
Appeal Decision

Site visit made on 2 June 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2020

Appeal Ref: APP/W1850/C/19/3240721

**Land at Millwood Farm, Lynch Lane (C1049), Little Hereford, Ludlow
SY8 4AZ**

- 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 David Edwards against an enforcement notice issued by Herefordshire Council.
 - The enforcement notice was issued on 14 October 2019.
 - The breach of planning control as alleged in the notice is *without planning permission the widening of an existing agricultural vehicular access onto a classified public highway known as Lynch Lane (C1049), in the approximate positions shown between points A to B and C to D (on attached plan); the removal of approximately 6 metres of hedgerow to facilitate the widening of the access and the construction of a private way surfaced in crushed stone in the approximate position on the land.*
 - The requirements of the notice are:
 - 1) Reduce the width of the access, between points A to D (shown on the plan) to its previous width of 4.5m.
 - 2) Replant the hedgerow at a height of 60-80 cm high to replace hedgerow that has been removed between points A to B and C to D (shown on the plan) with native species.
 - 3) Remove from the land the private way surfaced in crushed stone.
 - 4) Remove from the land all materials and rubble arising from compliance with 3 above and restore the land to its conditions before the breach took place.
 - The period for compliance with the requirements stated on the notice is 'until 1 January 2020 for steps 1 and 2, and until 1 May 2020 for steps 3 and 4'.
 - 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.
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Decision

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

- Expressing the compliance periods in months for each step as follows:-
 - (1) *delete* 1st January 2020 and *replace* with "2 months".
 - (2) *delete* 1st January 2020 and *replace* with "2 months".
 - (3) *delete* 1st May 2020 and *replace* with "6 months".
 - (4) *delete* 1st May 2020 and *replace* with "6 months".
- In requirement (2) *delete* "A to B and".

Subject to these variations the appeal is 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.

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 notice. The main issue is the effect of the proposal on highway safety.
3. Millwood Farm and farmhouse are located along a narrow, mainly single-width, winding, classified country road C1049, referred to as Lynch Lane, which is characterised by hedgerows close to the road edge. Due to the undulating topography the appeal site sits atop a hill and is approached uphill from either direction. The main access to the farm is the “current” access located part way up the hill when approaching from the north and which takes vehicles behind the farmhouse. Further up the hill there is a separate access and driveway to the farmhouse itself. The appellant’s family has run the farm since 1958. A sign board at the entrance to the current farm access announces ‘Edwards Agricultural Supplies’ which is open to the general public.
4. The proposal involves widening an “existing” field gate entrance, which is located approximately 70m south of the current access, on the brow of the hill. The two gates in the widened access have been set back into the field. This allows vehicles entering or exiting the widened access to wait off the highway before leaving/joining the lane, although it is not big enough to take an entire large vehicle. It also effectively creates a pull-in area in front of the gates that could act as a passing place for vehicles on the narrow lane. Timber post and rail fencing has been erected either side of the widened access along the newly created visibility splays.
5. To create the splay, approximately 2.5m of field hedge has been removed and the appellant intends to plant an additional 50m of new hedge that will help keep the animals in, but it is not clear where this new hedge is to be located, as I have not been provided with any plans or drawings. A stone track has been laid across the field from the gates towards the farm buildings, broadly following the line of the field hedge. The appellant says he has created visibility splays of 220m to the left and 80m to the right, when exiting. I have not been presented with any plans or drawings to show this.
6. The appellant advises that the access is already used by tractors and combine harvesters. He has “not increased the volume of traffic in any way” and has “not created a new business”. However, it is not clear from the appellant’s Statement if the widened existing access is intended to be the alternative access for just tractors and occasional articulated lorries who visit the farm to avoid them turning into the current uphill access. Or is it intended for all traffic visiting the farm. I noticed that the general public are invited to visit ‘Edwards Agricultural Supplies’ by the sign at the current access. Hence, there is no indication of the intended frequency of use of the widened access, and by whom. Nonetheless, the widened access will be used more often than it as the moment due to it being intended for articulated lorries to use, even if the number of vehicles visiting the farm and the business as a whole remains unchanged.
7. On the withdrawn planning application¹ it appears the appellant submitted additional information, including plans and pictures, such that the Highway Authority considered the proposed access alterations would offer some

¹ LPA Ref: 174666/F

improvement compared to the existing access in terms of highway safety. However, the required visibility splays of 2.4m x 124m in both directions could not be achieved. Furthermore, the Highway Authority requested a 7-day ATC (Automatic Traffic Counter) survey be undertaken whose data could be used to inform on average speeds of vehicles using Lynch Lane, rather than relying on observations and hearsay. This would in turn inform what the required visibility splays would need to be, as the national speed limit applies to the road, although this does not require vehicles to travel at 60mph. Submission of this survey would help address the appellant's claim that the Council has used visibility splays and design more applicable to a main road than a country lane. However, this survey has not been submitted. The Highway Authority has therefore objected to the substandard visibility from the access and the resulting impact on highway safety.

8. I saw for myself that the widened access has limited visibility in both directions. To the south (left when exiting) visibility is restricted by the existing hedge and the fact the lane bends. Drivers sitting higher up in tractors or in the cabins of large lorries would have some improved visibility over the top of the hedge and possibly be able to see vehicles approaching from the other side of the dip of the road. This may be the 220m distance the appellant refers to. But car drivers sitting lower down would not, as I found during my site visit when I repositioned my car and had to nose out of the widened access.
9. To the north (right when exiting) the lack of hedge makes visibility a little better, but views along the lane stop at the brow of the hill, so it is not possible to see vehicles approaching up the hill.
10. From my own experience of using the access on site I have not been persuaded that adequate visibility exists. In the absence of evidence to the contrary I find there is unacceptable harm to highway safety. The National Planning Policy Framework advises that 'development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'.
11. The appellant's suggestion of cutting the hedge down to ground level may help, but in the absence of the measures required by the Highway Authority I am not persuaded that it is sufficient mitigation to overcome the harm. I acknowledge that the set back of the gates and the effective creation of a passing-place is helpful and gives vehicles more space to manoeuvre and helps large vehicles using the access avoid damaging the neighbour's property opposite.
12. The appellant refers to other accesses and junctions on Lynch Lane and other nearby roads that have substandard visibility. In my experience, I find it unlikely that these other accesses, each with their individual site context, would present exactly the same situation and circumstances as the appeal access. The two properties referred to in Appendices 3 and 4 of the appellant's response to the Council's statement are in different locations along Lynch Lane. Furthermore, the example in this same Appendix 3 relates to a house extension and not the creation of an access. As such, it is not possible to draw any direct comparisons from any of these examples. Neither party has provided me with substantial evidence, technical or otherwise, to show these other accesses are substandard or reasons why any substandard accesses were permitted, so I am unable to comment further. Furthermore, I am obliged to consider the appeal on its own merits.

13. I accept that the existing field access could be used by farm traffic at any time, with no control on the numbers or types of agricultural vehicles. Indeed the appellant says it has always been used by tractors and combines, particularly at harvest time, and it has been gradually widened over the years as farm vehicles have got bigger. But the situation before me requires planning permission and has to be assessed against criteria in place today.
14. I am aware of support for the widened access from third parties who live nearby and also from a local Councillor. However, his comments that in recent years there has been an increase in the volume of traffic on Lynch Lane reinforces my doubts about the technical inadequacies of the access and the impact on highway safety.
15. I could see from my visit that some articulated lorries may well struggle to turn into the "current" access if they slowed down or stopped because of the incline of the road, but from my experience this would not be a major problem for most other vehicles.. Visibility when exiting the current access is somewhat limited in both directions, but it is already in use as it stands. I acknowledge that over the years there may well have been a few "close calls" with other road users and cyclists, but these are anecdotal. All road users should proceed with due care and attention and drive according to the road conditions and accidents can always happen. However, I have not been presented with any substantial data or comments from the Police or third parties to persuade me that the current access is an accident black spot and that there is a pressing need for an alternative access on highway safety grounds.
16. In light of the reasons above, I find the development fails to demonstrate that adequate visibility splays can be achieved to ensure that highway safety is not adversely impacted. Accordingly, the widened access is contrary to Local Plan Policies MT1 and ST4 of the Herefordshire Local Plan Core Strategy and Policy BLH18 of the Brimfield and Little Hereford Neighbourhood Development Plan. These collectively seek, amongst other things, to ensure that development achieves a safe entrance and exit and does not affect the highway network. The Council also refers to Core Strategy Policy RA6. This policy relates mainly to new rural diversification developments, which the proposal is not, hence the policy is not directly relevant.

Conclusion on ground (a) and the deemed planning application

17. The development does 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.
19. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. Therefore, when an appeal is made on ground (f) it is essential to understand the purpose of the notice.
20. The purpose of the notice is to remove the widened access and restore the land to its condition before the breach took place. Hence the notice is to remedy the

breach of planning control. The requirements of the notice do this. However, on a ground (f) appeal consideration is also given to whether any 'lesser steps' put forward by the appellant would achieve the same purpose.

21. I acknowledge the appellant's willingness to co-operate and that he is 'open to any suggestions from the Highways department on how to improve the existing access further to improve road safety'. However, the appellant was aware of the Highway Authority's concerns and what was required to improve highway safety with regards the visibility splays, and the submission of a 7-day ATC has not been submitted. That said, however, cutting the hedge down to ground level or removing the stone track do not remedy the breach and therefore are not 'lesser steps'. Nor is a 'general willingness to co-operate' as this is too vague. Consequently, the requirements of the notice are not excessive.
22. The notice requires the hedgerow between points A and B on the plan to be replanted. The appellant states at paragraph 4 of his Statement that there has always been a wired netting fence to the right-hand side of the access, not a hedge. If there was no hedge there, then the notice cannot require one to be planted. I shall therefore vary the notice to remove this part from requirement (2).
23. The ground (f) appeal therefore succeeds in part.

Period of Compliance

24. The notice states specific calendar dates for compliance, but these have been overtaken by the appeal process. Furthermore, the compliance periods will need to run from the date of this decision, which is when the notice takes effect. Consequently, I will vary the notice and express the time periods as an equivalent in months, taking into account that 2020 is a leap year. The compliance period for steps 1 and 2 equates to 1½ months and for steps 3 and 4 equates to 5½ months. For ease of compliance, I shall round these periods up to 2 months and 6 months respectively.

Conclusion

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

K. Stephens
INSPECTOR