



Appeal Decision

Site visit made on 21 January 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/P4225/C/19/3231391

**Land known as Land on the south east side of Todmorden Road,
Littleborough OL15 9AF**

- 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 Graham Ramsden against an enforcement notice issued by Rochdale Metropolitan Borough Council.
 - The enforcement notice, numbered 19/0075/EUD, was issued on 12 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission ongoing engineering operations comprising: the formation, layout out and construction of a means of access to a classified road with the erection of associated fencing and gates, and engineering operations comprising the re-profiling and raising of land facilitated by the importation and deposit of soil, stone, brick, plainings and other building materials.
 - The requirements of the notice are:
 - a) Cease the importation of soil, stone, brick, plainings and other building materials on the Land;
 - b) Cease the excavation, levelling and re-grading of the Land;
 - c) Dig up and remove all imported soil, stone, brick, plainings and other building materials from the Land;
 - d) Remove the fencing and gates from the Land, and
 - e) Restore the Land to its former levels and seed to grass.
 - The period for compliance with the requirements is one day for requirements (a) and (b) and 2 months for requirements (c), (d) and (e).
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by:

- In requirement d) *delete* the words "and gates".

Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal on ground c)

2. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. It is a legal ground of appeal, distinct from any planning merits. The onus of proving it lies with the appellant and the test of the evidence is on the balance of probability.

3. The key questions are whether 'development' has taken place which requires planning permission and, if so, whether planning permission is granted or the development is otherwise deemed to be lawful. In section 55(1) of the Town and Country Planning Act 1990 (the 'Act') 'development' is defined to include the "carrying out of building, engineering, mining or other operations in, on, over or under land".
4. There is no dispute between the parties that an access has been created wide enough to be able to fit a vehicle through, with hardcore laid to create a driveable route onto the land from Todmorden Road. Nor is there dispute that a fence and gates to a height of approximately 2m have been erected to secure the land, and that the land has been re-profiled to create a raised area.
5. The photographs in Appendix A (of the Council's Statement) show a mini-excavator at the far end of the created access track, a tractor and trailer parked on the road and hard core laid with excavator track marks, as it has gone over the hardcore to flatten and level it. Additional photographs in Appendix B (of the Council's Statement) show gates have been erected and some tall metal railings placed along the side of the site beyond the gates. The photographs do not show whether the timber fence had been erected at this time.
6. The photos also clearly show that material has been placed on part of the site nearest the trees and a bank has been created that extends across the width of the site. The ground raising is also clearly evident from looking at where the materials stop short of the neighbouring boundary fence. The materials and the bank were evident on my site visit, although during the intervening months the ground has started to grass over and the excavator track marks are no longer visible. I could see the material comprised bricks, stone, hardcore and rubble.
7. From the Council's photos and what I saw on site, the alleged works would have involved some pre-planning, to bring materials and machinery to the site in order to form and lay the access, erect the fences and gates, raise ground levels and re-profile the land. This is further evidenced by the Council's Officer having made separate visits to the site in March and May and seeing the works progress. The works also reveal a degree of permanence.
8. I am therefore satisfied that the alleged works constitute engineering operations and hence are 'development'. Whether the materials have been brought onto the site, or moved from somewhere else within the site, makes no difference to the fact that engineering operations have taken place.
9. Section 57(1) of the Act states that planning permission is required to carry out any development of land. The works do not fall under any of the exclusions of development set out in section 55(2) of the Act. Section 58 of the Act grants planning permission for certain developments by various means and Orders.
10. The Town and Country (General Permitted Development) (England) Order 2015 (as amended) ('the Order') grants planning permission for certain types of development as "permitted development" which does not need the express grant of planning permission.
11. With regards the re-profiling and ground raising, the Council refers to certain agricultural permitted development rights under Part 6 Classes A and B of the Order. The specified agricultural works are subject to a number of criteria and

conditions and some require the 'prior approval' of the Council before they can be undertaken.

12. As was evident on my site visit the appellant was keeping various breeds of birds, ducks and chickens on the land in a series of metal cages and enclosures. However, the appellant has not provided any evidence that the land is in agricultural use and that any of the alleged works are 'reasonably necessary for the purposes of agriculture'. In his statement the appellant refers to using the land for 'personal leisure use'.
13. With regards the access, Schedule 2, Part 2, Class B of the Order permits the *"formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in the Schedule (other than by Class A of this Part)"*. As Todmorden Road is a classified road, the access is not permitted development so requires planning permission, which has not been granted.
14. With regards the fence and gates, Schedule 2, Part 2, Class A of the Order permits the erection of any gate or fence *provided* [my emphasis] the height does not exceed 1m when constructed adjacent to a highway, otherwise they can be up to 2m in height.
15. The close boarded timber fence has been erected in close proximity to the back edge of the pavement. The pavement forms part of the adopted highway, therefore I deem the fence to be adjacent to the highway. As it exceeds 1m in height at this point the fence is not 'permitted development' and requires express planning permission, which has not been granted.
16. The gates have been set back a substantial distance from the highway and are therefore, in my view, not adjacent to it. Therefore, under permitted development they can be up to 2m in height, and the appellant states they are under 2m. However, from the evidence submitted it is clear to me that the gates have been erected as part of the same 'single operation' to create the new access and raise ground levels, even if the gates were erected on a different day to the other works. But any breach of control means that the appeal fails.
17. In light of the above and on the balance of probability, I find there has been a breach of planning control with regards to the formation, laying out and construction of a means of access, the erection of fencing and gates and the re-profiling and raising of the land. Accordingly, the appeal on ground (c) fails.

Other Matters

The Notice

18. The appellant has not appealed ground (f) – that the requirements of the Notice are excessive. However, I have a duty to get the Notice in order.
19. The gates are permitted development and the appellant could re-erect them immediately after fully complying with the Notice. The Notice does not require the access to be stopped up or the roadside boundary reinstated. After fully complying with the Notice, there would be a wide opening leading from Todmorden Road into the site, albeit grass seeded. In my view, it would be

reasonable for the appellant to want to secure his land with gates. This he could do under permitted development. Therefore, in light of permitted development rights the requirement to remove the gates is excessive.

20. Under s176(b) of the Act, I will vary the Notice to amend requirement d) so that the appellant can retain the gates.

Third party comments

21. There are a number of third party submissions of support and objection, including about flooding. These comments relate to the planning merits or otherwise of the development. However, as the ground of appeal is a legal one, there is no need for me to address planning issues in this decision.

Conclusion

22. For the reasons given above I consider that the appeal on ground c) fails. I shall uphold the enforcement notice with a variation.

K Stephens
INSPECTOR