

Appeal Decisions

Site visit made on 20 February 2017

by **B M Campbell BA(Hons) MRTPI**

Decision date: 21 March 2017

Notice A: APP/Z3635/C/16/3151913

Land west of Sheep Walk, Shepperton TW17 9NS

- 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 Symbiotic LLC against an enforcement notice issued by Spelthorne Borough Council.
- The enforcement notice, numbered 16/00001/ENF, was issued on 29 April 2016.
- The breach of planning control as alleged in the notice is unauthorised development on the Land in particular:
 - Two large metal posts concreted into the ground close to the boundary with Sheep Walk, these were large RSJ type posts of a height, strength and distance apart to form and support a gate.
 - Surface material being scraped back for a distance of approximately 200 metres to a width of approximately 5 metres, resulting in a wide flat surface commensurate with a prepared route for a roadway
 - The resultant vegetation, soils and other debris were piled to the sides of the scraped area.
- The requirements of the notice are:
 1. Removal of the metal posts and supporting concrete
 2. Return the scraped surface back to its former condition
 3. Cease the excavation of surface material
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Notice B: APP/Z3635/C/16/3151919

Land west of Sheep Walk, Shepperton TW17 9NS

- 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 Symbiotic LLC against an enforcement notice issued by Spelthorne Borough Council.
- The enforcement notice, numbered 16/00121/ENF, was issued on 5 May 2016.
- The breach of planning control as alleged in the notice is unauthorised development on the Land in particular:
 - A metal framework, metal fence panels and gate constructed on previously erected and enforced against metal posts.
- The requirements of the notice are removal of the metal framework, metal fence panels and gate
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Notice A, ground (c)

1. The Appellant's case begins by stating that the two enforcement notices address parts of one development comprising the creation of an access and erection of gateposts and gates and that it would be entirely artificial to attempt to respond to them in isolation from each other. That seems to me to be correct. One operation appears to have been undertaken to form an access into the site and to secure it with gates. The Council however, appear to have issued the first notice when operations were underway, necessitating the issue of a further notice to address subsequent works.
2. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The Appellant says that part of the development undertaken, that is the formation of the means of access to the land – taken to exclude the erection of gate posts and gates but to include the scraping back of the ground and the laying of a hard surface – is not a breach of planning control because planning permission is granted by way of Article 3 and Class B of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). As such that part of the development comprises permitted development.
3. That argument is misconceived. Given the Appellant's starting position that there has only been one development it would be entirely artificial to attempt to separate out elements of it (albeit that there are two notices) and say that they had been constructed as permitted development. It is not permissible to separate out parts of one development and to argue that those benefit from the grant of planning permission by way of the GPDO and that other parts of the same development are to be assessed separately. As one operation, falling within the meaning of development as set out in s55 of the Act, either the whole of the development benefits from planning permission or the whole has no planning permission.
4. Given that it is only argued that parts of the development are permitted and that the other parts are not addressed under this ground, the Appellant's case on ground (c) has not been made out and the onus is on the Appellant to do so. This ground must fail.
5. The Appellant has not sought to argue that the operation, looked at as a whole, was permitted by Class B of Part 2 of Schedule 2 and I consider that he was right not to do so. Class B permits the formation, laying out and construction of a means of access to a highway such as Sheep Walk where that access is required in connection with development permitted by other Classes in Schedule 2.
6. The Appellant was advised in January 2016 that the Environment Agency would need to enter the land for a temporary period to carry out site investigation and related works, with the suggestion of monitoring for up to 3 months.¹ I do not disagree that that work might be said to fall within Class D(c) of Part 13 of Schedule 2 to the GPDO – as development by the Environment Agency consisting of the provision of a building, plant, machinery or apparatus in, on, over or under land for the purpose of survey or investigation. As such, an access required in connection with that work could be said to be permitted by Class B of Part 2.

¹ Notice of Intended Entry dated 5 January 2016 and letter from Dalcour MacLaren dated 7 January 2016

7. The Appellant formed the access following this notification. However, whilst notice was given of the need to enter the land, no request was made for the access the subject of this appeal to be formed. The Environment Agency subsequently indicated that it would like to use the access, but that was after it had been constructed by the Appellant.² There is no indication that the Agency had required that access to be formed. I saw at my visit that it would be physically possible to enter the Appellant's land from the adjoining land to the north as there is no boundary division between the two properties and the land to the north is currently served by an existing access.
8. Even if it would not have been possible to use that access, there is nothing to demonstrate that the gated access of the scale and nature constructed was required in connection with the works to be carried out by the Environment Agency. What has been formed is clearly of a permanent nature and not something that would be required for works latterly intended for only a temporary period of some 4 weeks.³ Indeed the Appellant's appeal on ground (a) is predicated on the access being provided as a permanent feature.
9. The operations alleged in Notice A are component parts of a single development comprising the construction of a wide gated access. The formation of an access comprises operational development within the meaning of s55 of the Act for which planning permission is required. The Appellant has failed to demonstrate that permission is granted by way of the GPDO and no express permission has been granted for it. The appeal on ground (c) fails.
10. No ground (c) was brought against Notice B, but had it been that too would have failed for the same reasons as given above as the works alleged form part of the development comprising the formation of the gated access into the site which is operational development with no planning permission.

Notices A & B, ground (a)

11. The ground of appeal is that planning permission should be granted. The Appellant makes clear that this ground is brought for all the works referred to in the notices unless any part of it had been found to be permitted in the appeal on ground (c). As I have made clear the whole is part of a single operation – the formation of a gated access which is not permitted. Furthermore, the Appellant seeks a permanent permission and not simply permission for the duration of Environment Agency works.
12. The appeal site is located within the Metropolitan Green Belt. Government guidance in the National Planning Policy Framework (NPPF) says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

Inappropriate development?

13. Saved policy GB1 of the Spelthorne Local Plan says development will not be permitted in the Green Belt which would conflict with the purposes of the Green Belt and maintaining its openness. Subject to those provisos it lists development for agriculture and appropriate engineering and other operations

² E mail dated 10 August 2016 from Dalcour MacLaren

³ Ditto

- as permissible. The explanatory text relies heavily on government guidance in Planning Policy Guidance 2 which has since been replaced by the National Planning Policy Framework (NPPF).
14. The development attacked comprises both building⁴ (the gates, posts, metal framework and fence panels) and engineering operations (the groundworks). Paragraph 89 of the NPPF says the construction of new buildings is inappropriate in the Green Belt other than for specified exceptions, one of which is buildings for agriculture. Paragraph 90 says engineering operations are not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt.
 15. The Appellant's statement expresses an intention to restore the appeal site so as to enable it to be used for agriculture. At present it is in a poor condition and largely unused although there were signs that it had been used for rough grazing of horses and there was a small enclosure housing 6 pigs. The scale and nature of the access constructed could not be said to be related to the use of the land for agriculture and indeed the Appellant does not make that argument. The land extends to only a little over 5 hectares and no agricultural justification has been presented to warrant such a substantial gated access of an industrial nature rather than the sort of modest field gate that one might expect to see to access an area of open grazing land. I do not, therefore, agree with the Appellant's statement that the impact of the gates is no greater than if they were for the purposes of an agricultural access.
 16. The essential characteristics of Green Belts are their openness and permanence. The access has introduced an element of built development where formerly there was none, replacing part of a hedgerow. The resulting manmade sense of enclosure is considerable. The development not only erodes the openness of the Green Belt but also conflicts with one of the purposes of including land in the Green Belt, that is to safeguard the countryside for encroachment, as it introduces a feature with a distinct urban character into this rural setting.
 17. In applying both national and local policy I find the development to be inappropriate development in the Green Belt. It does not involve buildings for agriculture or buildings falling within any of the other exceptions listed in para.89 of the NPPF; it does not preserve openness, and it conflicts with one of the purposes of including land in the Green Belt (NPPF para.90 and Local Plan policy GB1).

Harm

18. The NPPF says inappropriate development is, by definition, harmful to the Green Belt and that when considering any planning application, substantial weight should be given to any harm to the Green Belt. In this case, in addition to the harm by definition, I have found erosion of openness arising from this imposing enclosing structure introduced along the otherwise natural field boundary. The gated access with supporting iron work, solid metal panels to either side, and exceptionally tall metal mesh gates is an alien feature in the countryside scene. It damages the appearance of the first section of Sheep Walk from its junction with Chertsey Road which, in the main, is lined on both sides with vegetation. Consequently, in addition to the harm to the Green Belt

⁴ Section 336 of the Act – "building" includes any structure or erection

by definition and by erosion of openness; there is also significant harm to character and appearance of the rural area in conflict with the requirement of policy EN1 of the Spelthorne Core Strategy and Policies DPD to achieve a high standard of design and layout, respecting and positively contributing to the character of the area.

19. Although in the reasons for issue, both notices refer to local policy LO1 which addresses flooding, the Council has provided no clarification as to why that is of concern. I find no reason to conclude that the development has any material impact on flooding issues.

Other considerations

20. I am told there was formerly an access onto the appeal site from Chertsey Road, which is now closed. The Appellant points out that an access onto that road would be less satisfactory than from Sheep Walk as it is a busy road with numerous side roads and domestic accesses. In addition, it is claimed that the Appellant's use of an access opposite the houses could be disturbing.
21. I have no evidence to demonstrate that an access onto Chertsey Road would be unacceptable in road safety terms and I saw that it is a relatively straight road with generally good forward visibility. Moreover the use of an access serving a limited area of land with no stated lawful use other than for agriculture would be unlikely to generate a level of vehicle movement so as to be unduly disturbing to residents opposite. Nonetheless, it might well be that if a new access onto the appeal site is warranted that it would be preferable to site it along Sheep Walk. But even if that was the case it would not justify an access of the scale and nature of that which has been constructed.
22. I note that, since the Appellant sold adjoining land to the north, there is a dispute as to whether the alternative access further along Sheep Walk is available to enter the appeal site. That access, presents an even greater visual intrusion as it incorporates a substantial length of high corrugated sheeting. I do not know whether that access and associated fencing is lawful but, even if it is, it does not warrant further harmful development elsewhere along the road.
23. I have noted the argument that the land needs to be secured to prevent trespass but it seems to me this could be achieved without introducing a gated access of an industrial, urbanised nature in this rural location.
24. In view of my findings, these other considerations have limited weight.

The balance of considerations

25. Taking into account all considerations raised in support, I find nothing sufficient either individually or cumulatively to clearly outweigh the harm to the Green Belt and the other harm identified. There are thus no very special circumstances to justify this inappropriate development in the Green Belt. Furthermore, even if the gated access had been found not inappropriate as argued for the Appellant, the significant harm to the character and appearance of the area in conflict with policy EN1 would, in itself, have been sufficient to warrant dismissing the appeals. That harm is not outweighed by other considerations so as to indicate that a decision otherwise than in accordance with the Development Plan would have been justified.

26. I note the Appellant's reference to the presumption in favour of sustainable development but having regard to the harm to the Green Belt and to the character and appearance of the area arising; the environmental dimension of such development is not met.
27. The appeals on ground (a) in respect of the works addressed in each notice contributing to the construction of the gated access fail.

Formal Decisions

Notice A: APP/Z3635/C/16/3151913

28. The appeal is 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.

Notice B: APP/Z3635/C/16/3151919

29. The appeal is 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.

B M Campbell

Inspector