



Appeal Decisions

Site visit made on 25 October 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal A Ref: APP/M0655/C/19/3224997

Appeal B Ref: APP/M0655/C/19/3224999

Land on the west side of Arley Road, Appleton, Warrington

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by JA Fryer against an enforcement notice issued by Warrington Borough Council. Appeal B is made by VC Fryer
- The enforcement notice was issued on 8 February 2019.
- The breach of planning control as alleged in the notice is without planning permission, the laying of hard standing and widening of an access.
- The requirements of the notice are:
 - a) Remove the recessed double field gates shown in photograph SB01 attached to this notice;
 - b) Remove all hard surfacing within the area shaded blue shown on the attached plan, including any sub base and base course or any other imported material above the native material of the field;
 - c) Narrow the access to no more than 4m wide with the use of post and wire fencing at a height of no more than 1m high from ground level at the back edge of the highway along Arley Road to maintain a continuous boundary feature where the hedgerow has been removed, retaining a 4m opening of a size to accommodate a single five bar braced field gate (as shown in image SB02 attached to this notice);
 - d) Reinstate the hedgerow on the inside edge of the post and wire fencing by planting hawthorn (*crataegus monogyna*) in a double staggered row of 5 plants per linear metre and at a height of 80-100cm;
 - e) Reinstate the area of land subject to the removal of the hard surfacing by spreading a layer of topsoil and seeding it with a suitable mix so as to achieve a vegetated ground cover similar to that of the adjacent field area.
- The period for compliance with requirements (a), (b) and (c) is two calendar months; for (d) and (e) is within the first available planting season after the date on which this notice takes effect, ie October to March.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the 1990 Act as amended. Appeal B is proceeding on grounds (c) and (d). Since the prescribed fees have not been paid within the specified period, appeal B on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

The Notice

1. The appellants claim the comparison between images SB01 and SB02, attached to the notice, is misleading as the photographs were taken from different angles. Crucially, it is explained that the land was purchased in June 2013 and at that time the gate shown in SB02 had been removed and access to the farmland was through a gap in the hedgerow.

2. Despite the different angle of the photographs, I am satisfied that it would be clear to the recipients of the notice what they have done wrong and what they must do to remedy the alleged breach. I do not consider the notice to be a nullity or otherwise invalid for this reason.
3. However, the requirements of the notice seek the narrowing of the access and the reinstatement of specific types of boundary and surface treatment. In that respect they are akin to planning conditions. The scope of the notice is limited by section 173(4)(a) and (b) of the 1990 Act as amended. Where planning permission has not been granted for the development, the power is to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition.
4. The Courts encourage a very wide-ranging use of the power to correct or vary notices provided there would be no injustice to the appellant or to the local planning authority. Consequently, I am satisfied that I can vary the notice to amend the requirements so that they simply require the appellants to restore the land to its condition before the breach took place. This would address the appellants' additional concerns about the date of image SB02.

Appeals A and B on ground (c)

5. In order to succeed on a ground (c) appeal, the appellants must show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. The appellants claim that the farm gate to the agricultural field is "permitted development".
6. Article 3 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants planning permission for certain classes of development described as permitted development in Schedule 2 of that Order. Under 3(6) of the GPDO, the permission granted by Schedule 2 does not authorise any development that requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road.
7. The Council has confirmed that Arley Road is a classified road. There is no dispute that a material widening of a means of access to an existing highway has occurred, hence, permitted development rights do not apply in this instance. The appellants have not submitted any evidence relating to the hardstanding.
8. I conclude on this ground that the appellants have not shown on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. Therefore, the appeals on ground (c) must fail.

Appeals A and B on ground (d)

9. In order to succeed on ground (d), the appellants must show on the balance of probability that the development was substantially completed on or before 8 February 2015¹.

¹ Section 171B of the 1990 Act as amended provides where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

10. No evidence to support this claim has been submitted. The Council, on the other hand, has provided street view images that contradict the appellants' argument. Hence, the appeals on ground (d) must fail.

Appeal A on ground (a) and the deemed planning application

Main Issues

11. The terms of the deemed planning application are derived from the allegation, hence, planning permission is sought for the laying of hard standing and widening of an access. The appeal site is located within the Green Belt alongside a classified road.
12. I consider the main issues to be:
- Whether the development is inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies;
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on highway safety;
 - Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.
13. For the avoidance of doubt, the alleged use of the access in connection with the nearby adventure park is not relevant to the matters before me. My consideration is confined to the matters stated in the enforcement notice.

Reasons

Whether the development is inappropriate development

14. The Council indicates that the development amounts to an engineering operation. I shall consider this matter first as my findings have a bearing on the Green Belt assessment.
15. The question as to whether the development constitutes a building or an engineering operation is an evaluative one which requires an exercise of planning judgement. An engineering operation would involve works with an element of pre-planning that would normally although not necessarily be supervised by a person with engineering knowledge. The widening of the access and the laying of hardstanding would have involved plant and machinery for the excavation works and laying of hardcore. It would have required an element of pre-planning. Taking account of all matters, I agree that the works alleged amounted to an engineering operation within the meaning of development in s55(1) of the 1990 Act as amended.
16. Policy CS5 of the Warrington Local Plan Core Strategy (2014) (the Local Plan) states that development proposals within the Green Belt will be approved where they accord with the relevant national policy. The National Planning Policy Framework (the Framework) states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.

Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

17. Paragraph 146 sets out that certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes engineering operations. The appellant argues that there is no effect on openness as the works are not part of an urban development. However, the Courts have established that openness of the Green Belt has a visual as well as a spatial aspect². It is appropriate to consider visual impacts in assessing the effect on openness.
18. The laying of hardstanding has introduced an engineered form of development in an otherwise predominantly agricultural landscape. The impact is exacerbated by the widening of the access and removal of hedgerow, which has increased views into the field making the relatively extensive area of hardstanding more prominent. In my judgement, the visual impact of the works cause harm to Green Belt openness. In addition, the development represents encroachment into the countryside as it has involved laying a significant area of hardcore at the entrance to a previously undeveloped field.
19. I find, therefore, that the development does not preserve the openness of the Green Belt and conflicts with the purposes of including land within it. It amounts to inappropriate development which is, by definition, harmful to the Green Belt.

Effect on character and appearance

20. The area is typified by mixed farmland with varying degrees of enclosure across the landscape. I saw that there are other vehicular entrances in the vicinity of differing size and type, some of which serve residential development.
21. I do not consider the development to be out-of-keeping with the character and appearance of the land, and the wider, semi-rural area. The type of gates that have been erected are not uncommon in an agricultural area. It meets the aims of Policy QE7 of the Local Plan which, among other things, seeks to protect the character of the countryside.
22. This does not affect my findings on openness, above. The assessment in relation to character and appearance can take account of whether development reflects its immediate surroundings, whereas openness involves a specific consideration of visual intrusion.

Effect on highway safety

23. The Council advises that Arley Road has a speed limit of 60 mph and is used by cyclists, horse riders and pedestrians. I saw that visibility at the access is restricted, particularly to the south, due to the vegetation along the side of the road. A highway sign located at the centre point of the access further restricts visibility. The visual advantage arising from the elevated seating position of a tractor driver is negated to some extent by the lower land level at the access.
24. The access as constructed does not meet the standards set out in the Design Manual for Roads and Bridges. It is not possible to secure improvements

² *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 and *Samuel Smith Old Brewery (Tadcaster) & Oxtan Farm v North Yorkshire CC & Darrington Quarries Ltd* [2018] EWCA Civ 489.

through planning conditions, as it is not clear whether the adjoining land is within the control of the appellant. Such conditions would not be reasonable in these circumstances and, moreover, any works would have a corresponding adverse effect on the openness of the Green Belt and should be avoided.

25. The appellant has provided a risk assessment and explains that the hardstanding helps control large farm vehicles and loaded trailers leaving the field. He also explains that the width of the previous access was insufficient to meet the needs of modern agricultural equipment, which are valid points. I am aware that a field access existed previously and sight lines are likely to have been similar. Nonetheless, it could reasonably be argued that the enlarged access is more frequently used, which inevitably increases the level of risk.
26. I accept that the restricted visibility would make it difficult for vehicles approaching at speed from the south to see emerging farm vehicles. Those approaching from the north would have better visibility due to the curvature of the road and the lower height of the hedgerow. Equally farm vehicles leaving the land would have restricted views in both directions due to the difference in land levels, vegetation and signage. However, taking account of the previous access which would remain under the terms of the notice, I consider the risk to highway safety would be low.
27. I acknowledge the concerns about loose material being transferred onto the highway. In response, the appellant claims that the hardstanding reduces mud on the road, which would be equally as dangerous. I saw that the hardstanding has bedded in over the months so it is unlikely that loose chippings would present a significant hazard.
28. The development is likely to have an impact on highway safety and would not accord with Policy QE6 of the Local Plan. However, taking account of all matters raised, I consider the likely level of risk to be low and the overall adverse impact to be minimal.

Other considerations

29. The appellant explains that the widened access is necessary to accommodate a combine harvester which is vital if he is to manage his land and secure the jobs of his workers. In addition, he is required to ensure the safety of his employees, and that of the general public, and the development is necessary for the safe operation of the farm equipment. Also, the access is used by the adjoining landowner who would be affected by its alteration. Finally, the appellant maintains that the role of farmers as land managers should be recognised and supported by the Council.
30. It is not apparent from the information submitted that the subject access to the land is the only suitable farm access available. Given the size and location of the land holding, it is likely that there are other more appropriate locations for a farm access of the size required.
31. Overall, I give these considerations moderate weight.

Conclusion

32. The development is inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. There is minimal impact on highway safety. Moderate weight is attached to the other considerations put forward by the appellant. These considerations do not clearly outweigh the totality of harm. Consequently, the very special circumstances necessary to justify the development do not exist.
33. The development conflicts with the Framework and Policies CS1 and CS5 of the Local Plan, which seek to protect the countryside and Green Belt land through resisting inappropriate development.

Conclusion

34. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

35. It is directed that the enforcement notice be varied by the deletion of requirements c), d) and e) in their entirety and their replacement with "restore the land to its condition before the breach took place". The compliance period for the replacement requirement remains as two calendar months.
36. Subject to these variations the appeals are dismissed and 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.

Debbie Moore

Inspector