



Appeal Decisions

Site visit made on 20 August 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 October 2019

Appeal A: APP/Y9507/C/19/3226910

Land along the 29b Bridleway, Old Racecourse, Lewes, East Sussex.

- 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 Mrs A Ffitch-Heyes against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 26 March 2019.
 - The breach of planning control as alleged in the notice is the widening of approximately 450m (in length) of the public bridleway to a width of approximately 2.5m by cutting into the vegetated banks (by approximately 30cm deep) on either side classed as unauthorised development and the flattening of approximately 450m (in length) of the public bridleway by using spoil from the vegetated banks to infill and level-off, classed as unauthorised development.
 - The requirements of the notice are re-grade and restore the earth banks to the same gradient prior to these works as shown in the photograph Fig 2 on the enforcement notice. To mitigate the effect to the local ecosystem, these works should a) be carried out with hand tools only; b) ensure that Natural England's correct licensing procedure is followed, due to the local confirmed Great Crested Newt population and c) be supervised by a representative of the SDNPA.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) & (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/Y9507/C/18/3217097

The Tote House, The Motor Road, Old Racecourse, Lewes, East Sussex BN7 1UR

- 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 Mrs A Ffitch-Heyes against an enforcement notice issued by South Downs National Park Authority.
 - The enforcement notice was issued on 5 November 2018.
 - The breach of planning control as alleged in the notice is the creation of a scalped surfaced track classed as unauthorised development.
 - The requirements of the notice are to remove the unauthorised scalped surfaced track that was laid and return it to an original grass surface.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (g) of the Town and Country Planning Act 1990 as amended.
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Procedural Matters

1. A cost application has been made by the National Park Authority against the appellant in relation to appeal B. This will be the subject of a separate decision.

Decisions

Appeal A

2. 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 widening of approximately 450m (in length) of the public bridleway to a width of approximately 2.5m by cutting into the vegetated banks (by approximately 30cm deep) on either side and the flattening of approximately 450m (in length) of the public bridleway by using spoil from the vegetated banks to infill and level-off at Land along the 29b Bridleway, Old Racecourse, Lewes, East Sussex.

Appeal B

3. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 2 months and the substitution of 4 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Reasons

Appeal A

Ground (c)

4. I have considered the appellant's arguments in relation to the state and width of the track in ground (a) below and while I acknowledge much of her case in relation to this, it is clear that in levelling the track some widening has occurred. At the edge of the track over some of its length the bank has been cut vertically indicating that some widening into the bank has occurred. This with the levelling, even if it only changed the height a nominal amount, involved heavy earth moving equipment. This is an engineering operation and therefore operational development that requires planning permission. I note the Article 4 direction referred to by the appellant which relates to gates and means of enclosure, but the works to the track are operational development whether or not the Article 4 direction is in place.
5. The appeal fails on ground (c) in relation to the works to the track, which requires planning permission.

Ground (a)

6. The development plan includes the South Downs Local Plan [SDLP] and the Lewes District Joint Core Strategy [CS]. SDLP Policy SD1 indicates that proposals that fail to conserve the landscape and natural beauty of the National Park will be refused. SDLP Policy SD4 notes that development proposals will be permitted where they conserve and enhance landscape character. The policy supports restoration of landscapes where features have been lost or degraded and development is to be supported where it contributes positively to the

- landscape character. SDLP Policy SD5 only permits development proposals where they adopt a landscape led approach and respect the local character, through sensitive and high quality design, that makes a positive contribution to the overall character and appearance of the area. SDLP Policy SD6 development proposals will only be permitted where they preserve the visual integrity, identity and scenic quality of the National Park. SDLP Policy SD12 only permits proposals where they preserve and enhance the historic environment. SDLP Policy SD9 notes development proposals will be permitted where they conserve and enhance biodiversity and geodiversity, giving particular regard to ecological networks and areas with high potential for priority habitat restoration or creation. SDLP Policy SD24 permits equestrian development if it is of a scale and intensity compatible with the landscape and the special qualities.
7. Core Strategy Policy CS10 aims to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and to conserve and enhance the high quality and character of the district's rural environment by ensuring that all forms of new development are designed to a high standard and maintain and enhance the local vernacular and 'sense of place' of individual settlements. Core Strategy Policy CS11 indicates that the local planning authority will seek to secure high quality design in all new development in order to assist in creating sustainable places and communities. This will be achieved by, amongst other things, ensuring that the design of development respects and, where appropriate, positively contributes to the character and distinctiveness of the district's unique built and natural heritage.
 8. The Authority notes that the bridleway has become very naturally 'hollowed-out' due to weathering, with deep banks on either side, and when it rains it tends to act as a natural water channel which causes it to get very muddy and churned under foot. Whilst I acknowledge that is the case, it is clear walking along the length of the bridleway from the Lewes direction to the appeal site that the arrangement of the track varies very considerably, sometimes in a 'hollow' arrangement but often not. The width also varies along the length. On sloping sections there has clearly been considerable harmful water erosion with a very deep channel formed in places well over 300mm deep and wide in fairly long lengths. Photographs suggest this was the case over part of the track the subject of the appeal.
 9. The appellant also identifies that before and after photographs in the enforcement notice are not of the same position, so it is not possible to put much weight on those in terms of identifying the change that has occurred in those particular locations. I acknowledge, as identified by the appellant, that the deep channel formed by erosion makes it difficult to use the bridleway and maintenance was urgently required. The presence of the channel also makes it necessary for users to divert to one side or other which is itself having an effect on the width in places.
 10. The appellant notes that no new material has been imported and that the subsequent level was achieved by scraping the surface and infilling the ruts with resulting material. This included some material from the edges of the track. The final level is therefore likely to only be marginally different from the track prior to the work. To my mind, viewing the track as now completed does not indicate any significant change in the level of the track. I note there is no

requirement in the notice to undertake any work in relation to the level of the track.

11. The width of the track is part of the character and appearance of the area. However, the width of the track varies considerably along its length and at the appeal site, while a little wider than it was, it is not unusually wide or out of character with the rest of the track. I accept that the appearance immediately after the work was done was stark, with relatively 'sharp' vertical edges. However, the appearance of the track has already considerably 'softened' with time, with vegetation beginning to re-grow on the flat surface and bank and I do not consider there is evidence that the biodiversity here has been materially affected. The edge of the bank is also beginning to soften with natural erosion. The works overall are not out of character with the remainder of the natural track or the character and appearance of the surrounding countryside. I consider that importing a small amount of material to infill the small gap at the side would serve little purpose and is likely to cause more harm to the track than benefit. Overall, I conclude that the edge of the track, its level and width is not out of character with the area. It does not conflict with SDLP Policies SD1, SD4, SD5 and SD6.
12. Whether other licences were necessary for the work is a matter for others.
13. The appeal on ground (a) succeeds.

Ground (f)

14. Given my conclusion on ground (a) there is no need to consider the ground (f) appeal.

Appeal B

Ground (a)

15. A retrospective planning application, which included the scalped surfaced track, was refused by the South Downs National Park Authority on 14 June 2018 (ref. SDNP/17/05255/FUL). This planning decision was appealed to The Planning Inspectorate (ref. APP/Y9507/W/18/3214453) and dismissed on 15 March 2019. This is a very recent decision and I have no reason to disagree with it.
16. I note that the South Downs Local Plan 2014-2033 was adopted on 2 July 2019, since the enforcement notice was originally served and since the appeal decision in March 2019, but the inspector gave substantial weight to the emerging policies. I have taken these policies into account, but do not consider that there has been a material change to the considerations in this case.
17. The previous inspector noted, "I consider that the use of chestnut cleft and rail fencing, and the dark grey surface material would not be in keeping with the character of the open downland area. Furthermore, the dark grey access track material is at odds with the existing underlying geology, which is Chalk." "I find that the extent of fencing proposed together with the dark grey surfacing tracks would form a prominent and stark feature in the open downland landscape which would fail to conserve the landscape and scenic beauty of the SDNP." "In the context of the significance of the heritage asset and paragraph 196 of the Framework, I find the harm as less than substantial. Accordingly, this should be weighed against the public benefits of the proposal. I observed that the existing bridleway was heavily used by members of the public and

workers, and in this respect a more robust track would provide some public benefit to the wider community. However, the harm to the setting of the designated battlefield combined with the great weight to be attached to the harm to the SDNP would not be outweighed by this benefit.”

18. While the inspector was considering some matters in addition to the hard surface, it is clear that the hard surface was a significant part of the consideration and I reject the appellant’s contention that the previous dismissal of the appeal did not include the track. In terms of the track alone, I agree with the previous inspector’s assessment of the track’s prominence and impact. The hard surfacing is out of character with the natural appearance of the rest of the route and causes considerable harm to landscape character of the area and its appreciation by users of the route. I also concur that the public and other benefits of the development as put forward by the appellant do not outweigh the considerable harm caused. The notice is also clear in that it requires removal of the scalped surfaced track that was laid and to return it to an original grass surface. The development does not accord with South Downs Local Plan policies SD1, SD4, SD5, SD6, SD9, SD12 and SD24 and CS Policies CS10 and CS11.
19. The appeal on ground (a) fails.

Ground (g)

20. The appellant argues that 4 months is necessary to carry out the works required. The Authority maintains that 2 months is sufficient, but that it would agree to 4 months. I note that the Authority has been in contact with the appellant in relation to the unauthorised works since they began, and that the material was laid in a relatively short time. However, to arrange for the works, and scrape it all up and then relay soil and grass will be likely to take longer than 2 months. I shall therefore amend the time limit to 4 months. The appeal on ground (g) succeeds.

Graham Dudley

Planning Inspector