
Appeal Decisions

Site visit made on 14 July 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal A Ref: APP/Y3940/C/20/3245770

Appeal B Ref: APP/Y3940/C/20/3245890

Land to the south of Bridge Paddocks, Braydon Road, Leigh, Swindon, Wiltshire SN6 6RQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Caroline Davies and Appeal B is made by Mr Michael Glyn Powell, both against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 17 December 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the formation of enclosures in breach of an Article 4 Direction by the way of the erection of gates, fencing and timber posts as well as the laying of a hard-surfacing.
 - The requirements of the notice are:
 - a) *Permanently remove the unauthorised fencing, fence posts, timber posts and gates from the land.*
 - b) *Permanently remove from the land the unauthorised hard-surfacing which has been laid to form the trackway from the entrance gate to the fenced enclosures.*
 - c) *Permanently remove from the land the mounds of earth which have been created as a result of the unauthorised works.*
 - d) *Permanently remove from the land all materials and debris resulting from compliance with 5 a)-c) above.*
 - e) *Permanently remove from the land all plant and equipment associated with the erection of the unauthorised fencing fence posts timber posts and gates and the laying of the hard surfacing*
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(e) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
 - Appeal is B proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

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

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

3. Although the two appeals are made by different landowners, they both relate to the same overall site, and to the same enforcement notice, and therefore it is appropriate that they be dealt with together.

Appeal A – the appeal by Caroline Davies

Main Issue

4. The main issue is whether copies of the enforcement notice were served as required by section 172 of the Act, and if not, whether that failure has resulted in substantial prejudice.

Reasons

5. The onus of proof on an appeal on this ground lies with the appellant, with the test being the balance of probabilities. The appellant is a part-owner of the enforcement notice site, which is split into a number of plots, with a number of different ownerships. The appellant claims that the Council had been made aware of the sale of parts of the appellant's plot prior to the issue of the enforcement notice. I have not been told who those purchasers are, and I have not been provided with any proof of their ownership.
6. The Council says that it carried out a Land Registry Search on 19 November 2019, shortly before the issue of the notice, which revealed that the appellant was the owner of a plot on part of the wider site. A further Land Registry Search was carried out on 16 January 2020, which reveals that there had been no change in ownership of any part of the appellant's plot.
7. Accordingly, on the balance of probabilities, there is insufficient evidence to satisfy me that the notice was not served on everyone who should have been served. Accordingly, the appeal on ground (e) fails.

Conclusion on Appeal A

8. The appeal on ground (e) fails, the appeal is dismissed and the notice is upheld.

Appeal B – the appeal by Mr Michael Glyn Powell

Appeal on ground (a) – that planning permission should be granted

Main Issue

9. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

10. The appeal site forms a part of large field in the open countryside, typified by scattered dwellings and farms, amidst wide expanses of open field. The appeal field is bordered by Braydon Road to the east, a field to the west, a railway line in a cutting to the south, beyond which are more open fields, and a group of mobile homes and associated buildings to the north, again with open fields behind.

11. The development subject of the enforcement notice consists of two areas of fencing, on either side of an access track leading from Blaydon Road. The area to the south has been fenced off alongside the track by high close-boarded fencing, interrupted by a pair of metal gates. The close-boarded fencing has a return section which extends to the south for well over 100m, and a short section lies parallel with the railway line. To the north of the access track, a smaller section of close-boarded fencing exists, punctuated by an ornate metal gate, painted in black, and topped with finials.
12. The access track has been surfaced with hardcore and similar material for a short distance from Braydon Road, and a part has what appears to be fly-tipped rubble on. The track continues unsurfaced to the western edge of the field.
13. The appellant argues that it is right and proper for a landowner to be able to secure his land. I would broadly agree with this proposition. However, the type of enclosure should respond both to context and need. Although the lawful use of the field is that of agriculture, no agricultural use is being made of it, and I have not been told of any future agricultural use which is intended, and therefore at present, there can be no need for any enclosure.
14. Moreover, the types of enclosures which have been erected on the enforcement notice site consist of high close-boarded fencing, which is very domestic in character and appears wholly out of place in an agricultural context. The fencing is seen from Braydon Road, and from the public footpath which runs along the southern boundary of the enforcement notice site. Whilst it appears that the footpath is not well used, as its route from the railway bridge is somewhat overgrown, that may not always be the case.
15. The appellant has not sought to justify the hard-surfacing of the access, and has not advanced any planning merits in its favour, other than to say that it causes "no senior harm". The hard-surfacing serves no clear agricultural purpose over and above the unsurfaced field access, and it appears as an unwarranted urbanising feature, out of character with the rural character of the area. I find that it causes harm to local character and appearance, albeit that the degree of harm is small.
16. I find that the enclosures and the hard-surfacing do not amount to good design, respecting the undeveloped agricultural character of the area, and that they harm its appearance. The development conflicts with Core Policy 51 of the Wiltshire Core Strategy, which aims to ensure that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character.
17. As an Article 4 Direction is in force, which removes rights to erect means of enclosure under the Town and Country Planning (General Permitted Development) (England) Order 2015, there is no fallback position to take into account.

Other matters

18. The requirements of the enforcement notice engage with the rights of the appellant to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the

public interest. In this case, upholding national and local planning policy, and the importance of preserving and enhancing the character and appearance of the area are matters of legitimate public interest. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellant's rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

Conclusion on ground (a)

19. Accordingly, I find that the development should not be granted planning permission, and that the appeal on ground (a) fails.

Appeal on ground (g) – that the period for compliance is too short

20. The notice specifies a period of 3 months for compliance. In the normal course of events, this would be ample time to carry out the required steps. However, I am aware that the Covid-19 pandemic has had an impact on the availability of contractors. However, as restrictions on outdoor work have now been eased, I consider that 3 months is a reasonable period to arrange and execute the work required. Accordingly, the appeal on ground (g) fails.

Conclusion on Appeal B

21. For the reasons given above, the appeal is dismissed, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended and the notice is upheld.

JP Roberts

INSPECTOR