



Appeal Decision

Site visit made on 25 January 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2021

Appeal Ref: APP/L3815/C/20/3260043

Land South East side of Priors Leaze Lane, Hambrook, West Sussex

- 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 Charles Willard against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the laying and compaction of hard core and tarmac chippings over an existing (unmade) track and to create new access tracks and the formation of an earth bank in the approximate positions shown on the plan attached to the notice.
 - The requirements of the notice are: 1. Break up the said hard core and tarmac chippings and remove from the Land; 2. Remove the soil and stone comprising the earth bank from the Land; and 3. Following compliance with 1 and 2, level the Land and reseed with grass.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since the 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.
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Summary of Decision

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

The ground (c) appeal

2. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development. The earth bank is not raised under this ground of appeal.
3. The works undertaken, namely the laying and compaction of hard core and tarmac chippings over an existing unmade track, amounts to an engineering operation that would materially affect the external appearance of what was previously said to be an unmade track. The works therefore amount to development for the purposes of section 55 of the Act.
4. The appellant contends that the tracks are permitted development by virtue of Schedule 2, Part 6 of the Town and Country Planning (General Permitted

Development) (England) Order 2015 as the authorised use of the land is for agriculture.

5. However, for either the provision, rearrangement or replacement of a private way or the provision of a hard surface to be permitted development, that development must be reasonably necessary for the purposes of agriculture within the unit.
6. The evidence before me is that the site is divided into four plots and the owner of one of those advises that he uses his land solely for agricultural purposes, and that the track provides his only right of way for vehicles and livestock.
7. Whilst that might be the case, this unsigned and undated letter alone does not demonstrate on the balance of probabilities why the tracks, which are of substantial construction and extend through most of the site, would be reasonable required for the purposes of agriculture. I therefore afford this evidence only limited weight.
8. The appellant has provided very limited further evidence concerning any agricultural activity or purpose within a unit that would demonstrate on the balance of probabilities that the tracks were reasonably required for the purposes of agriculture. Moreover, the Council have stated that during their site visits they have not found any such use taking place, and whilst I appreciate my site visit only represents a snapshot in time, there was very limited evidence of discernible agricultural activities taking place.
9. The evidential onus rests with the appellant and he has therefore not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.
10. The appeal on ground (c) therefore must fail.

The ground (d) appeal

11. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the tracks, as the earth bank is not raised under this ground of appeal. Accordingly, the latest date for the substantial completion of the tracks would need to be 20 August 2016.
12. To this effect the Council has enforced against the laying and compaction of hard core and tarmac chippings over an existing unmade track as well as the creation of new access tracks. It has therefore enforced against engineering operations in this regard and does not contest that there was a length of unmade track.
13. The evidence provided by the appellant is an aerial photograph dated 22 April 2015. This demonstrates on the balance of probabilities a length of track, which is said to have been created in 2013, but neither this aerial photograph nor assertions demonstrate on the balance of probabilities the engineering operation enforced against. It merely lends weight to the Council's position of there being a length of unmade track at the site.

14. The evidential onus rests with the appellant and he has therefore not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.
15. The appeal on ground (d) therefore must fail.

The ground (a) appeal

Main Issue

16. The main issue is the effect of the developments on the character and appearance of the area.

Reasons

17. The site is located and forms part of the countryside for planning purposes as it is outside of the settlement policy area of Hambrook. The site relates to a long parcel of land that is predominantly set to grass and demarcated by post and wire fences.
18. The developments before me consist of tracks predominantly located to the eastern side of the site as well as an earth bank to the south.
19. The ground (c) and (d) appeals have already failed. I appreciate that the site is located in reasonably close proximity of various urban forms of development, such as Hambrook, and that there are a range of other industrial and residential uses and buildings along Priors Leaze Lane.
20. However, the tracks enforced against are of significant length and result in an incursion through the site. The tracks are finished in black tarmac chippings and therefore have a particularly urban appearance at this otherwise rural site, which is at odds with the character and appearance of the area, even though there are other tracks accessed from along the Lane. It therefore does not represent good design or reflect its local context owing to its length and use of materials.
21. Furthermore, the earth bank appears as an alien feature given its length and height, on a tract of land that is otherwise relatively flat and open.
22. The developments are therefore not well related to an existing farmstead or group of buildings and do not have minimal impact on the landscape and rural character of the area.
23. The appellant states that the tracks are essential to provide access to the land for future viable uses that require a rural location, although I then have only limited evidence concerning any future uses. Whilst the appellant may also consider the tracks to be sustainable in economic and social terms, and they do not prejudice other viable agricultural uses, the tracks and earth bank are nevertheless not developments that meet an essential, small scale and local need, based upon the evidence before me.
24. I conclude that the developments are harmful to the character and appearance of the area in contravention of Policies 1, 2 and 45 of the adopted Chichester Local Plan: Key Policies 2014-2029. These policies, amongst other things, identify the presumption in favour of sustainable development and the development strategy and settlement hierarchy for the District and accordingly development in the countryside should meet an essential, small scale and local

need that is well related to an existing farmstead or group of buildings and have minimal impact on the landscape and rural character of the area. For the same reasons, the developments contravene the achieving well-designed places objectives of the National Planning Policy Framework.

Overall Conclusion

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

Formal Decision

26. 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.

Paul T Hocking

INSPECTOR