
Appeal Decision

Site visit made on 18 February 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/V4250/C/19/3233304

Land known as Public Bridleway Standish No.11 and to the rear of 18 Broomflat Close, Standish, Wigan WN6 0NF

- 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 Tracy Wadsworth against an enforcement notice issued by Wigan Metropolitan Borough Council.
 - The enforcement notice was issued on 19 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised engineering operation involving the importation of materials, the elevation of the ground level and the construction of 2 brick retaining walls to create vehicular ingress and egress. The operation is located on a designated public bridleway and effectively narrows public access to the public bridleway by 50%.
 - The requirements of the notice are:
 - a) Remove both brick retaining walls from Public Bridleway Standish No.11.
 - b) Remove all materials creating the elevation of land level.
 - c) Cease any use of Public Bridleway Standish No.11 to facilitate vehicular access to the rear of 18 Broomflat Close, Standish, Wigan WN6 0NF.
 - The period for compliance with the requirements is 14 days.
 - 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. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice upheld.

Appeal on Ground (a) and the Deemed Application

2. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the enforcement notice (the 'Notice').
3. The main issues are the effect of the development on the character and appearance of the area, and accessibility and safety of users of the bridleway.

Character and appearance

4. The appeal property is a bungalow in a cul-de-sac. It backs onto Bridleway Standish No.11 (hereafter referred to as 'the bridleway') that runs between the rear of back gardens of properties on Broomflat Close, Broomfield Road and Ormsby Close. It is part of a longer bridleway route. The bridleway has vegetated hedges and verge either side of the main surfaced route. Some properties have created pedestrian access off the bridleway into their rear

- gardens with paths or steps. From my visit the bridleway had a quiet, secluded and almost rural feel in amongst a residential estate.
5. The appeal property has close-boarded timber gates in the rear garden boundary that access onto the bridleway near the bend and junction with Ormsby Close, Bradley Lane and the access driveway to Broomfield House.
 6. The appellant's statement and photographic evidence suggest that gates have been previously installed and that vehicular access has been gained to the rear of the property for some time. However, it is the ground level raising and retaining walls that are before me. If the appellant wishes to establish the legal status of the land or access she can submit a Certificate of Lawful Development application to the Council, against which there is a right of appeal.
 7. The development involves the raising up of ground levels to the side of the bridleway to create a ramped driveway. This would provide vehicular access to cars and motorcycles into the rear garden, approaching from Bradley Lane. The ramped driveway has been surfaced in brick setts and abruptly stops where it meets the ground and mud of the bridleway. Around the side and rear of the raised ground are dwarf breeze block retaining walls, with the elevation facing the bridleway faced in brick. The works are 'development' that requires planning permission, regardless of who owns or maintains the bridleway.
 8. The raised ground and paved driveway extend a considerable distance out from the gates and encroach onto the bridleway and the vegetated verge, although it does not cross the worn path surface. The use of brick setts and a brick retaining wall create an unduly urbanised feature in this secluded and vegetated walkway, irrespective of whether the works are complete or not. This is compounded by the size and extent of the raised ground and driveway.
 9. I accept that the works are untidy and unfinished due to the issue of the enforcement notice. Nonetheless, I find the development is visually incongruous and detrimental to the wooded and vegetated nature of this stretch of the bridleway, despite the bridleway opening out and becoming tarmac as it follows Bradley Lane. Hence the development harms the character and appearance of the area. Accordingly the development is contrary to Policy CP10 of the Wigan Local Plan Core Strategy (the 'Core Strategy'), which seeks, amongst other things, to ensure good quality design that is effectively integrated to improve the built environment.

Accessibility and Safety

10. Neither party refers to any legal order that records the width of this particular bridleway. In the absence of such, there are no set minimum widths for such routes. Whether or not the existing bridleway measures a certain width does not alone determine whether the route is a bridleway or not. Nonetheless, it was clear to me from my visit that the ramped driveway and retaining walls have significantly encroached into the bridleway.
11. The raised platform and retaining wall come very close to the bollard and main path surface. This serves to restrict the width of the route. This in turn reduces the space available for all users of the bridleway, which include pedestrians, cyclists as well as horse-riders, to pass each other. This impediment to safe passage is worsened by the bridleway being on a bend at this point such that advanced visibility in both directions is restricted. This is different to the

situation of the bollards at the other end of the route by Greenwood Road that have been installed to prevent vehicles using the route. The route is a designated bridleway whether or not horses currently use it.

12. Vehicles accessing the nearby Broomfield House have to drive over part of the bridleway to get from the tarmac of Bradley Lane/Ormsby Close to their driveway, but they branch off to the left away from the bridleway. However, the appellant would have to drive over a greater extent of the bridleway and towards the bend that obscures visibility. This increases the risk of conflict with horses, pedestrians and cyclists and hence adversely impacts on overall highway safety.
13. This would run contrary to the Council's Policies CP7, CP8 and CP17 of the Core Strategy and Policy T1 of the Standish Neighbourhood Plan, that collectively seek to improve the local environment and links between places, as well as extending access opportunities for cyclists, walkers and horse-riders. Accordingly the development is contrary to the development plan.

Other Matters

14. I acknowledge that the appellant has sought to address parking congestion in the cul-de-sac with an alternative access, which would also allow easier access to her garage for when she may need to use a mobility scooter. Whilst I am sympathetic to the appellant's case, these matters have not been determinative in my decision and the property already has vehicular access from Broomflat Close.
15. The appellant refers to the Council's violation of the bridleway, but I have not been presented with any substantive evidence about this or of its relevance. Nonetheless, I must consider the appeal proposal on its own merits.
16. Any weed removal or maintenance the appellant intends to carry out is a matter between the Council and the appellant and is not determinative in this case.

Conclusion on ground (a) and the deemed planning application

17. The development would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given above, the appeal on ground (a) fails.

Appeal on ground (f)

18. The appeal on ground (f) is that the requirements of the Notice exceed what is necessary. When an appeal is made on ground (f) it is necessary to understand the purpose of the Notice, as required to be stated by section S173(4) of the Act.
19. Where the breach of planning control is unauthorised engineering works and the purpose of the Notice is to remedy the breach, as is the case here, the appellant must show that the requirements of the Notice are excessive to remedy the breach and that lesser steps would achieve the same end.
20. The steps required to be taken are to remove both retaining walls, remove all materials creating the elevation of land level and cease any use of the bridleway to facilitate vehicular access to the rear of the appeal property.

21. The appellant suggests lesser steps of removing the supporting wall, apparently an error by the builder. This would go some way to remedying breach as this is a requirement of the Notice. But the materials that have created the raised ground, including the brick sett driveway surface, would still remain and the raised ground would be unsupported. Hence, removing the supporting wall would not remedy the breach of planning control and achieve the purpose behind the requirements. That can only be achieved by full compliance.
22. Additionally, installing lighting and drainage at the foot of the driveway or offering to maintain the adjacent land as alternatives would not remedy the breach. Furthermore, the steps required to comply with the Notice cannot be varied to give effect to such alternatives without introducing significant degree of imprecision, which is unacceptable given the potential liability with a failure to comply with the Notice's terms.
23. Consequently, the requirements of the Notice are not excessive and the ground (f) appeal must fail.

Conclusion

24. 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 deemed application.

K Stephens
INSPECTOR