



Appeal Decisions

Site visit made on 5 September 2016

by **D E Morden MRTPI**

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

Decision date: 12 October 2016

Appeal Refs: APP/J1915/C/16/3147718 (Appeal A) & 3147719 (Appeal B) Land north of Waste Transfer Depot, Fillets Farm, Stansted Road, Hunsdon, Hertfordshire, SG12 8QA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr P & Mrs D Findlay against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice, Ref E/14/0422/A, was is dated 3 March 2016.
- The breach of planning control as alleged in the notice is the unauthorised creation of an access track.
- The requirements of the notice are to remove the unauthorised track and resultant material from the land and reinstate the land to its former condition.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period on Appeal B, ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered and that appeal is proceeding on ground (g) only.

Decisions: The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended on Appeal A.

The appeal on Ground (a) – Appeal A (3147718)

Main Issue

1. The main issue in this appeal, having regard to the prevailing policies in the adopted Development Plan (the East Herts Local Plan Second Review (EHLP) adopted in 2007), is whether the development material harms the rural character and appearance of the area.

Reasoning

2. The appellant argued that the Council had placed too much weight on policy GBC3 of the EHLP and the perceived adverse impacts and insufficient weight on (a) the wider rural economic benefits of retaining the track, (b) the positive response from the highway authority and (c) the enhancement provided for users of the Public Right of Way (PROW) through the provision of this alternative route.
3. The 'Rural Area Beyond the Metropolitan Green Belt' covers the northern two thirds of the District. Policy GBC2 states that within this area inappropriate development will not be permitted. The supporting paragraphs to the two

policies state there will be '... a strong restraint on inappropriate development as defined in Policy GBC3 ...'.

4. Policy GBC3 (Appropriate Development in the Rural Area Beyond the Green Belt) states that development will not be given for the construction of new buildings or changes of use unless the development, amongst other things listed (from a to l), consists of '(h) other small scale facilities, services or uses of land which meet a local need, are appropriate to a rural area and which assist rural diversification'.
5. Policy GBC3 defines what 'appropriate development' is but despite what the subtext in the EHLP states (para 3 above), it does not specifically state what inappropriate development is. Having defined appropriate development then anything else, by reason of being excluded, must, in my view, be considered as inappropriate development and I will determine the appeal on that basis. The parties considered the proposal in relation to GBC3 and whilst the development is not strictly 'the construction of a new building or a change of use' (as set out in the main part of GBC3), GBC3(h) is, in my view, the appropriate sub paragraph of the Policy against which to determine this appeal.
6. The track is comprised of rolled hard core and is about 70 metres long with the earth bund adjoining the northern side of it just over 85 metres long. At both ends the land rises fairly steeply to reach the higher level of the field to the north. Viewed from the existing access to the farm (the PROW) when walking/travelling in either direction, all that is visible is a slope consisting of a hard-core surface cut into the grassy bank; the fairly short length of level track at the adjoining field level can only be seen when at that higher level although the bund and plants adjoining it are obvious from the lower level.
7. The track presents a new harsh element in the landscape that is visually intrusive; the rising hard surfaced parts at either end have replaced the shrub and grassed areas that were there and present a stark view to those using the PROW whether walking, riding or driving along it. At the higher level the hard surface track is an unwelcome intrusion into what was otherwise a green field.
8. I could also see at that level that it would cause a problem of headlights shining on to the rear facades of some properties on the other side of Stanstead Road particularly at times of the year when there was less foliage on the trees. I acknowledge that the track is not particularly long but I consider it harmful to the living conditions of those nearby occupiers and visually intrusive in the landscape; unless it satisfies criterion (h), it should not be permitted.
9. The track is rural in character in so far as it is finished with a hard-core type material rather than being properly surfaced; that is more appropriate to a rural area. It is also small scale at about 70 metres in length (the bund is somewhat longer) and about 2m wide along most of its route. It also, however, has to meet a local need and assist rural diversification to satisfy all four elements of criterion (h).
10. A perfectly adequate access already exists, coming directly off Stanstead Road (about 25m to the east) and the development is in fact just a small loop off that access road. There is, therefore, no local need for it; it provides a short loop which by-passes the main access as that passes the entrance to the waste transfer station. The access track at this point, however, is about 3.5 to 4m wide and there is ample room for vehicles to pass each other and/or to widen

- it. I accept that there may be less conflict as vehicles would not meet others exiting the transfer station turning across them but that does not constitute a need; it is merely more desirable from the appellant's point of view.
11. The appellant also argued that the existing access track presented other users (riders and walkers) with a conflict by the entrance to the waste transfer station on the south side of the access track. The development would allow those using the PROW to use the new track (although no diversion of it was being proposed) as well as those travelling by car, van or lorry an alternative entrance to the appellant's farm and businesses. There were letters sent to the Council both from walkers and drivers (when it was considering the planning application for the development) that were in favour of the new track as well as another who objected to the development.
 12. The track is about 4m wide where the entrance to the waste transfer station is located (with a further 3m wide flat area to the north of that which I saw at my visit, was used for car parking). The entrance to the transfer station site which is about 2.5m wide is angled towards the main highway to the east (about 40m away). Vehicles entering and leaving it do not therefore have to turn a complete right angle making access into and out of the site straightforward.
 13. The appellant stated that the Council had not given sufficient weight to the enhancement provided for all users of the PROW by giving them an alternative to the existing track that was not in conflict with traffic movements from the transfer station. From representations submitted by interested persons and the Parish Council it is clear that there are divergent views and not everyone agreed on the point. The steep slopes at either end of the track are not particularly suited to walkers, cyclists or those on horseback. As with the alleged conflict between vehicles using the track and those entering the transfer station the track offers an alternative that removes that.
 14. From what I saw on site there is plenty of room for all who want to use the track and whilst the development offers an alternative, the advantages are not sufficient to outweigh the intrusive impact that it has on the rural character and appearance of the area. Finally, on the waste transfer station, the site does not have planning permission and the legal opinion provided to the Parish Council set out why what is occurring at the waste transfer station was materially different to what the Certificates of Lawful Use (LDC) stated that the site can be used for.
 15. Whilst the appellant stated in final comments that the position on the lawful use was settled, no copies of the LDC's were included upon which to make an informed judgement and the points raised in the legal opinion were not answered in any detail; they were simply disputed and stated to be incorrect. Taking these factors into consideration I do not consider that much weight can be attributed to the development on the basis that it removes a conflict. It is possible that the use of the land as a waste transfer station may be unlawful and would have to cease; in those circumstances there would be no conflict.
 16. As to the County highways department's representations, they stated that there were no objections in principle but that as the track entered a PROW at each end there needed to be adequate sight lines and a gradient of no more than 1 in 10 for the first 6 metres (at each end). Both these matters can be controlled by planning conditions and concern aspects that are technical in nature. I do not agree that the Council should have placed more weight on

them in the overall balance or in fact that they add very much weight to the appellant's case.

17. The final point made by the appellant was that the development provided wider rural economic benefits (in line with Policy GBC3 which stated that any development should assist rural diversification) and the Council had placed insufficient weight on that. In so far as some occupants of businesses at the farm stated that the loop track helped avoid conflict with vehicles entering and exiting the transfer station, I attribute very little weight to that for the reasons set out in paragraph 15 above.
18. There is perfectly adequate access to the businesses at the farm and I do not accept that the removal of the track that has been unlawfully constructed would have any impact on the commercial viability of those businesses. Vehicles driving to places everywhere meet other vehicles on roads, sometimes turning across their path and/or holding them up for various periods of time; there is nothing unusual in that. The appellant refers to hold ups for employees leaving businesses at the end of the day due to the way the transfer station operates. As stated earlier in this decision there is sufficient room to widen the track which would be far less intrusive than what has happened. There is a wide area opposite the transfer station entrance on which vehicles are parked; comments from the objectors that this is illegal have not been disputed. Also as landlord, the appellant has control over that situation.
19. In my view there is no substantiation of the argument that the removal of the development would affect the viability of the businesses operating at the farm even if the transfer station use proved to be lawful and continued to operate from the land. I consider that there is also no conflict in the Council's case with the objectives of the NPPF referred to by the appellant in regard to supporting thriving rural communities.

Conclusions on Ground (a)

20. Taking all these factors into account I conclude that the development is contrary to Policy GBC3, and no material considerations have been put forward to support allowing this development in these circumstances. I will therefore uphold the enforcement notice.

Other Matters

21. A number of objectors raised matters that were solely to do with the transfer station, its lawfulness and its operation. They are not relevant to my decision on this appeal where they concern the legality of the operation but I have taken into account the fact that no evidence that the operation is lawful has been put forward where that has been relied on by the appellant to support the development enforced against. I have taken account of all other matters raised in the representations but have found nothing of such significance as to outweigh the material planning considerations that have led to my conclusions.

The appeal on ground (g) – both appeals

22. On this ground the appellant stated that a longer time was needed to comply, particularly if the decision was issued at a time which necessitated the work being carried out in winter. There would be significant damage to the adjoining field in those circumstances although no further information was given as to why this would occur. The Council maintained that the three months set out in

the requirements was a sufficient period in which to physically undertake the work but did not comment on the point raised by the appellant.

23. The appellant does not explain how or why there would be significant damage to the adjoining field or what form such damage might take. Clearly a digger would need to travel along the track that has been formed removing the material that has been placed there and then earth/topsoil would have to be deposited there afterwards to raise the land to its previous level and the bund would have to be removed (soil taken away). I do not see why that should result in 'significant damage' to the field and other than making the assertion, the appellant put forward no indication as to how or why that should occur. In these circumstances I agree that three months is not unreasonable and the appeals on this ground accordingly fail and the enforcement notice will be upheld.

Overall conclusion

24. The development is intrusive and materially harmful to the character and appearance of the area; it also impacts detrimentally on nearby occupants. No material considerations have been put forward that in my view outweigh these objections and I shall, therefore, dismiss these appeals.

D E Morden

INSPECTOR