



Appeal Decision

Hearing Held on 25 June 2019

Site visit made on 25 June 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

Appeal Ref: APP/P4605/C/18/3205768

Woodside Farm, Duttons Lane, Roughley, Sutton Coldfield, West Midlands B75 5RJ

- 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 Malcolm Neachell against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 25 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a new access road in the approximate position marked in green on the attached plan.
 - The requirements of the notice are remove from the land the compacted aggregate that forms the new access road and reinstate the land to its condition before the breach took place.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is 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 construction of a new access road in the approximate position marked in green on the attached plan on land at Woodside Farm, Duttons Lane, Roughley, Sutton Coldfield, West Midlands B75 5RJ referred to in the notice.

Application for costs

2. An application for costs has been made by Mr Malcolm Neachell against Birmingham City Council. This is the subject of a separate Decision.

Preliminary Matters

3. The appellant considers that the requirement of the notice should explicitly refer to the retention of the access including the splayed bell-mouth onto Duttons Lane which the Council accepts is not a breach of planning control. I consider that the allegation and the requirement are sufficiently precise.

The Appeal on ground (b)

4. To succeed on this ground, the onus is upon the appellant to demonstrate that

the alleged breach has not occurred, as alleged.

5. The appellant accepts that aggregate in the form of road plainings have been put down and compacted along the line marked approximately by the green line on the notice plan. At the hearing he said that this amounts to around 6cm of plainings and the Council does not dispute that. As a matter of fact therefore material has been put down and compacted. The appellant's case on this ground of appeal however relates to the way in which the alleged breach has been described as a new access road.
6. The aggregate has been compacted to provide a consolidated surface although this is informal in appearance without curbs and strewn with pot-holes. Whether this is described as a road, track or private-way is not in my view a significant matter. The key issue is whether what has been done has formed a new track, road or private-way. For ease and consistency of reference, I will refer to the development as a track.
7. It was explained to me by the appellant that in the past, farm vehicles have entered the site from Dutton's Lane and travelled north-eastwards and entered the land around the buildings in the middle of the site. The farm vehicles have to travel from elsewhere to the fields adjoining the appeal site and due to various physical restrictions, this is the only suitable access into these particular fields. This has caused at times a rutted track along a similar line as that shown in green on the notice plan and mud getting onto the public road.
8. Although the dates on the Google aerial images are not certified by the agency responsible for taking them, those reproduced by both parties appear to relate to the summertime. The image attributed by the appellant to 2000 (the date of 1 January does not seem correct given the trees and hedges are in leaf) and not disputed as such by the Council shows a line of light green through the darker green field and some parallel lines which could be attributed to vehicle tyre tracks along a similar line as that shown in green on the notice plan. This also shows the 2 gates in the same position as the gates at either end of the current road or track.
9. However, there is no sign of any such track in this position on subsequent aerial images. Some images, including the appellant's from September 2011 and the Council's from 2013, show other lines that appear to be enclosures impeding access along that same line. The appellant's images taken from Duttons Lane in 2011 and 2012 show the gateway but no track extending into the field. Correspondence in support of the development from third parties make reference to the access rather than any sort of defined track in the field.
10. From the evidence provided as a matter of fact and degree, there may well have been temporary or occasional tracks formed from Duttons Lane towards the central farm yard and elsewhere within the fields. Some agricultural vehicles may have travelled from Duttons Lane to the farmyard in the most direct route but this did not result in a permanent track or obvious other sign that a private way had been formed. The appellant states that winter photographs when there has been wet weather would show a track but none are reproduced in evidence. It is for the appellant to prove his case.
11. On the balance of probabilities therefore I consider that there was not a track constituting a private way in existence prior to the laying of the aggregate. The appeal on ground (b) therefore fails.

The Appeal on ground (c)

12. The appeal on this ground is that the alleged breach of planning control does not constitute a breach of planning control.
13. In relation to this ground of appeal, the appellant relies upon Article 3 to Town & Country Planning (General Permitted Development) (England) Order 2015, as amended, (the GPDO) and in turn Schedule 2, Part 9, Class E. That class permits "*the carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way*".
14. Given my conclusion in relation to the appeal under ground (b), I do not consider that there was previously a street or private way that could have been so maintained or improved. The development was not permitted by the GPDO.
15. The appeal on ground (c) fails.

Ground (a) appeal and the Deemed Planning Application

Ground (a) Main Issues

16. The main issues are:-

- Whether the new access road is inappropriate development in the GB having regard to the revised Framework and relevant development plan policies which requires an assessment of the effect on openness; and
- The effect upon the character and appearance of the area.

Reasons – whether inappropriate development

17. Policy TP10 of the Birmingham Plan (BP)¹, sets out a general presumption against inappropriate development within the Green Belt and that such development will not be permitted unless very special circumstances exist. It also explains that development proposals will be assessed in relation to the relevant national planning policy. Therefore, although the BP was adopted prior to the current National Planning Policy Framework (the Framework), the cross reference and deferment to what is currently the relevant national policy means that the policy in practice is consistent with the Framework. The construction of the road is an engineering operation. Paragraph 146 of the Framework states that engineering operations are not inappropriate in the Green Belt provided that they preserve its openness.
18. The compacted aggregate forming the development is a little above the soil level of the adjoining fields. Due to the dark-grey surface and lack of grass, it is noticeable when looking through the access gateway onto Duttons Lane when passing along the road. Given that the surrounding field surface is not uniform and is covered with uneven grass the very slight increase in height is not perceivable and takes up very little volume or space. The physical structure of the track does not have an impact upon the openness of the area.
19. The track is bordered on either side by electric fencing which is not a part of the unauthorised development. These are lightweight structures with very little obvious volume or solidity. The electric chords are obvious due to their light

¹ Birmingham Development Plan, Part of Birmingham's Local Plan, adopted January 2017

colour rather due to any enclosing effect and large gaps are retained between them. The fields either side of the track are sub-divided in a similar way. The electric fencing stops livestock, at the moment horses, from getting onto the road but also keeps the animals separated with smaller sub-divisions unrelated to the track. The photographic images as referred to above show that the degree of enclosure of the fields has varied even before the track existed. Even if the track were removed, it is not clear that it would directly lead to a reduction of electric fencing to any significant or noticeable degree.

20. The Council is also concerned about the intensity of the use of the track by vehicles related to Tom Poole cars as well as the livery stable use. It seems likely that the road will be used more frequently than it would if the farmyard was still solely used for agricultural purposes. It was also clarified at the site visit that the previous route through the yard that accesses onto Duttons Lane to the east, is currently blocked off. These are valid concerns in my opinion. However, it is not clear what level of use has been made of the track since the development was carried out several years ago. It seems to me that the traffic will be transient with an ephemeral impact not therefore affecting the openness of the area.
21. The development overall does not therefore harm the openness of the area. On the basis that it preserves the openness of the Green Belt, the development is not inappropriate development. This therefore complies with BP Policy TP10 and the Framework in this regard.

Character and appearance

22. The appeal site is within a rural area on the northern outskirts of the built-up part of Roughley. The area is characterised by large fields in a patchwork with hedges and trees separating them from each other across gently undulating topography.
23. The informally surfaced track leads through an existing field that has been separated into parcels by electric fences which have horses grazing within them. The development can be seen through the gated access from Duttons Lane. I was not invited to look from any particular vantage points elsewhere and the development does not stand out above the grass within the adjoining field and is not therefore prominent within the landscape. The electric fences are more obvious than the track but in my view, as expressed above, are not there solely due to the presence of the unauthorised development.
24. There are similar examples of tracks leading from field gates elsewhere nearby. As such the development is in keeping with the sense of place within the rural area. In relation to this main issue, the development does not have a harmful impact upon the character and appearance of the area and complies with BP Policy PG3.

Conclusion

25. For the reasons given above, I conclude that the appeal succeeds on ground (a) and planning permission should be granted. The appeal on grounds (f) and (g) do not therefore need to be considered.

A Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs J Hodson BA Dip TP MRTPI	JVH Town Planning Consultants
Mr D Anderton	Consultant Solicitor at Ansons
Mr M Neachell	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Pennifold	Senior Planning Officer
Mr R Chima	Senior Planning Officer

DOCUMENTS

- 1 Encyclopaedia of Planning Law extracts – interpretation of Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- 2 Cowen v SOS, Court of Appeal 1999
- 3 Written confirmation of appellant's other considerations in support of the development under ground (a)