
Appeal Decision

Site visit made on 26 April 2017

by Simon N Hand MA

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

Decision date: 03 May 2017

Appeal Ref: APP/U2235/C/16/3156118

Howe Court Wood, Crismill Lane, Thurnham, Kent

- 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 Mr Chris Saunders against an enforcement notice issued by Maidstone Borough Council.
 - The enforcement notice, numbered ENF/15/50122/EN, was issued on 13 July 2016.
 - The breach of planning control as alleged in the notice is the unauthorised operational development/engineering works, including the laying of hard surfacing within an area of designated Ancient Woodland which is subject to a Tree Preservation Order and sited within a designated Area of Outstanding Natural Beauty, contrary to both National Legislation and the Local Development Plan Policies.
 - The requirements of the notice are (a) permanently remove all hard surfacing from the land located in the approximate position shown in solid blue on the attached plan marked B; (b) permanently remove the membrane the hard surfacing has been laid on from the land in the approximate position shown in solid blue on the attached plan marked B; (c) permanently remove all material resulting from steps (a) and (b) from the land.
 - The period for compliance with the requirements is 56 days.
 - 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.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr Saunders against Maidstone Borough Council. This application is the subject of a separate Decision.

The Appeal on Ground (c)

3. This ground is that planning permission is not required, because in this case it is granted by the General Permitted Development (England) Order 2015. The appellant argues that the works fall within Class E of Part 9 which allows works for the maintenance or improvement of a private way.
4. The notice is directed against works in Howe Court Wood to a private track that leads through the wood. The wood is split into three blocks each owned separately; Mr Saunders owns the furthest block called Toms Wood. The track enters Howe Court Wood at the southern end and links all three blocks together. Mr Saunders began work on the track in early 2016 and a stop notice was issued on the 13th July, by which time about two-thirds of the track

had been redeveloped. No further work has been carried out to the track since.

5. The Council argue that the original private way was just a muddy track and the appellant has laid a plastic membrane and covered it with crushed stone to create a new road. This is more than just "maintenance and improvement", and in any event it is not covered by Part 9, but Part 6, where Class E allows for the formation, maintenance or alteration of a private way, but only following prior approval from the Council. As no prior approval was sought the works are unlawful.
6. It seems to be agreed the track is a private way, and it is not clear to me whether it should be considered under Part 6 or Part 9, as both are relevant, but I do not think this matters. Conditions in E.2 (1) of Part 6 do require prior approval, but only for certain works. For a private way these are for its "formation or alteration" but not for its maintenance. Consequently, if the works are for the maintenance of the track then planning permission is granted by either Class 6 or Class 9.
7. As I saw on my site visit, access to Howe Court Wood is along a winding and lengthy road that turns into a track, made of crushed stone, which leads to the entrance to the wood. At the entrance I was shown where the disputed works began. These continued the crushed stone track into the wood. A pile of unused plastic membrane had been left by the contractors after they ceased work so there is no doubt that the construction method alleged by the Council has taken place, and this is not disputed. However, it was also clear that the unimproved section of track was also made of crushed stone, with a lot of half bricks, laid over a membrane. This was clearly visible close to the entrance to Toms Wood where the track has not been touched. On the sides of the track which had been worked on I was shown small piles of scrapings where the contractors had scraped off the top of the old track to create a level base for the new one. These piles consisted of crushed stone and half bricks. I also saw that the track approaching the wood was constructed of crushed stone, and bits of membrane poked through where this too needed repair. There seemed to be no difference to me between the track that had been repaired and the track that hadn't, and ample evidence the original track was made of crushed stone and bricks lain over plastic membrane. This view is further confirmed by the valuation made by Strutt and Parker for the appellant in 2009 and the Woodland Management Plan agreed with the Forestry Commission which both refer to a hardcore access track.
8. The Council had photographs which showed the original track and the new one. The original did indeed look like a deeply rutted mud track, while the new one was a smooth and shining creation. However, many months later and after a lengthy dry spell, the original track, now it was not covered in water and mud, could be seen to be as described above. The new track was already beginning to look very similar. The woodland vegetation had reclaimed the edges and the stone was no longer clean and shallow parallel ruts had already been worn into it. Indeed, apart from the lack of potholes it was not immediately evident there was a great deal of difference between the two tracks.
9. I am in no doubt the original track was made of similar materials to the new one. The new track does not seem to be any wider, or take a different route through the wood. The works therefore clearly seem to me to be for

maintenance purposes and so benefit from Class 6 or Class 9 permitted development rights.

10. I shall quash the notice. The appeal on ground (a) does not fall to be considered.

Simon Hand

Inspector