



Appeal Decisions

Site visit made on 10 October 2016

by Aidan McCooey BA MSc MRTPI

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

Decision date: 09 November 2016

Appeal Ref: APP/Q4625/C/16/3147177 & 78 (Appeals A & B)
Five Acre Farm, Meer End Road, Honiley, Kenilworth, CV8 1PW

- 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 Darren Rowlands and Mrs Jessica Rowlands against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The Council's reference is RAE/SG/101393.
 - The notice was issued on 24 February 2016.
 - The breach of planning control as alleged in the notice is without planning permission the formation of an access track or drive in the approximate position shown coloured red on the Plan.
 - The requirements of the notice are:
 - (a) break up the material used to form the access drive in the approximate position coloured red on the Plan in its entirety.
 - (b) Remove all the material created by carrying out step (a) from the Property shown edged blue on the Plan.
 - (c) After carrying out steps (a) and (b) above, cover the line of the access drive with top-soil to the level of the surrounding land and re-seed with grass.
 - The period for compliance with the requirements is within three months of the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/Q4625/A/16/3148014 (Appeal C)
Five Acre Farm, Meer End Road, Honiley, Kenilworth, CV8 1PW

- 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 and Mrs Darren Rowlands against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2015/52418/PPFL, dated 20 October 2015, was refused by notice dated 7 January 2016.
 - The development proposed is revised application to replace temporary access drive to house and equestrian buildings with permanent access drive.
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Decisions

Appeals A & B

1. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the formation of an access track or drive on land at Five Acre Farm, Meer End Road, Honiley, Kenilworth, CV8 1PW referred to in the notice, subject to the following condition:

The access drive hereby permitted shall be removed and all resulting materials shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 2 months of the date of this decision a scheme for the proposed re-surfacing of the access drive with a plastic grid system that is then filled with soil and grass seeded shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation and maintenance.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal C

2. The appeal is allowed and planning permission is granted for the revised application to replace temporary access drive to house and equestrian buildings with permanent access drive at Five Acre Farm, Meer End Road, Honiley, Kenilworth, CV8 1PW in accordance with the terms of the application, Ref PL/2015/52418/PPFL, dated 20 October 2015, and the plans submitted with it, subject to the following condition:

The access drive hereby permitted shall be removed and all resulting materials shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 2 months of the date of this decision a scheme for the proposed re-surfacing of the access drive with a plastic grid system that is then filled with soil and grass seeded shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation and maintenance.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Application for costs

- 3. An application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Background

- 4. The background to the appeals is that the appellants formerly owned the adjoining Elm Farm, which has an access to the road. In 2012 they obtained planning permission to convert an adjacent barn into a dwelling, which is where they now live. A planning application for a new access point and drive to serve the new dwelling was refused in 2013 and dismissed at appeal in April 2014. The appellants then sought advice as to how a new access could be considered to be acceptable. They say that a Council officer assured them that a new access associated with equestrian facilities would be approved. On this basis they applied for stables, a manege and a new drive from the existing access point. At the same time they sold Elm Farm and the existing access drive to a third party. The Council then issued a split decision; approving the stables and manege and refusing the access. The Council say that no assurances were given and even if they had been, this would not be binding on the Local Planning Authority when reaching a decision. The appellants (supported by an opinion from Counsel) argue that the split decision did not accord with proper procedure in that it was not in their interests and there was no consultation by the Council beforehand. The appellants would be left with no means of access to their dwelling and the other approved development. Neighbours were denied the opportunity to comment on the implications of the split decision. The Council took enforcement action and the appellants applied for planning permission, which matters are the subject of these appeals.

5. The requisite fee was paid for one of the EN appeals. As the appeals are for the same development encompassing the driveway that is in situ at the appeal site, I shall deal with the ground (a) appeal against the EN and the appeal against the refusal of planning permission together. An alternative surfacing for the existing track has been advanced as part of the appeal submissions, which I consider below. The planning merits are considered as one before proceeding to consideration of any remaining matters.

Main Issues

6. The main issues are firstly, whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (NPPF) and secondly, the effect of the driveway on the character and appearance of the area.

Reasons

7. The drive is an engineering operation. Paragraph 90 of the NPPF states that this type of development is not inappropriate provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt.
8. Solihull Local Plan includes Policy P17 that resists inappropriate development in the Green Belt. I find that this policy accords with the NPPF and I afford it significant weight in this appeal. Policy P15 refers to several matters relevant to this appeal including that new development should conserve and enhance local character and respect the surrounding natural environment. I find that this policy accords with the NPPF and I afford it significant weight in this appeal.

Is the development inappropriate in the Green Belt?

9. The issue is firstly the impact of the drive on openness. This is partly a function of its visual impact and partly the spatial aspect of the development. The existing drive utilises an existing access on to the highway. There is consequently no impact as a result of that access. The traffic levels would be low and as moving vehicles are involved; any resultant impact would be short duration. The drive is quite narrow and surfaced in stone chippings. It is at existing ground level. There are no discernable excavations or retaining structures and no kerbs. However there is an impact as a result of the drive crossing the paddock diagonally. The appellants have provided details of a grid force system which can be used to provide a drive way which resembles grass once installed and seeded. A sample section was in place at the site visit. I consider that provided the drive was resurfaced in this manner, it would not affect openness of the green belt. I conclude that the development (as amended) would not be inappropriate development in the Green Belt because it would preserve openness and would not conflict with the purposes of including land within the Green Belt.
10. The development differs from the previous appeal in that no new access point, gate and pillars are involved. The width of the drive is reduced. The existing surface is more appropriate. Furthermore an alternative surfacing is proposed which would mean that the effect on the green belt would be reduced. The appellants supplied an undertaking (under s106 of the Act) not to provide around 250 m² of hardstanding in front of the dwelling that was approved

under as part of the planning permission for the dwelling (ref 2014/1666). As I have concluded that the development would not have a significant effect on openness, this obligation is not necessary. It does not meet the relevant tests in the NPPF and I afford it no weight in this decision.

Effect on the character and appearance of the area

11. There is no change to the character and appearance of the area as a result of the access on to the road because the development uses the pre-existing access. The driveway, once re-surfaced, would not be readily discernable in the field it traverses. This area is characterised by dwellings set back from the road with individual long drives. I therefore conclude that the proposed drive would not have a significant detrimental impact on the character and appearance of the area and it would therefore comply with the requirements of Local Plan Policy P15.

Other matters

12. The Written Ministerial Statement (WMS) on unauthorised development in the Green Belt means that intentional unauthorised development is a material consideration to be weighed in the consideration of appeals. Whilst the appellants contend that they were misled by the Local Planning Authority they have wilfully constructed a new drive without planning permission. This means that intentional unauthorised development is involved. The WMS refers to there being no opportunity to mitigate the harm caused. This is not the case in this appeal. I have concluded that the harm can be mitigated as set out above. I therefore find that this material consideration (i.e. the WMS) does not outweigh my overall conclusions.
13. As I am finding in favour of the proposal I do not need to consider the appellants' case that there are very special circumstances or the other approvals in the area. Similarly I do not need to consider appeals A and B on grounds f) and g). I note the support for the appellants from a local resident and the lack of objection to the development from the public.

Conditions

14. The purpose of the attached condition is to require the appellant to comply with a strict timetable for dealing with the proposed re-surfacing of the access drive with a plastic grid system which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

15. Having considered all the matters raised, I conclude that the access drive would not be inappropriate development in the Green Belt as it would not have a significant effect on openness and would not conflict with the purposes of including land within the Green Belt. It would not have a significant detrimental impact on the character and appearance of the area. My overall conclusion is that the development would comply with the relevant LP policies referred to above and the NPPF. I allow the appeals.

A L McCooey

Inspector