
Appeal Decision

Site visit made on 2 October 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/M1005/C/18/3217318

Land Between 119 and 121 Birches Lane, South Wingfield, Alfreton, Derbyshire

- 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 Steve Leighton against an enforcement notice issued by Amber Valley Borough Council.
- The enforcement notice was issued on 26 October 2018.
- The breaches of planning control as alleged in the notice are:
 - i. The material change of use of the land for the storage of a caravan and the stationing of a metal storage container.
 - ii. The creation of a gravel track.
- The requirements of the notice are:
 - i. Cease the use of the land for the storage of a caravan.
 - ii. Cease the use of the land for the stationing of a metal storage container.
 - iii. Remove caravan from the land.
 - iv. Remove the metal storage container from the land.
 - v. Remove the gravel track and reseed the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (e) of the Town and Country Planning Act 1990 as amended.

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

The appeal on ground (e)

1. The ground of appeal is that the notice was not served on everyone with an interest in the land. In this regard the appellant contends that the enforcement notice was not served on the correct address, but he found the notice in his field weeks later. There is no communication between the two co-owners of the land.
2. A Land Registry search established the owners of the land. The Council used its powers under s330 of the Act to obtain information about the address of the owner and it appears to have used the limited information provided to serve the enforcement notice to the correct addresses. Although no response was received from the appellant, the information from another party provided details of the appellant's last known address.
3. The Council states that the enforcement notice was served on the appeal site by affixing it conspicuously to an object on the land, as provided by s392(2) of the Act. This is evidenced by copy of the certificate of service for notice displayed on the land and a photograph. It was also delivered to addresses known to be associated with the appellant and via email to Mr Leighton's last

known email address. Furthermore, a copy of the enforcement notice and associated information was sent to a bank which has an interest in the land. Photographic evidence of the service of notices to the various addresses has been submitted by the Council along with documents showing that the enforcement notice was delivered as they have described.

4. Section 329 of the Act prescribes a number of methods by which an enforcement notice may be served. I am satisfied that the Council's evidence is sufficient to establish that the enforcement notice was correctly served to relevant parties. But even if the notice had not been correctly served, s176(5) of the Act provides that failure to serve may be disregarded if the appellant has not been prejudiced by the failure to serve him. In this case the appellant has been able to submit an appeal against the enforcement notice and argue it fully in the course of the appeal proceedings. It cannot, therefore, be said that he has suffered any prejudice as a result of any failure to comply with the rules concerning service. There is no suggestion that any other party may have been prejudiced.
5. I conclude that in the circumstances of this case any failure by the Council in terms of service of the enforcement notice may be disregarded. Consequently, the appeal on ground (e) fails.

The Appeal on ground (c)

6. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The appellant argues that he has always accessed the land from the track that runs off Birches Lane. Indeed, photographic evidence seems to show some kind of access in place which, the appellant states, was resurfaced in May 2016.
7. The Council does not consider the works to be resurfacing of the track and the evidence submitted, including photographs taken during construction, clearly shows engineering operations taking place to construct a relatively substantial access track and base. Therefore, the construction of the track which included significant earthworks and digging out ground and rolling stone to form a hard-surfaced track is an operational development for which planning permission is required.
8. The appellant refers to Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) which relates to agriculture and forestry. Class A applies to agricultural development on units of 5 hectares or more and states that any excavation or engineering operations reasonably necessary for the purposes of agriculture within that unit is permitted development. The appellant has stated that the agricultural unit extends to 7.28 hectares, but the land at Birches Lane is only 3.04 hectares. I noted that much of the land in question is used for grazing horses, although part of the land appears to have recently been used for grazing sheep. Furthermore, there is insufficient evidence before me that the access track is reasonably necessary for the purposes of agriculture since the field it serves is currently used for grazing horses, which is not an agricultural activity. That is a fundamental consideration with respect to whether the development is permitted development.
9. The appellant has submitted little evidence of a farm business operating at the appeal site other than stating that the land is used for grazing of livestock and

fodder making. No DEFRA registration documents, livestock holding numbers, financial information or other evidence has been provided. Therefore, there is insufficient evidence for me to conclude that the site is land comprised in an agricultural unit of 5 hectares or more. Consequently, the engineering operation that has taken place to create the hard-surfaced access track does not benefit from planning permission by virtue of the provisions of the GPDO and, based on the evidence before me, the creation of the gravel track is a breach of planning control.

10. In July 2014 prior approval was granted for the erection of an agricultural building on the land adjacent to where the storage container is currently located. The building is not yet complete and it is contended by the appellant that the container is used to store implements and equipment until it is complete. I was unable to have access inside the container at my site visit. However, there is insufficient evidence before me that the container is required for agricultural purposes, simply because of the lack of evidence of related agricultural activity taking place at the appeal site. I see little justification for the need for the container to be stored on the site in association with particular activities relating to an agricultural enterprise. Consequently, the material change of use of the land for the storage of a metal storage container is a breach of planning control.
11. It is my understanding that the caravan was temporarily stored on the land but removed at the end of July 2018. Nonetheless, the Council is correct that although it has been removed this part of the enforcement notice should remain a requirement to ensure a caravan does not return to the land. The caravan was stored on the land due to a change on the appellant's personal circumstances. The siting of a caravan on the land for residential purposes is a material change of use of the land for which planning permission is required. No such permission has been granted by the local planning authority to my knowledge and as such it constitutes a breach of planning control.
12. The appellant has used a previously approved prior approval for an agricultural building as evidence of agricultural activity taking place at the appeal site. However, the building in question has not been completed within five years of the prior approval being granted and, as such, any approval from the local planning authority has now expired. Furthermore, given the argument that it does not seem to be part of an agricultural enterprise, it is not unreasonable to conclude that prior approval would be unlikely to be granted for an agricultural storage building in the current circumstances. Mr Leighton has not offered sufficient evidence that there has been no breach of planning control.
13. The appeal on ground (c) fails.

The appeal on ground (a)

14. The ground of appeal is that planning permission should be granted. The main issue is the effect on the character and appearance of the area.
15. With respect to the track, the appellant argues that it has historically provided the main access to the land and is necessary for the management of the agricultural land and livestock. If the track deteriorated, it is argued that access to the land would be very difficult and could give rise to highway safety issues through there being excess mud on the nearby road. However, there is no evidence of previous problems accessing the site when the access was in its

condition prior to the unauthorised development taking place. In addition, there is no evidence that use of the access in the past has led to problems of mud on the road or highway safety. The evidence that a hardstanding access is required to serve the land is weak given the lack of apparent agricultural activity taking place on the land other than some recent sheep grazing in an adjacent field, the fact that the previously agricultural building has not been completed and may not actually benefit from permitted development rights under the terms of the GPDO.

16. Policy EN1 of the Amber Valley Borough Local Plan Adopted 2006 (the LP) relates to the countryside. It states that in the countryside new development will only be permitted where it is essential in conjunction with the requirements of agriculture and is necessary within the countryside. Policy LS3 requires development to reflect good design by conserving and enhancing the quality and local distinctiveness of the natural environment and respecting the character of the locality. The National Planning Policy Framework (the Framework) states that development should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. It recognises the intrinsic beauty of the countryside.
17. The stationing of a caravan, metal container and construction of an access track are prominent and visually obtrusive forms of development within the countryside and are at odds with their attractive rural surroundings. As a consequence of the materials used, their location, design and situation within green rolling hills, the developments are obvious and intrusive in their surroundings. The track is disruptive of the green surroundings and fails to respect the countryside setting in which it is located. The yellow container is situated on a hill which overlooks residential properties and consequently, is highly visible and conspicuous in its surroundings.
18. The container and track do not conserve or enhance the character of the local natural environment. I can also see that a caravan in this location would have a similar harmful effect. Therefore, without adequate justification I conclude that the development is harmful to the character and appearance of the area. As such it conflicts with Policies EN1 and LS3 of the LP and the Framework. Therefore, the appeal on ground (a) fails.

Formal Decision

19. 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.

A A Phillips

INSPECTOR