



Appeal Decisions

Site visit made on 13 October 2020

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 04 December 2020

Appeal A Ref: APP/P1615/W/20/3249690

Land off Phillips Lane, Redmarley, Gloucestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr M Parrott against the decision of Forest of Dean District Council.
- The application Ref P1247/19/FUL, dated 22 July 2019, was refused by notice dated 26 September 2019.
- The application sought planning permission for the erection of an agricultural barn, creation of a new access within the site and associated works without complying with a condition attached to planning permission Ref P0380/18/FUL, dated 18 June 2018.
- The condition in dispute is No 02 which states that: *The development hereby permitted shall be carried out in accordance with the approved plans listed in the table below.*
- The reason given for the condition is: *For the avoidance of doubt and in the interests of proper planning.*

Summary of Decision: The appeal is dismissed.

Appeal B Ref: APP/P1615/C/20/3250243

The property known as Land South of Phillips Lane, Redmarley, Gloucestershire GL19 3NF

- 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 Michael Parrott against an enforcement notice issued by Forest of Dean District Council.
- The enforcement notice, numbered EN/0119/19, was issued on 4 March 2020.
- The breaches of planning control as alleged in the notice are, without planning permission, the construction of a hardstanding, access splays and close boarded fencing with associated access gates.
- The requirements of the notice are:
 - a. Demolish the access gates and fencing and remove hardstanding and associated planting located within the blue hatched area as marked on enclosed site location plan 1.
 - b. Replant the hedgerow following the planting specification as outlined in Appendix 2 within the locations as blue lines marked on enclosed site location plan 2.
- The period for compliance with the requirements is on or before 31 December 2020.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal succeeds in part on grounds (c), (f) and (g) and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters – Appeals A and B

1. The site addresses in the banner headings, taken from the application forms and enforcement notice respectively, differ slightly but relate to the same location. Although the delineated appeal site for Appeal B is larger than that of Appeal A, the matters alleged in the enforcement notice in respect of Appeal B are essentially the same as those considered and refused planning permission under Appeal A.
2. The original planning permission was granted on 18 June 2018¹ for the erection of an agricultural barn, creation of a new access within the site and associated works. Following complaints received the Council carried out a site inspection on 22 March 2019 and found the works carried out to be materially different to the approved plans. A retrospective application² for the variation of condition 02 of the original planning permission (Appeal A) was subsequently made on 22 July 2019 to allow for the erection of gates and a 1.8m fence.
3. Therefore, as the condition was breached before the planning application was made, I have determined Appeal A under s73A of the Town and Country Planning Act 1990, as amended (the 1990 Act), which is to retain the development as shown on the amended plans rather than in compliance with condition 02 of the original planning permission, which specifies the approved plans of that permission.
4. The appellant's statement in respect of Appeal A argues that the only part of the works which is not permitted development is the fencing adjacent to the highway. However, whether or not planning permission is required for the works is not a matter for me to determine within the context of an appeal made under s78 of the 1990 Act. Nevertheless, these are matters which I have considered as part of Appeal B.

The Enforcement Notice – Appeal B

5. The enforcement notice was issued under s171A(1)(a) of the 1990 Act, which relates to the carrying out of development without the required planning permission. This tallies with the alleged matters which are, without planning permission, the construction of a hardstanding, access splays and close boarded fencing with associated access gates. The appellant raises that the enforcement notice has not been issued under Section 171A(1)(b), which is a failure to comply with any condition or limitation subject to which planning permission has been granted. The appellant's view is that the notice is not capable of modification to include sub-section 171A(1)(b) without causing injustice.
6. However, development which differs materially from a scheme granted planning permission is development undertaken without planning permission. The notice is therefore correct. Even if it were not, the alleged matters would essentially relate to the same development, of which the appellant is fully aware, so I could correct the notice without causing injustice.
7. Section 2 of the enforcement notice (the land to which it relates) refers to 'the attached plan'. However, there are two plans attached to the notice. I am satisfied that I am able to make this reference plural without causing injustice.

¹ Application Ref: P0380/18/FUL

² Application Ref: P1247/19/FUL

Appeal B on Ground (c)

8. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged matters did not constitute a breach of planning control.
9. Article 3 and Schedule 2, Part 2, Class A of the GPDO³ grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A⁴ if the height of that erected or constructed adjacent to a highway used by vehicular traffic would exceed 1m above ground level, or 2m for any other gate, fence, wall or means of enclosure.
10. The appellant contends that it is only the part of the fencing that is adjacent to the highway which is not permitted development. It is also argued that the gates are permitted by Part 2, Class A as they are not adjacent to the highway, being set back from it, and are under 2m in height. However, the fence and the gates combine to create a continuous, single structure. The correct approach therefore is to consider the development as a whole, rather than its component parts. On the balance of probabilities the fence and gates constitute a single act of development and the development in its entirety amounts to a breach of planning control.
11. The Council confirm Phillips Lane to be an unclassified highway. In such circumstances, Part 2, Class B of the GPDO provides that the formation, laying out and construction of a means of access to a highway is permitted development where that access is required in connection with development permitted by any Class in Schedule 2 (other than by Class A of Part 2).
12. The appellant argues that the other permitted development in this case is Part 6, Class B, which provides that the carrying out on agricultural land⁵ of development consisting of the provision, rearrangement or replacement of a private way and the provision of a hard surface, where reasonably necessary for the purposes of agriculture within the unit, are permitted development.
13. However, Part 6, paragraph B.1(b) states that development is not permitted by Class B if the external appearance of the premises would be materially affected. For the reasons explained below, I find that the private right of way and hardstanding has materially affected the premises, compared to the pre-existing arrangement, such that they do not benefit from Part 6, Class B permitted development rights. As a consequence, the means of access does not benefit from the permitted development rights conferred by Part 2, Class B, because it is not required in connection with other development that is permitted development.
14. However, the Council has approved an application⁶ to partially discharge conditions 03 (landscaping), 04 (biodiversity) and 07 (drainage) of the original planning permission. Condition 03 deals with both hard and soft landscaping and the approved block plan (Drawing No. 638/002 Rev B) shows an access/hardstanding finished in MOT type 1 stone that is essentially the same in terms of its area and geometry, as that refused as part of the s73A application

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

⁴ Limitation A.1(a) and (b)

⁵ Comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area

⁶ Application Ref: P0004/19/DISCON approved 20 March 2019

(Appeal A) and which reflects that as constructed. Therefore, the access and hardstanding details, forward of the fence and gates have already been approved by the Council.

15. The hardstanding area behind the gates is bigger than that shown on the approved block plans (Rev A and B) but the difference is not significant and does not materially affect the external appearance of the premises. I am therefore satisfied, on the balance of probabilities, that this aspect is permitted by Part 6, Class B(e) of the GPDO.
16. Part of requirement 5.a of the enforcement notice is to remove associated planting. This does not form part of the allegation. In any case, as planting does not constitute development as defined by s55 of the 1990 Act, there is no breach of planning control in this regard.
17. Requirements (5.b) of the notice is to replant the hedgerow within the annotated locations. Notwithstanding that the removal of hedgerow does not form part of the alleged matters, the approved landscaping scheme shows that part of the roadside hedge would be removed to create a splayed access.
18. Bringing the above together, the ground (c) appeal succeeds in relation to the hardstanding and access splays (including new planting and loss of pre-existing hedgerow) as it has been shown, on the balance of probabilities, that their construction did not constitute a breach of planning control. The notice will be corrected to delete references to hardstanding and access splays in the allegation and related requirement. It has not been demonstrated, on the balance of probabilities, that the close boarded fencing and gates were not in breach of planning control. The ground (c) fails in this regard.

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

19. The approved block plan⁷ of the original planning permission provides limited details of the access other than showing a track running from a hardstanding surrounding the barn to the edge of the highway. The application, which is the subject of Appeal A, essentially sought to replace that plan with a revised block plan⁸ showing a splayed entrance/hardstanding, gates set back from the Phillips Lane, close boarded fencing and revisions to the internal access track/hardstanding area, in stone aggregates.
20. Ground (a) of Appeal B is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. This ground is concerned with the planning merits of the case and raises the same issues as the deemed application for planning permission. It also raises the same issues as Appeal A. I shall therefore deal with them together except where the circumstances warrant consideration of the appeals separately.

Main Issue

21. The main issue is the effect on the character or appearance of the area and the Lowlands Conservation Area.

⁷ Drawing No: 638/002 Rev A

⁸ Drawing No: 638/002 Rev C

Reasons

22. The appeals site is located in the countryside and within the Lowbands Conservation Area, for which the appellant highlights there is no character appraisal. Nevertheless, it is evident that its special interest is derived from its distinctive low-density geometric settlement pattern arising from its Chartist origins of the mid-19th Century. The overall character is distinctly rural with dispersed bungalows set back within their plots along a pattern of narrow lanes flanked by established hedgerows. Phillips Lane is largely characteristic of the Conservation Area with its straight lines, narrow width and predominance of hedgerow enclosures.
23. I acknowledge that there are sections of the lane which are more open but the enclosures in place of hedgerow are formed from low, open, rustic ranch style timber fencing. I also observed numerous other access points on both sides of the lane but none that I saw are comparable to the appeals development. Even though many appear to have been widened and the set-back increased, they are in the main smaller in area and scale, enclosed by either hedging and or low ranch style timber fencing, often with agricultural style field gates.
24. These accesses and enclosures are in keeping with the rural context and setting of Phillips Lane and make a positive contribution to the character and appearance of Conservation Area.
25. In contrast, the significant depth and expanse of the appeals site access, combined with the high solid timber fencing and gates, creates a stark and utilitarian frontage that appears completely out of place within the context I have described. The associated loss of hedgerow and the scale of the access also undermines the sense of enclosure in this part of Phillips Lane. I therefore find significant harm to the rural character and appearance of the lane and Conservation Area.
26. However, as noted, prior to the Appeal A application, the Council approved an application for the discharge of landscaping condition 03 of the original planning permission. In doing so the Council approved the extent of the access and hardstanding area in front of the fence and gates, as shown on drawing number 638/002 Rev B. Consequently, I have already found under ground (c) of Appeal B, that these matters were not in breach of planning control. For different reasons, I have also reached the same conclusion for Appeal B in respect of the additional hardstanding area behind the fencing and gates.
27. Therefore, for Appeal B, I am only able to consider those matters which I have found are in breach of planning control, namely the fence and gates. That is not the case for Appeal A but the effective fallback position remains an important consideration. In addition to those fallback aspects, I have found that the additional hardstanding behind the fencing and gates does not materially affect the external appearance of the premises, when assessed against that which has been approved. It follows, for my consideration of Appeal A, that the same essentially preserves the character and appearance of the Conservation Area.
28. Nevertheless, even taken on their own, the solid timber fence and gates represent an alien and unduly dominant feature in an area characterised by hedges and traditional lower and open agricultural style fencing. Indeed, I find

- their scale and appearance to be more akin to an industrial setting rather than an intimate, rural lane.
29. The planting provides some, but limited mitigation to the external elevation of the fence, which it is still visible and stark. I appreciate that the planting will further mature but its ability to do so will be constrained by the limited space between the fence and the concrete kerbs. In any case, the planting will be much less effective during the winter months. Whilst planting inside of the boundary would soften the appearance of the fence from the south, it would take time to properly establish and would also be subject to seasonal effectiveness.
30. I am also mindful that similar arguments could be repeated all too often, with such physically harmful development being justified by screening, to the overall detriment of the character of the countryside. Moreover, no such planting/mitigation is possible in respect of the gates. It follows therefore that I do not consider the harm arising from the fence would be overcome by an additional landscaping condition.
31. I also note that the fencing is annotated as 2m high on the submitted block plan (Rev C). This is inconsistent with the application as made by the appellant and description given by the Council, both of which refer to an existing height of 1.8m. Consequently, replacing the approved block plan Rev A with Rev C would allow the existing 1.8m fence to be further increased in height, with the associated additional harm.
32. For these reasons, I find that the fencing and gates fail to preserve or enhance the character or appearance of the Conservation Area, the desirability of which is fully anticipated by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, the National Planning Policy Framework (the NPPF) and Forest of Dean District Council Allocation Plan 2006 to 2026, Policy AP 5. These conclusions apply to both Appeal A and Appeal B. For Appeal A, the harm is compounded by the hardstanding area and access splays forward of the fencing.
33. The NPPF expects that great weight is given to the conservation of heritage assets irrespective of whether that harm is substantial or less than substantial. In this case I conclude that the development leads to less than substantial harm to the Conservation Area taken as a whole. In such circumstances the NPPF requires that any identified harm is weighed against any public benefits the development might secure.
34. In respect of the purported highway safety benefits, I saw during the course of my site visit, no pedestrians walking along Phillips Lane and a very low level of vehicular use. I appreciate that this provides a snap-shot of the local highway conditions but the evidence does not suggest that this would be substantially different at other times of the day.
35. There are in any case numerous other pedestrian refuge points and passing places for vehicles, which do not result in comparable harm. Moreover, I have no evidence, such as road safety data or personal injury collision data to show that any other accesses have resulted in conflict between pedestrians and vehicles, or a particular highway safety issue. That lack of evidence is unsurprising based on my own observations. Therefore, any additional highway safety benefits to the operation of Phillips Lane are likely to be limited.

36. The appellant appears to suggest that the Council was remiss in that it did not apply a highways/access condition to the original planning permission. Be that as it may, I note the email correspondence during the course of that application and the supporting Design and Access Statement which confirm that the intention was not to install any new fencing and that the existing accesses to the public highway were to remain unaltered. This lack of change is essentially reflected in the approved block plan.
37. The appellant also stated that the existing gates were to be used and that the accesses were suitable for agricultural use, thereby undermining the arguments now advanced that the current arrangement is necessary for those purposes. Nevertheless, the appellant's tracking plans do demonstrate that the present access arrangement is beneficial to its functioning. Consequently, there are highway safety benefits arising from associated vehicular movements.
38. In overall terms, for Appeal A, highway safety benefits attract moderate weight against the heritage harm. For Appeal B, highway safety benefits of the fence and gates are limited because the access itself is not in breach and therefore should not be properly included within the balance.
39. The appellant states that the fencing was erected for instant security having been alerted to a series of rural crimes affecting similar land in the area. In this regard I have noted the neighbourhood watch reports but I am not aware of any other security options considered, such as CCTV and or alarm systems, which would achieve similar ends without the associated harm. Moreover, representations received dispute the appellant's security concerns. Indeed, the neighbourhood watch coordinator confirms that Lowbands has a very low crime rate. I therefore attach little weight to the stated security benefits.
40. I accept that the existing arrangement will provide benefits to the farming enterprise, which in turn would be beneficial to the local economy. However, no evidence is provided to quantify such gains, which are likely to be limited. Notwithstanding the loss of any pre-existing hedgerow, any landscape benefits arising from new planting are significantly outweighed by the harm arising from the fencing and gates. Given the limited extent of new planting, any biodiversity gains are likely to be very limited.
41. Therefore, even without the additional harm of the splayed access, hardstanding and associated loss of hedging, I find that the harm to the designated heritage asset arising from the fencing and gates outweighs the benefits advanced in favour of the appeals.
42. I also find conflict with Forest of Dean District Council Core Strategy Policy CSP.1 and Allocation Plan Policy AP 4. In respect of the former, the design and construction does not, for the reasons explained, take into account important characteristics of the environment and conserve, preserve or otherwise respect them in a manner that maintains or enhances their contribution to the environment. In respect of the latter, I do not find the development to be of a high quality that makes a positive contribution to the design quality of the area, thereby conflicting with the second and third bullet points of that policy.
43. The additional development plan conflict therefore compounds the heritage harm I have found. I find no other additional benefits or material considerations which outweigh the conflict I have found with the development plan as a whole.

Overall conclusion on Appeal A and ground (a), the deemed planning application of Appeal B

44. I am mindful that the appellant has requested that I issue a split decision should one aspect of the proposal be found acceptable and another harmful. Whilst there may be potential issues with functional severance, in physical terms the principle of issuing a split decision would be appropriate for Appeal A. Indeed, withholding planning permission for the access/hardstanding (forward of the fence) would be inconsistent with the approved landscaping scheme.
45. However, to do so would result in conflict with the description of the s73A application which is the '*variation of Condition 2 (approved plans) of planning permission P0380/18/FUL to allow for the erection of gates and a 1.8m high fence.*' In this regard, the description contains the only aspects which I have found to be unacceptable for the reasons explained. Applying a condition to exclude the only matters contained within the description would therefore be confusing and contradictory and effectively nullify the benefit of the permission. Such a condition would not therefore pass the tests of reasonableness.
46. I am also mindful that the importance of issuing a split decision for Appeal A is diminished by my findings for Appeal B, which remove those matters which have been approved from the alleged breach of planning control.
47. For the reasons given above, and having had regard to all other matters raised, I conclude that the ground (a) appeal of Appeal B fails and the deemed planning application and Appeal A should be dismissed.

Appeal B on Ground (f)

48. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
49. Requirement 5.a is to demolish the access gates and fencing and remove the hardstanding and associated planting. The purpose of this requirement is therefore to remedy the breach. In this situation, the only appeal that can be considered on ground (f) is whether the requirement is excessive to remedy the breach. It cannot be argued that the requirements are excessive in order to remedy harm. The appellant suggests that any harm would be mitigated by planting a hedge on the inside of the fence to supplement that already planted outside of it. I have considered this matter under ground (a) and come to the opposite conclusion.
50. I have also found under ground (c) that the fencing and gates are not permitted development. The appellant argues that for any fencing that is deemed to be adjacent to the highway there is no reason why the breach could not be under-enforced as there is little point in removing the entire fence when a 1m fence could be re-erected as permitted development.
51. In acknowledgement of Part 2, Class A(ii)⁹ permitted development rights the Council has requested that I amend requirement 5.a of the enforcement notice to read:

⁹ The Council actually refer to Part 4, Class A but I've assumed this to be in error as Part 4 relates to temporary buildings and uses

Remove the hardstanding completely, including lowering the access gates and associated wooden fence splays to a maximum of 1 metre.

52. However, I have already found under ground (c) that the size and extent of the hardstanding forward of the fence and gates has already been approved. Although the hardstanding area behind the gates is greater than that shown on the approved block plan (Rev B), the difference is not significant and that is reflected in my grounds (a) and (c) findings. Accordingly, I find that requiring the complete removal of the hardstanding to be excessive to remedy the breach.
53. The Council's requested amendment also obviates the requirement for associated planting to be removed, which I have already found should be deleted as part of my ground (c) considerations.
54. From requirement 5.a, and its suggested replacement, this leaves only the gates and fencing, which I have found under ground (c) to be a single act of development. Whilst the GPDO is not retrospective it may offer a valid fallback position. The question that arises is whether the requirement exceeds what could be achieved if permitted development rights were exercised. As noted, Part 2, Class A of the GPDO grants planning permission for the erection of a gate or fence adjacent to a highway which would not exceed 1m in height.
55. I therefore find that it is excessive for the notice to expressly require the gates and fence to be demolished in their entirety, when the enclosure could be rebuilt to 1m in height as permitted development. I shall therefore vary the notice to require the gates and fence to be reduced to a maximum of 1m in height.
56. Requirement 5.b of the notice is to replant the hedgerow within the delineated locations. Notwithstanding that the removal of hedgerow does not form part of the alleged matters, I have already found under ground (c) that the approved landscaping scheme shows that part of the roadside hedge would be removed to create a splayed access. It follows that requirement 5.b is excessive to remedy the breach of planning control. I shall vary the enforcement notice by deleting it.
57. The appeal on ground (f) succeeds to the extent explained.

Appeal B on Ground (g)

58. A ground (g) appeal is that the time given to comply with the enforcement notice falls short of what should be reasonably allowed.
59. In this case the enforcement notice sets a date of 31 December 2020 for compliance. On the basis that the notice would have taken effect on 6 April 2020, this amounts to a period of approximately nine months.
60. The Council acknowledge that as a result of the appeal the deadline of 31 December 2020 is too onerous. It has therefore proposed the following separate periods:

Step (a) to be fully complied with within 3 months from the date of the appeal decision

Step (b) to be fully complied with on or before 15 November 2021.

61. The appellant suggests at least nine months, or 'to be a safe', a full 12 months.
62. Having regard to my findings on grounds (c) and (f), the requirements of the notice are substantially reduced and the potential difficulties arising from meeting planting seasons, removed. Consequently, extending the period of compliance to 12 would not be justified. Nevertheless, it would not be appropriate to reduce the period to less than that effectively given in the enforcement notice. I shall therefore vary the enforcement notice to expressly set the period of compliance as nine months, prior to upholding it. The appeal on ground (g) succeeds to that extent.

Other Matters

63. Whether the landscaping carried out meets the specification of the approved details is a matter for the Council.
64. I have noted the appellant's comments on how the application was assessed by the Council and also the concerns of local residents over the actions of the appellant. However, such matters are not for these appeals which I have determined afresh on the basis of all the evidence before me.
65. The appellant has not made an application for costs against the Council but has suggested that I should consider issuing such an award. However, I have no reason to believe that the Council has acted unreasonably to prompt me to pursue the suggested course of action and initiate an award of costs.

Formal Decisions

Appeal A

66. The appeal is dismissed.

Appeal B

67. It is directed that the enforcement notice be corrected and varied by:

- Replacing 'plan' with 'plans' in paragraph 2.
- Deleting requirement 5.a and replacing it with:
Lower the height of the gates and close boarded fencing to a maximum of 1 metre above ground level.
- Deleting requirement 5.b.
- Deleting paragraph 6.1) and replacing it with:
The time for compliance is nine months.

68. Subject to those corrections and 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.

Richard S Jones

INSPECTOR