables, Redmarshall, rear of Greencroft.**
- The details for which approval is now sought are:
 - 06 No development shall be commenced until details of all the means of enclosure on the site have been submitted to and approved by the Local Authority. Such means of enclosure as agreed shall be erected before the development hereby approved is occupied and shall be maintained for the life of the development hereby approved.**
 - 11 Further porosity tests shall be carried out to the satisfaction of the Local Planning Authority to demonstrate that suitable subsoil and adequate land area is available for the soakaway in accordance with and the Building Research Establishment Digest Standard 365 (soakaway system). The private treatment plant shall be de-sludged at not more (sic) 12 monthly intervals with a suitable access to be provided in accordance with a scheme to be agreed with the local planning authority.**
 - 12 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority, a detailed scheme showing existing ground levels, finished ground levels, finished floor levels for the dwellinghouse, a final ridge height of 6.4m above agreed ground level and road levels. Thereafter the development shall be completed in accordance with the approved details.**
 - 13 Notwithstanding the submitted plan No 1.2, a turning space shall be provided in accordance with a scheme which has previously been submitted to and approved in writing by the Local Planning Authority within the site to enable vehicles visiting the site to enter and leave in forward gear. The turning facility as approved shall have a width of 4.5m, be designed to be on the eastern side of the front hardstanding area and be provided to the satisfaction of the Local Planning Authority prior to the development being occupied.**

Summary of Decision: The appeal is allowed in part and is dismissed in part, as set out below in the Formal Decision.

**Appeal D: Ref. APP/HO738/A/07/2039173
The Stables, Drovers Lane, Redmarshall, Stockton-on-Tees**

- 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 David Holmes against the decision of Stockton-on-Tees Borough Council.
- The application Ref 06/3790/FUL, dated 18 December 2006, was refused by notice dated 16 February 2007.
- The development proposed is **stables for horse breeding business.**

Summary of Decision: The appeal is dismissed.

1. The application for costs by Mr Holmes is the subject of a separate decision.
2. The appeals relate variously to parts of a single ownership of land at The Stables alongside a 'C' class road at the edge of built development in the village of Redmarshall. In the case of Appeal D the defined site had included additionally a field of some 2.8 hectares (approx), owned by another party and located immediately to the north of the 0.71 hectare (approx) field and residential plot owned by Mr Holmes.
3. The dormer bungalow, referred to in the conditions Appeal C, relates to a small plot directly alongside an established bungalow known as 'Greencroft' on land formerly partly occupied by ranges of timber stables. The submission dated 19 May 2004 for approval of details required by conditions was itself related to conditions imposed on what was described as an approval of reserved matters of an earlier planning permission. The 'root' permission was not included with documents accompanying the representations, although it appears to have been granted in July 2000, and had not reserved for later approval the siting of the dwelling. It seems likely that the

April 2004 approval was a separate planning permission rather than the form of words employed on the decision notice.

4. The notice of 'approval of reserved matters' in April 2004, as copied with the Appellant's appeal documents, had included 14 conditions. The Council indicated that this initially issued notice had contained an error, and a corrected decision notice had been issued. Within the appeal documentation I have seen copies of notices with different conditions and numbering of individual conditions. This situation has led to a degree of confusion over the matters now to be considered. In determining this appeal, I shall follow the numbering applied on the initial decision notice dated 8 April 2004 – an arrangement followed by the Council in responding to this appeal. The matters relating to the specified conditions were the subject of on-going discussion and correspondence between the Appellant and the Council up to the time when the current appeal was lodged. In a number of cases the Council have treated the submissions, as modified or augmented during that process, as having "discharged" the conditions, apparently on an informal basis. Notwithstanding the wording of the original application letter of 19 May 2004, it is apparent that the outstanding items are those listed above in my description of Appeal C. They had not been formally specified in lodging the appeal, but had been cross-referenced to a discussion of the question in representations lodged in respect of the enforcement notice appeals. Those representations had discussed in detail the complex planning history of the overall site, and had identified 06, 11, 12 and 13. The various more recent documents submitted by the Council, and their written statement, had also identified these conditions by these numbers.
5. The enforcement notice allegations related to 2 operational developments and a change of use of land in the immediate environs to the plot of the new dwelling. The stables building proposed in Appeal D would be sited within the field owned by the Appellant a short way to the south-east of the dwelling.

Appeal A: Notice 1

Ground (c) appeal

6. This appears to relate to both parts of the allegation ie the wooden frames with wire mesh (the "chicken coops") and the access track/driveway. The chicken coops are wooden framed structures of about 2.5m height surrounded by wire mesh and intended to house poultry. They were unused at the time of my visit. They are both sited within the north-western corner of the field close to the garden boundaries of 'Barford Cottage' and 'Greencroft'. The Appellant did not argue that these structures benefited in some way from permitted development rights under Part 6 of the GPDO Schedule (as agricultural development). He argued that they enjoyed residential permitted development rights (ie they amounted to development permitted under Class E of Part 1 of the GPDO Schedule). This would require "any building or enclosure" to be within the curtilage of the dwellinghouse and "required for a purpose incidental to the enjoyment of the dwellinghouse as such ...".
7. On my analysis of the outstanding conditions, the format of items 6 and 12 is expressly that of conditions precedent in their employment of the words "No development shall be commenced/take place until ...". A failure to comply with these conditions would have rendered a prior commencement of development unlawful. An unlawful dwelling does not enjoy rights of permitted development. Whilst the dwelling can be rendered lawful retrospectively by approval of the various outstanding matters, it would remain the case that at the time when the chicken coops were erected, they were not development compliant with the terms of Class E.
8. Aside from this question, it would have been necessary for the structures to have complied fully with the terms of Class E. The new dwelling at The Stables appears to have been physically complete for some time, and I saw that external works within the plot also appeared complete. It was unoccupied and unfurnished at the time of my visit. All the available evidence indicated that it had not been occupied and brought into use as a dwelling at any stage up to the present day. Rights of permitted development under Class E cannot be enjoyed until the new dwelling has been brought into use by occupation – ie they could not be said to be required for a purpose incidental to the enjoyment of the dwellinghouse until the point at which there were occupants to enjoy such a purpose. At the time when the coops were erected, they were therefore not permitted under Part 1.

9. There is separately difficulty over the question of whether they are positioned within the curtilage of the dwellinghouse. The Council's statement suggested that *"the chicken sheds were erected partly on the agricultural land and partly on the residential land associated with The Stables"*, and plots their positions in relation to an area hatched on a plan BC001. This involves a narrow sliver of ground of irregular shape beyond the main residential plot and alongside the fence boundaries of Greencroft and Barford Cottage. It is outside the area now fenced as a rear garden to the dwelling, that fence according in its siting to the detailed plans approved in 2004. It is unclear whether the 'sliver' was part of the site defined in the outline planning permission for the site, or was simply a rendition of the village boundary line shown on the local plan.
10. If this ground is treated as part of the residential planning unit arising from the planning permission, that is not the same thing necessarily as indicating that it forms part of the curtilage of the property for the purposes of permitted development rights. Curtilage defines an area of land in relation to a building and not a use of land. In the absence of a statutory definition of the word, the OED definition has been held to be adequate for most present day purposes, namely *"A small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings."* The rectangular block of ground, fenced off as a rear garden, appears to reflect this position. This is physically separated from the sliver of ground around the margins of the field and located out of ready sight from the house. This latter area is undifferentiated from, and forms part of the remaining field, and there is no intimate association between this land and the dwellinghouse. I therefore agree with the conclusion of the Council that the rectangular fenced area marks the limit of the curtilage of the property in this part. The coops are sited outside the curtilage of the house, and this provides another reason why they did not amount to permitted development.
11. For these various reasons my conclusion is that the ground (c) appeal in respect of the chicken coops should fail.
12. The "access track/driveway" on the 'blue edged land' to the east of the dwelling comprises a gravel surfaced trackway with brick on edge margins connecting with a gated link to the approved residential plot, and leading up to a field gate close to a fruit tree in the southern part of the blue land. The treatment plant to serve the property has been sited close to the fruit tree. The access track/driveway incorporates a vehicle turning facility at the point where it turns southward to lead towards the septic tank. The Appellant indicated that it had been constructed so as to discharge elements of conditions 11 and 13. The works now on the ground were not, however, permitted as part of the dwelling development (so as not to be a breach of planning control). The line and constructional details of the "suitable access" have not been approved by the Council for the purposes of 11, and the turning space, as built, does not reflect the plan submitted to the Council, ultimately treated as a submission under condition 13. The track/driveway across the blue land was therefore a breach of planning control, and any ground (c) appeal in respect of it would fail.

Ground (a) appeal

13. The reasons for issue of this notice cite conflict with Policies GP1 and EN13 of the Stockton on Tees Local Plan. These policies remain in force following 27 September 2007 by Direction of the Government Office for the North-East. GP1 sets overall criteria to be met by development, including (i) its external appearance and relationship with the surrounding area and (ii) the effect on the amenities of the occupiers of nearby properties. EN13 lists potential forms of development permissible "outside the limits to development". These include development necessary for farming and that contributing to the diversification of the rural economy (where not harming the character and appearance of the countryside).
14. In respect of the chicken coops the main issues are the effect upon the rural landscape at this edge of the village, and the impact upon the outlook from the nearby dwellings.
15. Regardless of the precise position of the village 'development limits' boundary in the vicinity, the coop structures are located within a grass field at the outer edge of the settlement. They have an effect on the openness of countryside adjacent to the settlement. Their size and mass is not particularly large. They are sited close to back garden fences of village properties, and are effectively shielded from available public views as a consequence. They are, nevertheless, readily seen at fairly close quarters from the rear areas of residential properties in the vicinity, and

impinge on the openness and character of the rural landscape between the villages of Redmarshall and Carlton. Although they would be for the housing of animals, they are not part of an operational farming business, and their overall purpose is unclear. They are isolated structures whose incongruous siting and appearance causes some damage to the rural character of their surroundings.

16. Separately, they are positioned very close to the garden boundaries of Barford Cottage and Greencroft, and because of the very limited depth of back gardens of these properties, close to the dwellings themselves. Although lightweight structures, they are much taller than the garden fences and have a substantial impact upon the outlook from the 2 dwellings. I consider this to be materially harmful to the standard of amenity enjoyed by their occupants. Having regard to the criteria of GP1, I consider that there is harm to the issues identified in this policy. Although the precise line of the local plan's mapped village development boundary remained something of an issue between the parties, the positive terms of EN13 do not support this appeal whether the structures are outside, inside, or traversing the boundary between the settlement and countryside. The coops are neither part of a farming business nor a clearly defined diversification activity. My conclusion is that this element of the ground (a) appeal should fail, and planning permission will be refused.
17. Arguments relating to the access track/driveway were inter-linked with the claim in Notice 2 of a change of use of the same "edged blue" area to residential garden. In respect of the track the main issue is the impact upon the character and appearance of the open land beyond the defined limits to development, having regard to the degree of need for the development for the purposes of access to the grazing land beyond, access for de-sludging the treatment plant and associated requirements for vehicle turning.
18. In its layout and appearance the track appears as a continuation of access formed within the defined residential plot. Highway considerations appear to have dictated that all vehicular access to the remaining grass field of 0.65 hectare shall be by way of the established link to the C class road now serving the residential plot.
19. The route of the track does not appear clearly to serve purposes associated with residential occupation of The Stables, although its appearance reflects its residential surroundings in terms of the quality of surface created as a continuation of the standard of driveway formed within the permitted plot. The 2 sections are separated by a timber post and rail fence with wide gates to afford a link.
20. As to the need for an access formation across the agricultural land, I agree that many agricultural field accesses do not feed onto a separately formed roadway within the adjacent section. Having regard to the likely use of the land for grazing purposes, its configuration and the distance in depth of the main body of the land from the highway, I can understand that some type of formation away from the house drive and front door would be advantageous for users. The position with regard to an annual visit by a de-sludging vehicle for the treatment plant is also not clear cut. Whilst it may be possible for a vehicle to stand within the dwelling plot and operate via suction tube over a distance of some 30 – 40 metres, the Council's requirement in condition 11 suggests doubt about the efficacy of such an arrangement.
21. In all these respects a lesser standard of trackway would be capable of meeting the operational need. The effective issue is whether the higher quality of access surface causes unreasonable harm to the character of the area. The track is seen in the context of the new dwelling, and its quality adds to the 'domestication' of the area to its east. It is not, however, necessarily part and parcel of an intended change of use of the land. So far as I was able to see at my visit the new gravel surfaced formation cannot be viewed easily from anywhere beyond the site. It is over land at a somewhat higher level than the road, and several layers of roadside vegetation and a fence screen the area from view from beyond. Allied to the level changes, roadside hedgerows and trees further screen visibility of the land at the approach from the east. The hedgerow along the eastern edge of this part of the field parcel screens longer distance views from possible vantage points in and around the village of Carlton. In the absence of perceived visual harm caused by this length of track my conclusion is that its advantages for the use of the wider land and the treatment plant access are sufficient to justify the grant of planning permission to retain it. This part of the ground (a) appeal will therefore be allowed.

Appeal B: Notice 2

Ground (b) appeal

22. The area identified on the notice plan remains divided off from the residential plot towards the front. Along its south-eastern boundary an area was enclosed around the treatment plant/fruit tree, and there was a field gate at the end of the gravel surfaced track. However, the gate was located some way back from the line shown on the enforcement notice plan.
23. The Appellant argued that the change of use being alleged could not have occurred as a matter of fact because the dwelling had yet to be occupied. The Council considered that as certain works had been carried out there had been a material change, regardless of whether the dwelling had been occupied, being visually related to the residential use of the site.
24. The physical features identified by the Council in the treatment and maintenance of this appeal site could be part of a judgement that a material change of use had taken place to that of a residential garden. The situation at The Stables is, however, made intrinsically more difficult by the overall design and layout of the scheme. This had been contrived to maximise the use of land for the new dwelling within the previously approved plot. The end result is that the long east facing elevation of the building directly abuts the boundary of the plot with the field with 4 ground floor habitable room windows and a door opening immediately onto the field. As I saw it, there was an inherent visual relationship between the building and the land around it on this side. The door from the hallway appears to have been added in substitution for a window at the express request of the Council for building control purposes, although what action was separately taken for planning purposes was not clear. There was nothing to indicate that this change was being challenged in relation to the terms of the planning approval.
25. The land on this side of the new building would have been significantly disturbed by the building process, including the installation of drainage facilities. The standard of reinstatement of the land and subsequent maintenance regime perhaps reflects the juxtaposition with the building and one of its principal aspects. It is not, however, conclusive of a change of use having already taken place. Notwithstanding the standard of maintenance of the land, there was no formal physical separation of this area from the bulk of the grazing field beyond. The enforcement notice plan extrapolates the line of the rear garden fence as far as the hedgerow boundary. The area beyond the line of the field gate was not being maintained in the manner applied to the remainder of this site, and this small part did not look like a residential garden.
26. Taking these various matters into account, I consider that whether a material change of use had occurred as a matter of fact at the date of issue of the notice must be related to activity on the ground as indicative of the residential use. Maintenance works are not to my mind conclusive in the circumstances of the case. In the absence of any residential occupation of the building there has not thus far been any use of this extra area for the purposes of a residential garden attached to that dwelling. My conclusion is therefore that the alleged unauthorised development had not occurred as a matter of fact. The ground (b) appeal succeeds, and the notice will be quashed.

Appeal C – approval of conditions 6, 11, 12 and 13

27. The discharge of conditions of the April 2004 approval had been the subject of extensive discussion between the Appellant and the Council (and third parties) over a long period of time. As discussed earlier, the outstanding issues related to numbers 06, 11, 12 and 13. In relation to conditions 6 and 12 the Council took the view that insufficient information had been submitted to enable them to be discharged, but that works as carried out were satisfactory and enforcement action was not expedient. Conditions 11 and 13 bear on the access formed around the building, which the Council considered unacceptable as built.
28. The current appeal effectively seeks approval of the details submitted pursuant to the 4 conditions. In the case of condition 12 the appeal representations criticised its validity on the basis that it does not meet the tests set out in C11/95. The application, as made in respect of this and other conditions, was not, however, under S73 of the 1990 Act for permission to develop land without complying with conditions.
29. Condition 6 required submission and approval of all means of enclosure on the site. Despite the protracted discussions of this question, which had included argument about where fence lines should be formed, the Appellant appears never to have formally responded to requests to supply

a drawing detailing the post and rail fences intended and as later erected at the site. The general description which he employed would not meet the condition's requirement clarified in the letter of 4 June 2004 for "elevational detail" of the structures, including their height. Any approval, thus founded, would not have been capable of adequate enforcement. Photographs taken at a later date by Council officers of the fences following their erection would similarly fall short as a basis for their approval. It would have been a relatively simple matter for Mr Holmes to have provided the requested information. His later refusal to submit any further information was a reflection of the bad feeling which had been generated by what he regarded as excessive bureaucracy on the part of the Council in dealing with all the matters at the site in conjunction with the various objections raised by third parties.

30. Although the boundary fences, as erected, were considered to be visually appropriate and acceptable, a view with which I concur, a formal approval within the terms of the condition should not be made at this stage. The appeal in respect of this condition will fail.
31. The only aspect of condition 11 at issue was the last clause requiring provision of a "suitable access" in accordance with a scheme to be agreed. The Council's stance on this matter was founded on their judgement that the trackway which had been constructed was unacceptable. I have separately considered that earlier in relation to Appeal B. The issue in respect of the condition is not, however, the visual impact of what was later built, but the adequacy of the details submitted to discharge this condition. Regardless of my conclusions on the merits of retaining the track challenged by Notice 1, the details provided to discharge the condition were inadequate. The issue in this case became embroiled with a plan said to have been submitted in July 2004, but which the Council claimed not to have received. Although the rough details of the track shown on the plan (now submitted with the appeal), and said to have been the disputed drawing, are similar to what was later set out on the land, they are not the same. Again, it would have been fairly straightforward for the Appellant to have supplied the details at a later date. His refusal to do so must condemn the appeal in relation to this condition to failure also.
32. Condition 12 poses a similar problem, augmented by the potential difficulty of internal inconsistency within its wording. Although the issue of levels – floor levels, external ground levels and the ridge height of the dwelling appears to have been a particularly thorny issue between the parties in the light of representations from neighbours, the Council regarded the works on site as finalised as acceptable. Their criticism related to the lack of information within submitted drawings about "existing ground levels" so as to make clear the extent to which the site had been altered by the development.
33. The Appellant described in some detail the manner in which works had been executed on site for demolition of the stables, ground preparation and construction of the house. Although the Council appeared ultimately satisfied with the way in which this information related to the situation on the ground, there remained in their view a gap in the formal details submitted.
34. The approved drawings deal fully with ridge height, finished floor level and external finished ground level. It is arguable that Drawing 1/3 contained a gap in information about pre-existing levels in the immediate position of the new dwelling, although the Appellant sought to clarify this position in email exchanges about the initial site survey. It seems to me that the accumulated information is sufficient to provide a full picture of site conditions to meet the purposes of condition 12. More particularly, the letter dated 1 September 2006 from the Council's Corporate Director seems to acknowledge this. This letter is a further detailed review of the various disputes, but in its discussion of condition 12 it states, in relation to drawing 1/3 received on 26 May 2004, that planning officers ".... will now accept the plan as discharging condition 12". This appears to be an express approval. The final sentence of the paragraph refers to the condition being discharged.
35. In relation to the Appellant's separate complaint about the condition, a degree of ambiguity arising from the phrase ".... a final ridge height of 6.4m above agreed ground level" would make it difficult at this stage for any enforcement action on the subject matter. My conclusion on the appeal, as lodged, is that the submitted details are sufficient to justify approval within the terms of condition 12, if the letter of 1/9/06 has not already done this. The appeal will be allowed in relation to this condition.
36. The issue in relation to condition 13 is similar to that for condition 11, in that the Council's concern was with what had been done rather than what had been submitted. The turning space

being required was shown on drawing 1/3, and was contained within the residential plot. The notation for a hammer head width of 4.5m was agreed informally to be amended to 4.8m at the express request of the Council's engineers. The Council officer's letter of 7 July 2004 suggested that subject to such a change "the condition can be discharged". The email of 12 July 2004 appears to acknowledge the acceptability of the details, but the promised letter "formally to discharge the condition" appears not to have been sent. This acknowledgement was repeated in the Corporate Director's letter of 14 July 2006. Although the site frontage has been subsequently laid out rather differently, the details submitted to discharge the condition of the approval were acceptable in their own right. The appeal will be allowed on this basis.

Appeal D – the proposed stables building

37. The main issues in this appeal are:

- the effects of the development on the character and appearance of countryside between the settlements of Redmarshall and Carlton, paying due regard to the potential benefits of the proposed horse breeding business as a form of rural diversification; and
- the implications for highway safety.

Visual impact and commercial benefit

38. Local plan Policy EN13's positively framed provisions for development outside "limits" include cases where it contributes to the diversification of the rural economy providing that it does not harm the character or appearance of the countryside. Stables are not uncommon features of rural areas. The proposed stables building would be sited alongside the eastern field boundary of the Appellant's land some way further back from the new dwelling and clearly within countryside. It would be a sizeable frame building of 170m² floorspace to a ridge height of 6.5m and entirely clad with profiled steel sheeting. Whilst of a kind now used in agriculture, and capable of being used for stabling, the proposed structure would have more the appearance of a moderately sized industrial unit than a rural building. Its siting as a large freestanding building within the rural landscape would be both an intrusion into the openness of the rural scene and harmful to the area's character. The monolithic nature of the structure and the external materials to be employed would not be sensitive to the character of the area or local distinctiveness.
39. Level changes and tree and hedgerow growth alongside Thorpe Road would be likely largely to conceal its visibility from that direction. The building would, however, be sited on relatively high ground in relation to open areas to the east and within fairly open terrain. The site's eastern hedgerow would provide little screening cover along this part of the boundary. The building would be positioned close to the boundary with little space for screen planting. If it were re-sited to facilitate this, I doubt that landscaping would be able to achieve much by way of screening in the short or medium term. My conclusion is that the building would be clearly harmful to the rural landscape at odds with EN13's terms. Its long elevation would face the backs of residential properties along Drovers Lane. The open aspect from the backs of these properties would be significantly impaired, and this would be a matter of some harm to amenity.
40. These matters need to be balanced with the economic benefits of the proposed business development. PPS7 does not formally establish a needs test for such countryside development, and offers general support for equine related activities (albeit initially in the context of farm diversification schemes and the re-use of buildings). This support for rural enterprises and activities which contribute to the areas' economy is, nevertheless, within the overall context of policy which seeks to protect the quality and character of the countryside by maintaining strict control over new building development within it. The extent of benefits deriving from a scheme and the realistic prospects of these being achieved are clearly material to an overall judgement.
41. In this context the proposal would involve a new enterprise, horse breeding having thus far been a hobby for the Appellant. I do not question the availability of the additional 2.8 hectare field to the east of his ownership. The envelope of the proposed building would accommodate 6 brood mares (together with feed and other storage requirements and the garaging of a horse transporter). The Appellant provided relatively limited financial forecasts for its development, regarding the Council's wish for a more fully worked business plan as naïve. He preferred to rely upon his own business acumen and proven track record and his belief that a breeding operation of this type could be made to be a success. Whilst he may well be correct to criticise as

disingenuous an approach based upon firm forecasts for a wide range of difficult to predict financial variables, there was relatively little to judge the prospects of this as a wholly new venture. Whilst his budget figure of £120,000 for start up costs could be readily explained, his figure of £20,000 for annual operating costs was not explained in any detail. Many factors would feed into this. It was unclear whether wage costs for one full-time and one part time employee were intended to be included within this figure. The full-time employee would live in the new dwelling. It was unclear whether this was a reference to an intention on his own part now to occupy the house, with labour being provided by himself and his wife. If this was indeed the case, there would presumably be a need to include some provision for a financial return from their employment in this as a business venture rather than as a continuing hobby.

42. Although I accept the inherent difficulty of financial forecasting in this area for a new enterprise, the very restricted information base must limit the weight which I can give to the potential economic value of the scheme to set against harm to the countryside. The proposal would rely upon a sizeable new 'general purpose' building, and the Appellant was opposed to a condition suggested by the Council which would require demolition of the building if the proposed business use ceased. He preferred any condition to allow for the possibility of an alternative use being permitted. In these circumstances I do not consider that the prospects of the breeding project succeeding as a financially viable venture are sufficient to outweigh the harm to the countryside.
43. The Appellant submitted details of a number of favourable appeal decisions for stabling. As individual decisions have to be made in the detailed circumstances of each case, these do not devalue the above conclusion. A number of the cases appeared to involve substantially smaller structures with designs and external materials of a different nature.

Site access

44. The commercial use of the proposed stables would rely upon the established access to Thorpe Road. The Appellant forecast that it would generate a maximum of 20 vehicle movements per month. The Council's concern was with the safety of the access in terms of major road visibility at the approach from the east, with particular regard to problems which could arise where large slow moving vehicles such as horse transporters were involved in entering or leaving the site. Notwithstanding the Appellant's comments about the location of the 30 mph speed limit at the approach to the village, he did not dispute that the access fell outside the limited area, and that the national speed limit of 60 mph would apply. The Council considered that the required sight line would therefore be 2.4m x 215m on the basis of established national standards, and that available visibility was significantly short of this because of a dip in the carriageway in that direction. No measurements of the extent of a deficit were submitted by either party with their representations. Neither had traffic at the access point been measured in terms of 85th percentile speed.
45. I viewed the available sightline at my visit, albeit that a formal measurement was made difficult by the nature of the change in vertical alignment of the carriageway. Whilst visibility along the major road was indeed below the 215m standard, a number of factors bear on the extent to which this would affect safety within the highway. I would expect vehicle speeds on this approach to the village to be significantly below the 60 mph figure because of the alignment of the road and proximity to the 30 mph speed limit sign. Visibility standards have been re-visited recently in the *Manual for Streets* (MfS) whose publication superseded *Design Bulletin 32 and Places, Streets and Movement* [PSM]. The MfS focuses on lightly trafficked residential streets, but many of its key principles may be applicable to other types of highway, including lightly trafficked lanes in rural areas. Its guidance on sight lines in sections 7.5 - 7 is expressly directed at situations where 85th percentile speeds are up to 60 km/hr. Its Table 7.1 reflects revised calculations in terms of driver perception/reaction time and deceleration rates. Stopping sight distances are substantially reduced (in the case of 60 km/hr from 90m to 59m by comparison with PSM).
46. Although MfS standards may not be readily transferable to the current appeal situation, they indicate the scope which may exist for relaxation of visibility requirements without affecting safety. Concern about the possible implications of use of the access by larger vehicles would be countered to some degree by the likelihood that such vehicles would have higher cab heights. These would counter the visibility effects of the road 'dip'. Although the location of the bus stop a short way to the east of the junction point would represent a potential driver distraction to be borne in mind, the presence of a bus at that point would be a hazard of a nature which ought to

be reflected in all driver behaviour, whether of vehicles already on Thorpe Road or any seeking to leave the site access.

47. As submitted, the proposal would have a very limited traffic generating potential. Whilst a total addition of no more than 20 movements per month seems a very low figure for a freestanding new business, I accept that other forms of equestrian activity such as livery stabling are capable of generating much more traffic. The established use of the site for horse keeping would already be likely to generate some of these movement numbers. From all the available information, including the absence of recorded problems arising from use of the access to The Stables, my conclusion is that its use in association with the proposed development would be unlikely to give rise to conditions prejudicial to highway safety.
48. Despite my conclusion on this matter, I consider that the objection on visual grounds is compelling, and I shall dismiss the appeal.

Formal Decisions

Appeal A: Enforcement Notice 1: Ref. APP/HO738/C/07/2038786

49. I correct the enforcement notice by the deletion in full of the second paragraph at section 3 reading "*without planning permission the construction of an access track/driveway on the land edged in blue on the plan marked Plan A attached to this notice*".
50. I allow the appeal insofar as it relates to the access track/driveway, and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the construction of an access track/driveway on the land edged in blue on the plan marked Plan A attached to the notice on land at The Stables, rear of Greencroft, Drovers Lane, Redmarshall, Stockton-on-Tees.
51. I vary the enforcement notice:
- (a) by the deletion in full of the numbered item (3) at section 4 of the notice; and
 - (b) by the deletion in full at section 5 of the notice of the numbered requirements (2) and (3).
52. I dismiss the appeal and uphold the enforcement notice as corrected and varied insofar as it relates to the erection of two structures consisting of wooden frames with wire mesh covers in the approximate positions marked with crosses on the attached plan marked Plan B, and I refuse planning permission in respect of that development, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: Enforcement Notice 2: Ref. APP/HO738/C/07/2038787

53. I allow the appeal and direct that the enforcement notice be quashed.

Appeal C: Ref. APP/HO738/A/07/2039280

54. I allow the appeal and approve the details of existing ground levels, finished ground levels, finished floor levels for the dwellinghouse and final ridge height for the dwelling submitted pursuant to condition No.12 and the details of a turning space within the site submitted pursuant to condition No.13, both as attached to planning approval Ref 03/2705/REV granted on 8 April 2004, in accordance with the application dated 19 May 2004 and the plans submitted with it.
55. I dismiss the appeal and refuse to approve the details of the means of enclosure submitted pursuant to condition No.6 and the details of a suitable access to the private treatment plant submitted pursuant to condition No.11, both as attached to planning approval Ref 03/2705/REV granted on 8 April 2004, in accordance with the application dated 19 May 2004 and the plans submitted with it.

Appeal D: Ref. APP/HO738/A/07/2039173

56. I dismiss the appeal.

Alan Upward

INSPECTOR