
Appeal Decision

Site visit made on 29 July 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 8 August 2019

Appeal Ref: APP/Y3940/C/18/3217780

Land known as Lansdowne, Littleton, Semington, Trowbridge, Wiltshire

- 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 Felix Rooney against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 29 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development comprising the formation of a vehicular access way; the approximate location of which is hatched in blue on the attached plan entitled "Notice Plan".
 - The requirements of the notice are: Block up the unauthorised vehicular access by erecting a timber/wooden close boarded fence in the approximate location annotated by two red crosses on the attached plan entitled "Notice Plan" so that the erected fence is the same height as the existing fence shown on the attached photograph entitled "Notice Photograph" and so that the erected fence adjoins the two existing fences on either side of the unauthorised vehicular access way.
 - The period for compliance with the requirements is: Within 3 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. The site visit should have occurred with representatives from the Council and the appellant. The appellant's agent was there but no one arrived from the Council. I could see the access from the road and did not need to enter the site to understand the cases put to me by both sides. I therefore suggested to the agent that he could leave and that I carry out an unaccompanied site visit. He agreed and I proceeded on that basis. No discussion was held with the agent other than that necessary to decide to change the site visit procedure and thus keep the appeal on track. Neither appeal party has been prejudiced by this change in procedure.

The ground (a) appeal – the deemed planning application

Main Issues

3. The main issues are the effects of the development on highway safety and on the character and appearance of the area.

Highway Safety

4. While each appeal should be determined on its merits, it is a significant material consideration that the safety of using this access has been assessed before most recently in 2018 by a previous Inspector (Appeal Ref: APP/Y3940/C/17/3191874). The appellant and the Council have confirmed that the access I am considering is the same one as considered by the Inspector last year. Against this background, I note that the lane is a dead end and is lightly trafficked. Also, that the road alignment means vehicles approaching the bend would be slow. However, as the appellant points out, the bend is a blind one and the previous Inspector, whilst noting very similar considerations, stated that "this is not a case where visibility is merely poor, but is seriously substandard". He also stated that "conflicts with vehicles using the site and farm machinery is a real possibility".
5. I have nothing in this appeal in terms of new highway evidence or material changes to the site circumstances to show why I should, or could, reach different conclusions from last year's Inspector. I also agree with his findings.
6. The appellant's offer to move the access further east is noted. However, there is no plan showing where exactly this could be and to what extent visibility could be improved for exiting and oncoming vehicles to the west. There is also nothing to show how visibility to the east may be affected bearing in mind that plot 2 is now owned by the appellant's brother and the implications that may have for achieving appropriate sight distances. Moreover, this would be a new access in a different position, materially different from the scheme I am considering under the deemed planning application, the terms of which are defined by the breach of planning control. For these reasons, I cannot consider this alternative now. The appellant has already said that he could submit a new planning application to formalise the matter. That would be the best way to see if the highway safety concerns could be addressed.
7. In view of the above, I find that the new access has a serious adverse effect on highway safety. Consequently, it conflicts with the highway safety aims of policies CP47 and CP62 from the Wiltshire Core Strategy (CS), the National Planning Policy Framework (the Framework) and Policy H from the Planning Policy for Traveller Sites (PPTS).

Character and Appearance

8. The wide entrance to the site allows significant views of the caravans on plot 3 from the lane. Their residential appearance, along with parking and large gravel area, has a jarring visual presence with the otherwise rural nature of the lane defined by hedges and open fields. I also agree with the 2018 Inspector when he stated, "this is a pleasant rural location and the works on the south west corner stand out as intrusive and out of place".
9. This is in contrast with the screening along the lane envisaged by the layout granted planning permission by the Council (Ref: 15/08789/FUL) of which condition 7 is relevant. The need for and benefits of landscaping here were also highlighted earlier than that by the first Planning Inspector when he allowed an appeal (Ref: APP/Y3940/A/14/2217289) in 2014 and granted

planning permission for the site. In his decision he commented that the caravans and various other features and paraphernalia on the site would be effectively screened by the existing boundary planting and the proposed supplemental planting. He further noted that "the existing southern boundary hedge provides screening from the public rights of way and the lane". He went on further to find, therefore, that along with other landscape screens on the other site boundaries "the impact on the rural scene and landscape would be negligible". He consequently imposed appropriate landscaping conditions.

10. What has been envisaged by the previous permissions is a site that would not harm the local landscape. That is not what has occurred and there is now serious harm to the character and appearance of the area. Planting of hedgerows against the timber fencing would not prevent views of the site through the access and thus would not make the development acceptable.
11. Therefore, the development does not accord with the landscape protection aims of CS policies CP47, CP51 and CP57, the Framework and the PPTS.

Other Considerations

12. I am aware of the alleged family feud between the appellant and his brother, which apparently led to the new access being created. It is unfortunate when family bonds break down. Given my findings above, I acknowledge that plot 3 could be effectively landlocked and there may therefore be consequences for the families the appellant says live on the plot. However, this is a personal matter which, if it could be resolved, would negate the need for the access. Despite it being stated that the feud is irreconcilable, there is nothing to support this view or to show that attempts have been made to sort out the dispute other than by creating the new access. I therefore give this matter little weight. Moreover, the planning system operates in the wider public interest. In this case the harm I have identified from permanently retaining the access would be serious and on-going. It is necessary in the public interest to secure the closure of the access.
13. The appellant has also not ruled out that anyone on plot 3 could not relocate to plot 1 which is land he also owns and is encompassed by the 2015 planning permission. He has given no reasons why this would not be a suitable scenario. Therefore, based on the information I have, the consequences of my decision do not mean it is necessarily inevitable that any persons could be dispersed over a larger area away from relatives and friends or end up on sites not approved and thus at risk of being moved on as intentionally carrying out unauthorised development.
14. Taken in the overall round, also having regard to my other public sector duties, the decision to refuse planning permission would not be an unjustified interference with someone's home and it would be a proportionate response to the need to uphold the aims of planning policies in a democratic society which seek to avoid harm to highway safety and the countryside. The personal circumstances do not indicate a decision other than in accordance with the development plan.

Ground (a) Conclusion

15. Against the above background, the ground (a) appeal fails.

The ground (f) appeal

16. The appellant has not suggested in what way the steps required by the enforcement notice are excessive or how lesser steps could still remedy the breach of planning control. The matter of planting next to the fence is an issue of planning merit which I have considered above.
17. In order to remedy the breach of planning control in this case it is necessary to permanently close the opening and that can be easily secured by erecting a fence across it to match the existing fences either sides of the access. That would also be in line with what was envisaged by the Inspector in the appeal in 2014 and the Council when it granted planning permission in 2015. It would do no more than secure part compliance with what has been previously envisaged would be an acceptable site layout.
18. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. The ground (f) appeal also does not succeed.

Overall Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gareth Symons

INSPECTOR