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## Appeal Decisions

Site visit made on 23 November 2020

**by Hilary Orr MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 January 2021**

**Appeal A Ref: APP/D3830/C/20/2352272**

**Appeal B Ref: APP/D3830/C/20/2352273**

**Land at Kiln Cottage, Turners Hill Road, Crawley Down RH10 4NW**

- The appeal is 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 Mr Tony Oliver and Appeal B by Mr Robin Simmons against an enforcement notice issued by Mid Sussex District Council.
- The enforcement notice, numbered EF/19/0465, was issued on 22 April 2020.
- The breach of planning control as alleged in the notice is:
  - (1) The formation, laying out and construction of a means of vehicular access onto a classified Rd (B2028) Turners Hill Rd in the approximate location shown coloured green and marked a on the attached plan ("the unauthorised access) and the use of the unauthorised access for vehicular access into the land and vehicular egress onto a classified road;
  - (2) The formation, laying out and construction of a concrete track in the approximate location shown edged and hatched orange on the attached plan ("The unauthorised track"); and
  - (3) The Erection of fences and gates in excess of two metres in height in the approximate location marked blue on the attached plan ("The unauthorised fences and gates").
- The requirements of the notice are:
  - (1) Cease the use of the unauthorised access for vehicular access into the land and vehicular egress onto a classified road.
  - (2) Cease all work relating to the formation, laying out and construction of the unauthorised track including any work to extend and/or add to the unauthorised track.
  - (3) Permanently stop up the unauthorised access
  - (4) Take up and remove from the land all of the imported materials including but not limited to the concrete sleepers and hardcore base used to form the unauthorised access and the unauthorised track.
  - (5) Remove from the land the unauthorised fences and gates.
  - (6) Remove from the land to an authorised place of disposal all equipment, materials, paraphernalia, waste and debris resulting from compliance with requirements 5.1) to 5.5).
  - (7) Make good, reinstate and restore the land to its condition before the breach of planning control took place including the replacement and planting of any trees, hedges and bushes removed.
- The period for compliance with the requirements is:
  - 1) The requirement set out in 5.1) and 5.2) above must be complied with within 24 hours after the notice comes into effect.
  - 2) The requirements set out in 5.3) and 5.5) above must be complied with within 14 days after the notice comes into effect.
  - 3) The requirements set out in 5.6) above must be complied with within two months after the notice comes into effect.
- **Appeal A** is proceeding on the grounds set out in section 174(2) (a), (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.

- **Appeal B** is proceeding on the grounds set out in section 174(2) (f) and (g) 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.
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## **Decision**

### **Appeal A**

1. It is directed that the enforcement notice be varied by: the deletion of steps 5.1 to 5.7 in paragraph 5 of the notice, in full and the substitution of the following:
  - 1) Permanently stop up the unauthorised access.
  - 2) Take up and remove from the land all materials, including hardcore, concrete and railway sleepers, used form the unauthorised access and the track.
  - 3) Dismantle all unauthorised fencing and gates.
  - 4) Restore the land to its former condition prior to the breach taking place.
2. In addition, the consequential deletion of steps 1) to 4) in paragraph 6 of the notice and the substitution of:

Step 1). Within 14 days of the notice taking effect.

Steps 2) to 3). Within three months of the notice taking effect;

Step 4). By the end of the first planting season following the notice taking effect.
3. Subject to the variations, the appeal is dismissed, 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 B**

4. It is directed that the enforcement notice be varied by: the deletion of steps 5.1 to 5.7 in paragraph 5 of the notice, in full and the substitution of the following:
  - 1) Permanently stop up the unauthorised access.
  - 2) Take up and remove from the land all materials, including hardcore, concrete and railway sleepers, used form the unauthorised access and the track.
  - 3) Dismantle all unauthorised fencing and gates.
  - 4) Restore the land to its former condition prior to the breach taking place.
5. In addition, the consequential deletion of steps 1) to 4) in paragraph 6 of the notice and the substitution of:

Step 1). Within 14 days of the notice taking effect.

Steps 2) to 3). Within three months of the notice taking effect;

Step 4). By the end of the first planting season following the notice taking effect.

6. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

### **Preliminary matters and the notice**

7. Appeal A is proceeding on ground (a), (f) and (g). As no fee for appeal B has been paid, it is proceeding on grounds (f) and (g) only. The appellants case for both appeals on grounds (f) and (g) are largely the same and I have therefore considered these together.
8. An error has been identified in the requirements notice which the Council agree, fails to give a time for compliance with step 5.4. The Council have suggested that I could correct this as part of the appeal. To my mind notwithstanding this omission, the other requirements of the notice make it clear what the notice seeks to achieve. Thus, I consider that I can vary the notice, without causing injustice to the parties. I shall consider this and any other matters relating to the notice under grounds (f) and (g).
9. The allegation in the notice refers to three elements, namely: the construction of the vehicular access, the concrete track and the fences and gates. However, I have no evidence to suggest that these works were not carried out as a single operation and I have accordingly considered the appeal on this basis.
10. During the course of the appeal and after the issue of the notice, additional plans have been provided by the appellants which attempt to overcome the Council's concerns. The proposed plans show a number of proposed changes, including alterations to the alignment and siting of the track, the addition of a new length of track and parking area, provision of new adjusted 2m high timber fencing and alterations to the surface of the track. I have reviewed these plans and in my judgement these changes result in a significantly different development to that has been carried out and is subject to the notice. Consequently, whilst I have had regard to these in my decision, I can only consider the planning merits of the development that has already taken place. The appeal on ground (a) will be assessed on this basis.

### **Appeal A ground (a) and the deemed application**

#### **Main Issues**

11. I have reviewed the reasons why the Council issued the notice and consider that the main issues are:
- The effect of the development on the character and appearance of the area; and
  - The effect of the development on highway safety.

#### **Reasons**

##### *Character and appearance*

12. The site comprises a detached single storey dwelling set within a large wooded plot. To the south there are a number of residential properties with woodland

and open countryside to the north. The site lies to the east of the B2028 Turners Hill Road which is a classified road. There is an existing access to the property from the road, leading to an area of parking to the front of the dwelling. There is a modest grassed area immediately to the rear of the dwelling. Further to the rear, lies an area of woodland known as Warren Wood, which the parties agree is designated ancient Woodland.

14. From my site visit other dwellings in the area are generally marked with either hedges or have open frontages. Similarly, the fields opposite, and adjacent to the site, have traditional hedging, interspersed with established trees adding to the attractive rural character of the area.
15. The development, subject to this appeal, has resulted in a large new access sited immediately adjacent to the original access to the dwelling. Timber close boarded fencing, painted black, has been constructed around the access, extending towards the rear of the property and the woodland. Large timber gates have been set back from the highway, forming the bell-mouth of the access.
16. It is not disputed that the fence and gates required planning permission when built, as they exceeded the height limitations conveyed by schedule 2 Part 2 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO). However, it is part of the appellants case that the Council's concerns only arise, as the fence is slightly higher than that allowed by the GDPO. Nevertheless, planning permission is required, and this is the starting point for the appeal.
17. From my site visit, and in stark contrast with other residential accesses and boundary treatments, the scale and design of the access, fencing and gates means that they are highly visible in the street scene. The development appears overly large, harsh and incongruous, when viewed in the context of the prevailing rural character of the area. Moreover, the proximity of the fence to the access allows little scope for any planting or screening to soften its appearance.
18. A substantial track has been constructed from this access leading into the woodland and the remainder of the site to the rear. An additional spur track has been created to rear of the grassed garden area. The parties agree that part of the track lies within the 15m buffer zone of the Ancient Woodland.
19. It was clear from my site visit that the works are incomplete. Nevertheless, it provides a weight bearing road, more akin to that found at commercial premises, or temporary haul roads. Consequently, in my judgement, the scale, design, siting and materials, result in development that appears as an incongruous feature in the context of this rural location. There is nothing in the evidence to suggest that there is any agricultural or forestry use currently taking place. Moreover, I saw no evidence of any agriculture or forestry activity at my visit, to justify a need for an access and track on this scale.
20. I recognise the appellants intention to reduce the height of the fencing and gates. However, the enforcement notice targets the development that has been carried out and accordingly it is this that I have considered. I shall go on to consider whether lesser steps would be appropriate under ground (f).

21. For the above reasons, I find that the access, track, fencing and gates cause unacceptable harm to the character and appearance of the area, due to their scale, siting and design. The development is therefore contrary to policies DP12, DP21, DP26, DP37 and DP38 of the Mid Sussex District Plan 2014-2031 (2018) (the LP). These policies in summary, seek to protect the intrinsic character and beauty of the countryside, by promoting high quality design that contributes positively to the private and public realm and protects areas of ancient woodland.

#### *Highway safety*

22. The new access lies immediately adjacent to the original access to the dwelling and results in three accesses onto Turners Hill Road, all in close proximity to each other. The road in this location, is subject to a 40 mph speed limit.
23. My attention has been drawn to requirements of the Manual for Streets 2, although I have not been provided with a copy of this document. The appellants intention to close the original access is also noted and it is recognised that this would allow a larger gap between the new access and the existing access for Rydal. It is acknowledged that this remedial work could be achieved through a suitably worded condition.
23. Nonetheless, it was clear from my site visit, that visibility to the south was obscured by vegetation when exiting any of the three accesses. Even with the closure of the original access, I have not been provided with evidence, to demonstrate that the vegetation falls within the appellants control, or that adequate visibility splays can otherwise be provided. The appellants submit that, when completed, the development will result in an improvement to highway safety. However, I have little evidence to demonstrate the extent of, and how that improvement to highway safety would be achieved.
25. For the above reasons, I am not satisfied that on the balance of probability, the development provides adequate visibility for those leaving the site, to ensure the safety of others using the highway. Accordingly, the development is contrary to DP21 of the LP which seeks to ensure that development is designed to provide a safer transport network.

#### **Appeal A and Appeal B – ground (f)**

24. The appeals on ground (f) are that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the works cease and specific steps are taken to remove the unauthorised development and to restore the land. I therefore consider that the purpose of the notice is to remedy the breach of planning control.
25. Broadly it is the appellants case, that the requirement to remove the fence and gates is excessive. This is because it only requires planning permission as it exceeds the limitations of the GDPO. Secondly, that the materials used have a value and so requiring removal to an authorised place of disposal is excessive. It is also submitted that in the absence of clear records as to the condition of the land prior to the unauthorised works then it is problematic to carry out the restoration requirements of the notice.

26. It is acknowledged that it is possible that replacement fencing and gates could be erected without the need for planning permission, and it may be possible to reduce their height, so that they accord with the GDPO. It is therefore necessary to me to assess, whether this would represent an obvious alternative to the steps required by the notice. To my mind, the fencing and gates form an integral part of the unauthorised development. Their siting and physical relationship to the new access and the track, means that they cannot reasonably be separated from the remaining development. Accordingly, I find that the steps required by the notice to remove the fencing and gates do no more than is required, to remedy the breach of planning control in this respect.
27. With regard to the second point, the purpose behind the notice is to remedy the breach of planning control. Thus, once the track, fencing and gates have been removed, the purpose of the notice has been fulfilled. The track has been constructed using reclaimed railway sleepers and as such these have an intrinsic value to the appellants and could be sold or possibly re-used in another location. Similarly, the timber used in the fencing and gates could be either sold or stored prior to being reused on site, with any requisite planning permission. Consequently, allowing these materials to be sold or reused, rather than taken to an authorised place of disposal, would not undermine the purpose of the notice. I shall vary the notice accordingly.
28. Turning to the appellants third submission. The scope of the notice is limited by s173(4)(a) and (b). Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. Moreover, it is an established principle, that the developer and the landowner are generally best placed to know the condition of the land, before the breach occurred. The evidence refers to an exchange of emails between the Council and the appellants with letters and emails sent to the owners between February and May 2020, prior to the issue of the notice in April 2020, and during the course of the development. It is therefore likely that the appellants will be aware what existed before the breach took place. I shall therefore vary the notice to reflect this position.
29. As operational development is involved, and a stop notice remains extant, step 5.1 and 5.2 do not serve any identified purpose. However, the requirement to permanently to close the opening together with a requirement to replant the original hedge is in my view necessary.
30. For the above reasons, I find that some the requirements of the notice exceed what is required and the appeal on ground (f) therefore succeeds to this extent. As the variation would not be more onerous than when first issued, the notice can be varied without causing injustice to the parties. Accordingly, I intend to vary the notice by deleting in full the requirements at paragraph 5 and replacing with the following;
- 1) Permanently stop up the unauthorised access.
  - 2) Take up and remove from the land all materials, including hardcore, concrete and railway sleepers, used form the unauthorised access and the track.
  - 3) Dismantle all unauthorised fencing and gates.
  - 4) Restore the land to its former condition prior to the breach taking place.

31. As a consequence of this change the time for compliance will also need to be varied as set out in ground (g).
32. For the above reasons, I find that the steps required by the notice exceed what is necessary to remedy the breach of planning control and the appeals, on ground (f) therefore succeed to this extent.

### **Appeal A and Appeal B – ground (g)**

33. It is the appellants case that the time for compliance with the notice is too short and should be extended to allow time for negotiations with the Council and an associated planning application to attempt to overcome the Council's concerns. From the evidence the Council have made it clear that it would not support various parts of the development.
34. The issue of the Stop Notice has achieved compliance over the use of the access. However, whilst the manner of closure is not prescribed, it is necessary to ensure that the access is permanently closed, until any replacement re-planting has fully established. For this reason, I consider that 14 days is a reasonable period of time to take these required steps.
35. As a consequence of the variations and the error in the notice, the time for compliance will also need to be varied. Accordingly, the times set out for compliance, should be varied by their deletion in full, and replacement with the following:
- Step 1. Within 14 days of the notice taking effect.
- Steps 2 to 3. Within three months of the notice taking effect;
- Step 4. By the end of the first planting season following the notice taking effect.
36. To this extent the appeals on ground (g) succeed.

### **Conclusion**

#### **Appeal A**

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

#### **Appeal B**

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

*Hilary Orr*

INSPECTOR