



Appeal Decision

Site visit made on 27 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: 22 January 2021

Appeal Ref: APP/W1850/C/20/3254937

Land at Stokes Hill, Stokes Lacy, Bromyard, HR7 4RE

- 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 Mike Moran against an enforcement notice issued by Herefordshire Council.
- The enforcement notice was issued on 2 June 2020.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a vehicular access and driveway including the laying of gravel and installation of electronic gates and walls shown outlined in blue on the attached plan. The removal of approx. [sic] 8m of hedgerow to facilitate the construction of the vehicular access and driveway.
- The requirements of the notice are:
 - (1) Permanently cease use of the vehicular access and driveway
 - (2) Remove all of the gravel from the area shaded in orange on the plan attached to this notice
 - (3) Remove the electronic gates and walls built for vehicular access
 - (4) Return the land to its former condition before the vehicular access and driveway were constructed and the electronic gates were installed by levelling the ground and re-seeding with grass
 - (5) Replant the hedgerow with a native species at a height of 60-80cm to replace the hedgerow that has been removed between points A and B as shown on the attached plan
- The period for compliance with the requirements is:
 - (1) 7 days from the date this notice takes effect
 - (2) 90 days from the date this notice takes effect
 - (3) 90 days from the date this notice takes effect
 - (4) 90 days from the date this notice takes effect
 - (5) 180 days from the date this notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) 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.

Decision

1. It is directed that the enforcement notice be corrected and varied by:
 - Deleting the text 'of approx. 8m' from the second sentence of paragraph 3.
 - Deleting sub-paragraph 5.(1) in its entirety.
 - Deleting 'between points A and B as shown on the attached plan' from sub-paragraph 5.(5).
 - Re-numbering sub-paragraphs 5.(2)-5.(5) as 5.(1)-5.(4).

- Deleting sub-paragraph 6.(1) and re-numbering sub-paragraphs 6.(2)-6.(5) as 6.(1)-6.(4).
2. Subject to the correction and 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.

The Site and Planning History

3. The appeal site includes a dwellinghouse known as Stokes Hill and land in the same ownership, which includes an arable field. The dwelling stands close to the northern boundary of the site which adjoins a private lane. The southern site boundary adjoins the A465 and it is lined with hedgerow except where that is punctuated by the alleged access, gates and walls.
4. The private lane to the north connects the appeal and other properties to the C1117 and then the A465. The alleged driveway and access provide the appeal house with a direct and private route to the A465. The appellant made two previous planning applications for a new vehicular access and driveway but the first was refused in June 2019¹ and the second was refused on 19 February 2020². I shall refer where necessary to the '2019' and '2020' applications.

The Appeal on Ground (d)

5. Ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The question is whether, on the balance of probabilities, the construction or installation of the alleged access, driveway, gates and wall was substantially complete four years before the date of the enforcement notice³. The material date is 2 June 2016 and the onus is the appellant to make his case.
6. The appellant has pleaded ground (d) only in respect of the alleged access and driveway; he claims that a track providing access between Stokes Hill and the A465 has been in existence since at least 1999. Whether or not that is right, it certainly appears possible that an access has been in place for more than four years; the Council has submitted a Google Street View image purported to be from 2009, which shows an agricultural field gate breaching the hedgerow beside the A465, in the same approximate position as the alleged gates.
7. However, it is also undisputed that works have taken place to the access and driveway in the past four years. The appellant acquired Stokes Hill in July 2017 and he says that the track then, although usable for the house move, was overgrown with weeds and grass. In November 2018, he improved the track, including by laying gravel, and he also constructed the brick wall and installed the alleged gates at the junction with the A465.
8. The appeal on ground (d) cannot succeed simply on the basis that there was a pre-existing access on the land; there is a question as to whether the works that took place in November 2018 amounted to the 'construction of an access and driveway...' as a matter of fact and degree.

¹ Application Ref: 190135

² Application Ref: 193650

³ s171B(1) of the Town and Country Planning Act 1990

9. The 2009 Google Earth image and indeed another aerial photograph from 2018 do not show any gravel track laid across the land. On the evidence, it appears likely that any pre-existing driveway was widened, lengthened (towards the house) and resurfaced in gravel. The access onto the A465 was also widened and altered with splays; the new gates and walls were installed and erected, following the removal of hedgerow, as part of those alterations.
10. Even if a track already existed on the land, it does not follow that subsequent works to the route would not amount to development that requires planning permission. As a matter of fact and degree, I find that the works which took place in November 2018 can be properly described as involving engineering operations or the 'construction of a vehicular access and driveway including the laying of gravel and installation of electronic gates and walls...'
11. Given the evidence of a pre-existing farm gate, I am not persuaded that the appellant removed approximately 8m of hedgerow and I shall correct the notice to delete that aspect of it. However, my main conclusion on ground (d) has to be that, on the balance of probabilities, the alleged development was not substantially complete by 2 June 2016. It was not too late for the Council to take enforcement action when it did and the appeal fails on ground (d).

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

12. The main issues are the effect of the appeal vehicular access, driveway, gates and walls on highway safety and the character and appearance of the area.

Reasons

Highway Safety

13. The alleged access meets the A465 at a point where the posted speed limit is 40mph but not far from where the national speed limit of 60mph applies. The appellant submitted a traffic speed survey with the 2020 application which found the 85th percentile driver speeds past the site entrance are approximately 51mph and 49mph in each direction; the Council and I accept that evidence.
14. It is clear that the pre-existing access to the site was not designed to afford drivers exiting or passing the site with adequate views of each other. Although the appellant carried out works to widen the access and extend visibility splays with the intention that it would be safe, the Council objects that there is still inadequate visibility at the junction. National guidance in the Design Manual for Roads and Bridges, and the Council's own Design Guide for New Developments indicate that the access should give drivers exiting the site unobstructed views in each direction of 160m in order to prevent a road traffic accident.
15. The appellant acknowledges that the existing splays fall short and I saw that visibility from the access, in both directions, is seriously compromised by the flanking hedgerow and walls and by the alignment of the A465. I find that use of the access would thus unacceptably compromise the safety of occupiers of and visitors to the appeal house; of occupiers of and visitors to the property served by a driveway on the opposite side of the A465; and of passing drivers.
16. I could not justify a grant of permission for the development on the basis that the pre-existing access was less safe. There is no evidence of that track being

- used for domestic purposes, or indeed used to any great extent at all. It only served farm fields and it was overgrown by the time that the appellant bought the property. In contrast, the alleged drive and access serve a large residential property which could be expected to generate several trips per day.
17. The National Planning Policy Framework (the Framework) seeks to ensure that development achieves safe and suitable access for all *users*, and in my view the access is not safe or suitable for the occupiers of the appeal house.
 18. I find that any deficiencies in the design of the junction of the C1117 and A465 could not justify my allowing this appeal. The Highways Authority has sought to mitigate risks to drivers caused by the layout of that junction by signs on the road, but I could not compel any public body to put up similar signs in the vicinity of the site. Also, the C1117/A465 junction would remain in use if the appeal is allowed, and it would potentially become less safe for its remaining users because of its proximity to the substandard access before me.
 19. The appellant also argues that planning permission ought to be granted for the alleged development on the basis that further works to the site boundary could be carried out to create splays of 160m to the west and 115m to the east. The appellant has submitted plans which show such splays could be created if the alleged gates are relocated some 3.15m back from the kerb and the alleged walls to each side of the gates are removed and hedgerow translocated.
 20. I agree with the Council that such works would not remedy the unacceptable risks caused by the development; a splay of 115m to the east would fall significantly below the 160m required based on the 85th percentile speeds. If a driver turned out of the site with such constrained visibility, oncoming drivers would not have the space to slow down and stop to avoid collision.
 21. Moreover, the deemed planning application relates to the development as alleged and built; there is no mechanism for incorporating any revised plans into any permission granted. The only way to require that the works proposed by the appellant are carried out would be to permit what is there subject to a condition that a scheme is submitted to and approved by the Council, and then implemented within a period of time – or the development is removed.
 22. If I were to impose such a condition in this case, it seems improbable that the Council would approve the appellant's plans, given their refusal of the 2019 and 2020 applications, their objections to this appeal and the fact that a splay greater than 115m could not be created to the east. Accordingly, it would be difficult for me to word a condition that has the requisite precision for the appellant to know what the scheme should look like.
 23. I do find that a condition could be reasonably imposed to require the submission of a scheme for resurfacing part of the driveway in a bonded surface, and that would suffice to overcome the Council's objection that the existing gravel surface makes the development even more dangerous. However, resurfacing would not address the harm caused through poor levels of driver visibility.
 24. I conclude that the alleged access is substandard in design, such that use of the appeal driveway and access will cause an unacceptable loss of highway safety – and that harm could not be overcome by condition. The development conflicts with Policies MT1 and SS4 of the Herefordshire Local Plan Core

Strategy 2011 – 2031 (LP) which require, amongst other things, that developments are designed and laid out to achieve safe entrances and exits. The development also conflicts, as described, with the Framework.

Character and Appearance

25. The alleged driveway, as described above, runs northwards from the A465 and access through intervening fields to a point to the south east of the dwelling. From its width, length and gravelled surface, I consider that the driveway appears as a suburban feature which seriously detracts from the landscape that it crosses and the rural character and appearance of the surrounding area. That there was a narrow and overgrown track on the land does not alter that assessment.
26. I find that imposing a condition to replace the gravel would not make the appearance of the driveway acceptable, because some replacement hard surface would be required and likely to appear equally incongruous. A condition that requires the planting of trees along the length of the driveway would not overcome or justify the harm caused by the development. Trees could only partly screen the driveway, and screening is not an answer to landscape harm; the argument could be repeated too often.
27. The access to the A465 has also been widened and the alleged gates are in fact higher as well as wider than the pre-existing farm gate. The alleged gates also have a domestic appearance, since they have been constructed with a steel frame, solid wood inserts and decorative steel bars, and they are attached to brick and stone pillars. The pillars form part of the alleged walls, which are splayed out from the access.
28. Otherwise, however, I saw that the A465 is generally lined by hedgerow or, to a lesser extent, open post and wire fencing. Accesses in the main comprise visually open agricultural steel gates. Notwithstanding that there are (clusters of) dwellings nearby, it is evident to people travelling along this road that they are in an area of largely open countryside.
29. I consider that the alleged access, gates and walls appear conspicuous and unacceptably discordant in their rural setting. I accept that most passers by would only have fleeting views of the development but that is not a reason to permit it, and the access and site boundary can in any event be clearly seen from the residential property on the opposite side of the A465.
30. I have noted the appellant's offer to set back the gates and replace the walls with hedgerow; a 'scheme' condition could require other landscaping works. But even if such a condition was reasonable, I am concerned that setting back the gates might serve to make the access or front part of driveway more prominent. The hedgerow would be on a splayed and not the traditional roadside line, and it might need to be maintained at a different height to the established hedgerows nearby because of the visibility issues at the site access.
31. In any event, improvements to the appearance of the site boundary treatment would not remedy the unacceptable visual harm caused by the driveway itself. I conclude that the alleged development causes unacceptable harm to the rural character and appearance of the area and the harm could not be wholly overcome by imposing conditions. The development conflicts with LP Policies

SD1 and LD1 which require it to be demonstrated that the character of the landscape has positively influenced the design of proposed development.

Other Matters and Conclusion

32. The appellant proposes that the landscaping scheme would be designed to secure a net gain in the biodiversity value of the site. However, there is not sufficient evidence for me to quantify that gain or even describe what the biodiversity enhancements might be. I do not dispute that some benefits could be achieved but I cannot find that they would outweigh the harm caused by the development or justify a grant of permission.
33. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should fail on ground (a) and the deemed planning application should be dismissed.

The Appeal on Ground (f)

34. 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.
35. The appellant objects that the notice requires the use of the alleged access and driveway to cease when there was a pre-existing access and track. Since the notice is not even concerned with the use of land, I agree that the first requirement is excessive and indeed seeks to make the appellant worse off than he was before the alleged works took place. I have had to consider how the access and driveway are used when addressing their effect on highway safety but the harm as well as the breach will be remedied by the requirements of the notice to remove the gravel, gates and wall, and to restore the site to its former condition.
36. Requirement 5.(5) is to replant the hedgerow that has been removed between points A and B, stated as being shown on the plan attached to the notice. However, points A and B are not marked. I shall therefore delete that reference. By doing so the requirement addresses only the amount of hedgerow removed to facilitate the changes to the access over and above the original field access, rather than the entire width. The appellant will be best placed to know what this will entail.
37. I shall vary the notice by deleting the first requirement and amending the times for compliance accordingly. The appeal succeeds on ground (f) to that extent but otherwise the appeal shall be dismissed and the notice shall be upheld with variations.

Richard S Jones

INSPECTOR