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## Appeal Decision

Inquiry held on 2 November 2016

Site visit made on 2 November 2016.

**by Stephen Brown MA(Cantab) DipArch RIBA**

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

**Decision date: 26 January 2017**

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**Appeal Ref: APP/X2410/C/15/3141341**

**Land adjacent to St. Leonard's Church, Main Street, Swithland LE12 8TQ**

- 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 Adam S Page against an enforcement notice issued by Charnwood Borough Council.
  - The Council's reference is E/15/0121.
  - The notice was issued on 24 November 2015.
  - The allegation in the notice is without planning permission a new vehicular access onto a classified road has been created as shown more clearly in the photograph attached to the notice marked SC1 ('the unauthorised development').
  - The requirements of the notice are to:
    1. Cease the use of the Land for the unauthorised development for the purpose of the egress and access of vehicular traffic.
    2. Remove the entrance gates as shown on photograph marked SC1 attached to the notice.
    3. Stop-up the vehicle standing area and entrance by continuing the post and rail fencing across this area at the same height and design of the existing fencing. The approximate area for this is depicted by a blue line on the plan SC 2 attached to the notice.
    4. Remove from the Land all building materials and rubble arising from compliance with the second requirement (2) above, and the third requirement (3).
  - The period for compliance with the requirements is 2 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (e), (f), and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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### Decision

1. I direct that the enforcement notice be corrected by:

DELETION of the words '*Swithland Estates Ltd*' from the address of the landowner in the heading to the enforcement notice, and from the addresses of other persons served with a copy of the notice

Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

### The Inquiry

2. Evidence at the Inquiry was taken under oath.

### **Preliminary matters**

3. It was confirmed at the Inquiry that the appeal on ground (g) was withdrawn.
4. The vehicular access subject of the enforcement notice was nearing completion at the end of March 2015, when there was a meeting between the appellant and the Council's Planning Enforcement Officer. Insofar as the appellant is claiming that the access and gates should be regarded as development permitted under the provisions of a development order, I have had regard to the The Town and Country Planning (General Permitted Development) Order 1995 as amended (the 1995 GPDO) – the version in force at the time the development was carried out.
5. Although the appellant has appealed under ground (b) – that the matters enforced against have not occurred as a matter of fact – much of his evidence is on the basis that the vehicular access is the replacement of an earlier access. This is essentially an appeal on ground (c) – that there has not been a breach of planning control – for instance, because no planning permission is required or the development is permitted development. I have therefore considered the appeal under both grounds (b) and (c), and do not consider any party is substantially prejudiced by this.

### **Background**

6. The appeal site fronts onto the southern side of Main Street – a classified road, and the principal approach to the village from the east. The site is a trapezoidal piece of woodland immediately to the east of the churchyard of St Leonard's Church. To the east of the site is a drainage ditch, beyond which is a long strip of woodland fronting the road, which forms part of the appellant's substantial estate. To the south of the appeal site, connected by a narrow neck is a further piece owned by the appellant, known as the Glebe Field.
7. The development enforced against comprises a gravel surfaced vehicular access from Main Street, a post and rail timber fence close to the road boundary, and a 6-bar gate set back from the road by several metres. The post and rail fence is splayed where it sets back towards the gate.

### **The appeal on ground (e)**

8. This ground is that the enforcement notice was not properly served on everyone with an interest in the land. S.172(2) of the Town and Country Planning Act 1990 as amended (the Act) provides that:  
*A copy of an enforcement notice shall be served -*  
*(a) on the owner and on the occupier of the land to which it relates; and*  
*(b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.*

For an appeal to succeed on ground (e) the appellant must show that on the balance of probabilities he was substantially prejudiced by faulty service of the notice.

9. The enforcement notice was served on three addressees - 'Mr Adam Stoddart Page', 'The Owner' and 'The Occupier'. The address on which the notice was served in all three instances is 'Swithland Estates Ltd, Swithland Hall, Swithland, Leicestershire LE12 8TJ'.

10. The appellant objects on the basis that the administrative company '*Swithland Estates Ltd*' has no interest in the property, and the notice should not have been served on that address. That may be the case, but it is clear from correspondence and the material submitted that Mr Page received the notice, was able to put in an appeal against it, and able to appear at the Inquiry. Furthermore, Mr Page is the owner of Swithland Estates Ltd, and has corresponded with the Council on notepaper with that heading.
11. In my opinion the inclusion of the reference to Swithland Estates Ltd in the address did virtually nothing to prevent Mr Page from understanding the notice and taking the actions he thought fit. I do not consider he was substantially prejudiced by what he perceives to be faulty service. The appeal on ground (e) therefore fails.
12. Nevertheless, I accept that the inclusion of the estate company in the address is a defect in the notice. I consider I can correct this defect without causing substantial prejudice to any party, and that is what I intend to do.

### **The appeal on ground (b)**

13. This ground is that the matters alleged in the notice have not occurred as a matter of fact. The appellant's arguments ostensibly made on this ground relate mainly to the previous existence of a vehicular access and the claim that this is a replacement, and the further claim that the access has subsisted for more than 20 years. These are matters more properly addressed under grounds (c) and (d), and I have determined the appeal accordingly.
14. As to whether the alleged development has occurred, the road access, recessed gateway, and gravelled surface are there for all to see. The development has clearly occurred as a matter of fact, and any appeal on ground (b) must fail.

### **The 'hidden' appeal on ground (c)**

15. Ground (c) is that there has been no breach of planning control. The appellant claims that the access is no more than a replacement of one that has existed for many years. I note first that even had there been a vehicular access at this position in the road, the works carried out are not a like-for-like replacement of what the appellant claims was there, but are in an entirely new configuration. This constitutes a new act of development for which planning permission would be required in any case.
16. Considering whether the works may be regarded as permitted development, Class A of Part 2 of Schedule 2 to the 1995 GPDO permits various minor operations including the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other enclosure. Paragraph A.1(a) then precludes these operations if constructed adjacent to a highway used by vehicular traffic, and greater than 1 metre in height. The gate and fence in this case are greater than 1 metre in height, but the Council have not taken issue with this, or taken enforcement action against it.
17. Class B of the same part permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where access is required in connection with development permitted by any Class in Schedule 2 (other than Class A of Part 2).

18. In this case the access is onto a classified road, and is precluded from being permitted development under Class B of Part 2. Furthermore, it is for access to a piece of woodland, and is not required in connection with development permitted by other Classes in Schedule 2 of the 1995 GPDO.
19. The formation of the vehicular access is not permitted development, and requires planning permission. No permission has been obtained. Had an appeal been made under ground (c) it would have failed.

### **The appeal on ground (d)**

20. This ground is that the alleged development is immune from enforcement action. In this regard the principal question is whether the operational development was substantially completed at least 4 years before the enforcement notice was issued.
21. The appellant claims that there has been a vehicular access in this position for at least the period of 20 years that he has owned the site, or probably longer than that, and that the new access is no more than its replacement. The main evidence for this is a 'Google Streetview' image taken before the present access was constructed. This shows a section of white painted picket fence in the approximate position of the new access, set behind a narrow verge. The fence is heavily overgrown with ivy and other vegetation, and there is a dense thicket of trees/ivy on the far side of the fence. There is nothing in particular to indicate a vehicle crossing.
22. It was suggested that the picket fence included a gate, but this is by no means obvious from the image, since it is so obscured by vegetation. Furthermore, the section of picket fence is not the type of construction I would expect to see for the relatively large size of gate needed for a vehicular access, and if there was a gate there it is likely to have been a pedestrian gate.
23. It was also put forward that there had always been a path between Swithland Hall – some 500 metres to the south-east of the appeal site and St Leonard's Church – and called Church Walk, or Dale Walk. A photograph from 1905 shows a part of this, and recent maps show a path running approximately parallel to Main Street towards a gate in the eastern churchyard wall that still exists. It was argued that this path was necessary as a service route to carry foodstuffs from the Dairy – more or less opposite the appeal site - to the Hall, and that a cast-iron bridge across Cropston Road indicated that it had been for more than merely pedestrian traffic.
24. I saw that the path was long disused, and there are only remnants of the cast-iron bridge. The 1905 photograph indicates it had been a narrow paved path – probably suitable for small carts and hand barrows, but nothing larger. An extract from an Ordnance Survey map shows a pathway leading from the position of the new access, passing through the appeal site and connecting to a path leading across the churchyard to the south side of the church. There is nothing to indicate this was any more than a pedestrian route. As a matter of fact and degree I consider Church Walk/Dale Walk was a footpath that could be used for handcarts rather than one intended for motorised vehicles.

25. It was argued that there must have been a road access at this point to give access to Church Walk and the Glebe field – a triangular piece of woodland to the southern side of the churchyard, also owned by the appellant. This is on the assumption that heavy machinery was needed to maintain the woodland. However, paths into these areas have existed for very many years – including a bridge across the drainage ditch – now very rudimentary but clearly more substantial in earlier years. It appears to me that such access would have been adequate to carry out the relatively minor and occasional maintenance needed for these quite small areas of woodland.
26. The Court has held<sup>1</sup> that in enforcement appeals on legal grounds – such as ground (d) – the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to dismiss the appeal provided the applicant's evidence alone is sufficiently precise and unambiguous.
27. In my opinion the appellant's evidence as to the previous existence of a vehicular access at this place in the road was far from precise. There is little to demonstrate that there was ever such an access at this point. Furthermore, it is apparent that the present vehicular access was not substantially completed until about the end of March 2015. I conclude that on the balance of probabilities a vehicular access was not in existence in this position for a period of 4 or more years prior to issue of the enforcement notice. The appeal on ground (d) therefore fails.

### **The appeal on ground (f)**

28. This ground is that the steps required by the notice exceed what is necessary to remedy the breach of planning control, or remedy any injury to amenity, and lesser steps would overcome the Council's objections.
29. The appellant proposed to set the gate further back from the road edge than at present. However, that would not bring about cessation of the use, nor is it apparent whether it would overcome any injury to amenity. I do not consider the proposal would overcome the Council's objections, and the appeal on ground (f) must fail.

### **Other matters**

30. The appellant says that access to the land with vehicles and machinery is imperative so that the woodland and the drainage ditch can be maintained. He evidenced the flood that had occurred quite recently that had necessitated urgent action. While I readily understand that some degree of access is required, this need not be a permanent gated access. It appears to me that the Council's suggestion of a demountable section of fence could be a practical way of achieving this.

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<sup>1</sup> *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630.

## **Conclusions**

31. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed and I intend to uphold the notice with the correction referred to above.

*Stephen Brown*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT:

Adam Page

Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Richard Hanstock

of Counsel, instructed by  
Hinckley & Bosworth, Solicitors on behalf of  
Charnwood Borough Council.

He called:

Sara Coleman

Planning Enforcement Officer  
Charnwood Borough Council.

## DOCUMENTS

- 1 Attendance list.  
2 The Council's letter of notification of the appeal dated 29 March  
2016.  
3 Appendices to Mr Page's proof of evidence.  
4 Appendices to Ms Coleman's proof of evidence.  
5 Letter from Mr Page to the Council, dated 26 March 2015.

## PLANS

- A Land Registry Title Plan no. LT347175.

## PHOTOGRAPH

- 1 View of the earlier post and wire fence on the road boundary of the appeal site.