



Appeal Decision

Site Visit made on 16 February 2021

by Janet Wilson

an Inspector appointed by the Secretary of State

Decision date: 8th March 2021

Appeal Ref: APP/C1760/W/20/3262592

Bottom Lane Farm, Maurys Lane, West Wellow, ROMSEY, SO51 6DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Skyfield Estate LLP against the decision of Test Valley Borough Council.
 - The application Ref 20/00038/FULLS, dated 7 January 2020, was refused by notice dated 5 May 2020.
 - The development is an agricultural access track.
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Decision

1. The appeal is allowed and planning permission is granted for an agricultural access track at Bottom Lane Farm Maurys Lane, West Wellow, ROMSEY, SO51 6DA in accordance with the terms of the application, Ref 20/00038/FULLS , dated 7 January 2020, and the plans submitted with it reference numbers: P18-021-02-02-009; P18-021-02-02-010; 722-MP-05B.

Applications for costs

2. An application for costs was made by Skyfield Estate LLP against Test Valley Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The address for the track is described as Bottom Lane Farm, Maurys Lane. However, the access point to the track is from Bottom Lane via a gated entrance¹ and not directly from Maurys Lane. Notwithstanding this, I find that the slight difference in how the site address is stated has no substantive impact in defining the location of the proposal. As such, I have used the address on the original application form.
4. The access track is already in situ and is therefore retrospective. I have as a result removed the word proposed from the description of development.
5. The Council in its statement confirmed that the references to Policies T1 and T2 were included erroneously within reason 2 of its decision notice. References to policies E1 and E2 are the correct policies which should have been referred to. The appellants have referred to policies E1 and E2 and commented that policies T1 and T2 do not apply. It would not therefore be disadvantageous for either party for me to consider the appeal without reference to Policies T1 and T2.

¹ Gated access allowed on appeal ref APP/C1670/W/16/3160728

Main Issues

6. The main issues are: a) whether it is essential for the development to be located in the countryside in the context of the development plan; and b) the effect of the development on the character and appearance of the area.

Reasons

Background

7. The appellants aim is to provide a safe means of access to the agricultural land and improve accessibility to the agricultural holding. Evidence indicates that access to this land was previously via the original access to Bottom Lane Farm though subsequent alterations to the farm and outbuildings mean that agricultural vehicles can no longer utilise it. The applicants state they require continuous access to recently constructed agricultural buildings to support farm operations and the access track cannot be located anywhere else.
8. An earlier appeal dating from 2017² relates to the replacement of a gated access located at the point where the appeal proposal meets Bottom Lane. That appeal decision makes only passing reference to Bottom Lane Farm in that the access gate would assist in providing better security for the house and property. It is, nonetheless, clear from that evidence that the access is also associated with the residence at Bottom Lane Farm.
9. In respect of the use of the land the Council in their delegated report state that '*the land to which the application refers is to the east and north of the house and the land is considered in agricultural use (outside the residential curtilage)*'. There are two agricultural buildings located close to the northern most part of the appeal site, the land is part of a registered holding and the buildings are referred to in the appellants agricultural justification report as having been constructed under permitted development³ applications for which prior approval was not required.

Development plan policy

10. Policy COM2 of the Test Valley Borough Revised Local Plan 2016 (the Local Plan) states that development will only be permitted in two circumstances: a) if it is appropriate in the countryside as set out in policies COM9-COM15, LE10, LE16- LE18 or b) if it is essential for the proposal to be located in the countryside. I note that the list of policies given in the officer report refers to COM8 to COM14 though in the published policy extract the reference is to policies COM9 to COM15. I have not been provided with the policies referred to in the cross reference of part a) of Policy COM2 though it is accepted by both the Council and the appellants that part a) of policy COM2 does not apply. I have not therefore pursued the relevance of COM2 a) any further.
11. In respect of Policy COM2 b) this relates to whether it is essential for the proposal to be located in the countryside. There are no criteria set out in Policy COM2 b) nor any definition of the meaning of essential so I must interpret it on the face of its plain reading.
12. The appellants emphasise that COM2 b) is a simple test and the Council have muddled their interpretation through reference to a functional need. On the

² APP/C1760/W/16/3160728

³ LPA reference 18/01707/AGNS & 18/01707/AGNS

basis of the evidence before me this scheme involves an access to land which the Council accept is agricultural, serving buildings constructed for agricultural purposes under permitted development⁴ and for which there is no obvious alternative route capable of servicing them. I am, on this basis, satisfied that the land and buildings can be regarded as part of an agricultural unit and the track is necessary to service access to it.

13. The appearance of the track is neat and tidy, with track edging, pale gravel surfacing and enclosed by parkland railings. Whilst this is a more formal treatment than may usually be found in an agricultural setting, this does not mean that it alters the function of the track. Neither does it mean that the track is not essential to serve the agricultural land and buildings. Similarly, the existence of a secondary access into the residential property of Bottom Lane Farm does not undermine the appellants position that the primary purpose of the access track is to service agricultural land and buildings. The approach to the access along Bottom Lane, a Public Right of Way, (PROW) is across very rough ground. It is not, in its present condition, suited to use by domestic cars. In any event, it would be a longer and more convoluted route from the main road such that it would be highly unlikely to serve as anything more than occasional secondary access to Bottom Lane Farm.
14. Ground conditions have been referred to though I have no technical evidence to demonstrate that the conditions are such that only a consolidated surface would suffice to service the agricultural buildings. Equally I have not been directed to any policy justification which would make this matter critical to my determination of this appeal.
15. The point of access is authorised by virtue of an earlier appeal decision. Part of the access track is within the boundary of the residence at Bottom Lane Farm and there are spurs off the track into two areas of the field but these features do not alter the main purpose of the track.
16. Taking all of the above into account, I regard the access as necessary to serve the agricultural land and recently constructed agricultural buildings and therefore conclude that it is essential for it to be in this location. Consequently, there is no conflict with Policy COM2 b) of the Local Plan.

Character and appearance

17. The Council confirm that the principle of the track is acceptable however it is the implications of the design which they regard as being out of character with the rural area. Policy E1 advocates high quality development in relation to materials and the most relevant parts of Policy E2 relate to ensuring no detrimental impact on the appearance of the immediate area or the wider landscape character.
18. The Council argue that the track is more of a domestic driveway than an agricultural track and is inappropriate in a countryside location. They also refer to the site being within a sensitive tract of valued landscape which is undermined by the visual appearance of the track. They also argue that the access track would be an urbanising feature which is prominent from the PROW, in a landscape which is not "without merit".

⁴ following prior approvals

19. However, the topography of the appeal site is relatively flat and the land is not constrained by any formal designation. I found that the site is not generally visible from the PROW due to the extent and nature of the vegetation along Bottom Lane. I observed that the track is not particularly visible in the wider landscape from the north. I note that no objection was raised by the Landscape officer and the recommendation made that there should be a separation between the residential curtilage and the agricultural land has been put in place.
20. Whilst the track surface is readily distinguishable from the immediately adjoining fields either side of the track, I have little evidence that the site is visually sensitive from other locations nor did I find this to be the case on my visit. In fact, to the contrary, I found that the views of the access track from the PROW were extremely limited. Whilst the track is neat and tidy surfaced in pale-yellow gravel and enclosed by relatively simple parkland railings, I find that it is not prominent or harmful to the landscape setting of the appeal site or the wider area.
21. For the reasons given, there is no conflict with the relevant parts of Policies E1 or E2 of the Local Plan. These policies seek to ensure that new development should integrate with, respect and complement the character of the area, and should not have a detrimental impact on the appearance of the immediate area or the landscape character.

Other Matters

22. The appellants argue that if the Council were to issue enforcement action and the land were to be reinstated there would be the opportunity to apply for the agricultural section of the track under the provisions of permitted development⁵. They argue that under those provisions the test would not be whether the track was essential but whether it was reasonably necessary. Moreover, if found to be so, only the siting and means of construction would be matters for consideration. I have no evidence before me that the appeal proposal would meet the requisite conditions set out in that same legislation. Equally, I am not persuaded that the removal of the access, surfacing and fencing would be likely. In any event Prior approvals do not apply to works which have already been carried out and I do not recognise the appellants argument as a legitimate fall-back position. Nonetheless, it does not alter my findings in relation to the main issues.
23. I have been referred to the Wellow Village design guide, an SPG approved in 2010, however its content does not alter my findings.
24. I have been referred to other agricultural access tracks which the Council have approved and to appeal decisions relating to the interpretation of Policy COM2⁶. The Inspector in that case commented that COM2 had two overarching functions and commented that *"so long as it does not result in any material harm to the countryside it would not conflict with the overarching aims of the policy"*. The Council also refer to an appeal⁷ which refers to Policy COM2. From the information provided those cases are not for development which is the same as this appeal proposal and as such they do not alter my findings.

⁵ Class A, Part 6, of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

⁶ APP/C1760/W/20/3246112

⁷ APP/C1760/W/19/3233009

Conditions

25. The Council have not suggested any conditions, however given that the access track has been completed further conditions are unnecessary. My decision refers to the plan drawings so there is no need for a plans condition.

Conclusion

26. For the above reasons and having regard to all other matters raised the appeal is allowed in accordance with the formal decision set out in paragraph 1.

Janet Wilson

INSPECTOR