



Appeal Decision

Site Visit made on 27 July 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Appeal Ref: APP/T0355/C/20/3258519

Land at Pound Meadow, Temple Lane, Bisham, SL7 1SA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Vali against an enforcement notice issued by Royal Borough of Windsor and Maidenhead.
 - The notice, reference 20/50033/ENF, was issued on 27 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission:
 - a. Erection of timber fencing fixed with concrete posts and footings; b. Erection of vehicular and pedestrian gates; c. The formation of a concrete slab adjacent to riverbank; d. Importation of materials to extend vehicular access point; e. Formation of a concrete plinth and installation of a water tank, with associated pipes.
 - The requirements of the notice are: 1) By hand, and using hand tools only, dig up and remove from the land all concrete fence posts and associated footings. Remove all timber close boarded fence panels; 2) By hand, unhinge and remove from the land the vehicular and pedestrian gates and associated posts; 3) By using a handheld pneumatic drill, break up the concrete slab that has been installed near the riverbank and identified on the appended plan with a green outline. Remove all associated materials from the land, including all the materials used to form the sub-base; 4) By hand, dig up and remove the materials, including but not limited to broken rubble, used to form a hard surface at the entrance to the site, identified on the appended plan outlined in blue and further identified on the appended image. 5) By hand, disconnect and remove from the land the black water tank located on the concrete plinth in the southwest corner of the site, and identified on the appended plan marked in green; 6) By hand, dig up all associated pipework and boxes installed to facilitate the water tank; 7) By using a handheld pneumatic drill break up the concrete plinth including any sub-base, that the water tank sits on. Remove all materials from the land. 8) Re-seed the land in all areas where digging has taken place in accordance with steps 1-7 above.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting allegation (d) *"Importation of materials to extend vehicular access point"* and varied by deleting requirement (4) *"by hand, dig up and remove the materials, including but not limited to broken rubble, used to form a hard surface at the entrance to the site, identified on the appended plan outlined in blue and further identified on the appended image"*; and by deleting the words *"by hand"* from requirement 5). Finally I shall substitute *"3 months"* for *"2 months"* as the period for compliance.

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.

Background to the Appeal

3. The site lies next to the Thames riverbank between Bisham Abbey and the Marlow sailing club. The area of land between the road and the river is essentially a large meadow, with trees along the riverbank and the side of the road which are covered by a TPO. The meadow has been split up into different ownerships and the appellant owns the section of meadow adjacent to the sailing club. Various accesses have been provided from the unclassified road to the individual parcels of land.
4. The use of the meadow is agricultural and the appeal site has a long planning history where the previous owner tried to establish various leisure uses to no avail. The current owner has upgraded the access with new gates and fenced all three sides of the site (excluding the riverbank). He has installed a water tank on a concrete plinth in the corner of the site nearest the sailing club and a concrete pad roughly in the centre of site on the riverbank. Since the notice was issued the riverbank concrete pad has been removed and as I saw on my site visit only a gravel/sand sub-base remains.

The Appeal on Ground (b)

5. This ground is that the matters alleged have not occurred. The principal argument is that the access has always existed. This is not in doubt, but the allegation is that it has been enlarged. There is some dispute about whether it has actually been enlarged. Measurements taken from aerial photographs suggest to the appellant the overall size is actually the same, however photographs of the old access suggest to me the new one has wider gates and an extra pedestrian gate so has most likely been enlarged. There is no dispute the rest of the matters alleged have happened so the ground (b) appeal fails.

The Appeal on Ground (c)

6. This ground is that the matters alleged have planning permission. In this case an article 4 direction has removed the right to erect fences and gates on the land, so there is no doubt the fences are unlawful. The appellant has already begun removing some of the close boarded fencing. The gates are clearly not the same gates as shown in the older photographs, but are substantially different, larger and more imposing. They are clearly more than the normal maintenance of an existing gateway and so count as new development which, because of the article 4 require planning permission.
7. I agree that an access to the site can be created, as Class B of Part 2 of the General Permitted Development (England) Order 2015 allows the construction of an access onto land in connection with any development allowed in the rest of Schedule 2. That includes the right to use the land for 28 days a year for any purpose¹, which in this case would include mooring a boat and general leisure uses of the meadow. The access already exists and enlarging it by a relatively small amount, including the importation of a small amount of hardstanding would not amount to development that lay outside the

¹Class B, Part 4 of Schedule 2

requirements of Class B of Part 2. I agree that planning permission exists for the matters alleged at (d).

8. The two concrete slabs and the water tank are not associated with any lawful agricultural use of the land and so they too are development that requires planning permission. I shall correct the allegation to remove (d), but otherwise the appeal on ground (c) fails.

The Appeal on Ground (a)

9. The site lies in the green belt and next to the Thames. Saved Policy N2 of the 2003 local plan protects the setting of the Thames and this protection is carried forward by SP4 of the emerging local plan. The appellant accepts the fences need to go, but contends the proposed use is acceptable as are the gates, concrete pads and water tank.
10. The appellant contends that a planning application will be made for the access, gates and fencing at the access point, the concrete pads and the water tank. They are all required in association with a proposed use as an allotment and 28 day leisure uses such as boat mooring, fishing and occasional family gatherings. However, such an application, if it has been made, is not the subject of this appeal and the ground (a) relates only to the matters alleged, which are the works described above. No allotment use has commenced so none of the works can be related to such a use, even if it were lawful. The site has been put on hold since the notice was issued and has become completely overgrown.
11. Consequently I am concerned only with the physical works. The new gates and the water tank are large physical objects that clearly affect the openness of the green belt and so do not fall within any of the categories of development that are not inappropriate. Inappropriate development is by definition harmful unless there are very special circumstances. The fact they may be used in connection with a use such as an allotment that preserves openness is not a reason to allow them when they, themselves, do not preserve openness. No very special circumstances have been put forward so the works are contrary to the NPPF and green belt policies in the local plan. The installation of the large gates and the water tank are also harmful to the protected riverbank as they represent large, alien intrusions into what should be an undeveloped water meadow and so are contrary to policy N2.
12. The flat concrete pad by the riverbank does not affect openness and so can be considered to be an engineering operation that falls within the list of development that is not inappropriate development in paragraph 150 of the new NPPF. However, this part of the riverbank has the character of undeveloped meadowland which is relatively unusual along this well settled part of the river. Creating a large mooring with a concrete pad harms the character and setting of the river contrary to policy N2.
13. The majority of the meadow is flooded in the winter, and I saw photographs that demonstrated the extent of the flooding. Policy F1 and emerging policy NR1 seek to protect the flood plain from development that might impede the flow of water or reduce the capacity of the land to store water. Clearly adding a concrete pad will do both of those, albeit to a limited degree. The appellant argues water seeps beneath the pad and so there is no real impact. It is not clear how this happens or if it indeed does, but in any event the concrete is

impermeable and so is bound to have some impact which would make it contrary to F1 and NR1, as well as the NPPF which seeks to direct development away from flood plains, except where it is essential. There is no essential need for the concrete pad and so it is likely to increase flooding and is contrary to policy. The same is true for the pad beneath the water tank, albeit it is further from the river.

14. The Council also have concerns about the impact of all the developments on the protected trees. The appellant points out the TPO is an old type group order and the PPG advises these should be replaced by more specific TPOs and in the meantime only be invoked in an emergency. I don't think this is an emergency and the harm to the root protection zones is limited to the concrete posts and the pad under the water tank. The appellant's arboricultural report does suggest there might be some minor impact within the rootzones of several trees, but it is very minimal. It also notes the concrete fence posts are actually form a pre-existing fence and the new wooden fence posts are not concreted into the ground. I do not think that harm to the trees adds any weight to the case against the development, but nevertheless it does not mean the protected trees can be ignored. I shall deal with this under ground (f).
15. In conclusion the fences are to be removed anyway, the gates and water tank harm the green belt and the setting of the Thames, the concrete mooring pad harms the setting of the Thames and it and the water tank and its pad are liable to increase flooding. The appeal on ground (a) therefore fails and planning permission should not be granted for these developments.

The appeal on Ground (f)

16. The use of hand tools to remove the fences and concrete pads is in order to protect the rootzones of the trees. Simply because the TPO is old fashioned does not mean care should not be taken to protect the roots of the trees. There is no prohibition of using vehicles on the site as a whole, just that the action of removing the unlawful development should be done by hand rather than using a machine. This does not seem unreasonable to me. I agree however that to remove the water tank by hand is both unnecessary and would probably be very difficult. I shall delete requirement 4) as it relates to the access and vary requirement 5) to remove the reference to by hand.
17. The appellant comments on the access track within the site which is not included in the notice and suggests this represents underenforcement and so it is granted planning permission by virtue of s173(11). This is not the case as the notice could not have required the track to be removed as it was not included within the allegation. S173(11) only has effect on matters included within the allegation.

The Appeal on Ground (g)

18. I agree that 2 months is a short period of time and that 3 months would be more reasonable especially as a contractor will be needed to remove the water tank.

Simon Hand

INSPECTOR