



Appeal Decision

Site visit made on 31 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2021

Appeal Ref: APP/C3620/C/21/3271248

The land known as land to the west of The Hay Barn, Partridge Lane, Newdigate, Dorking, Surrey RH5 5BU

- 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 Anton McFarland against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice was issued on 18 January 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the creation of a track.
 - The requirements of the notice are: (1) Entirely remove from the Land the material used to lay the access track and restore the land to its former condition and use prior to the access having been created.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld subject to a correction.

Preliminary Matter

2. The deemed planning application only concerns the operational development attacked by the enforcement notice, namely the creation of a track. The appellant is however also proposing a grass-crete/change of materials for the surface of the track, removal of hedgerow and/or to significantly reposition the gate to create what he considers to be a clear sightline and with-it alternative route for the track. However, that amounts to a different scheme with limited details before me, particularly concerning highway safety. Accordingly, I can only consider the appellant's arguments insofar as they are relevant to the development attacked by the notice for the existing track, as opposed a proposed different scheme.

The Enforcement Notice

3. The sole requirement of the notice includes for the former use of the land to be restored. However, the notice does not relate to a use of land and in any event a notice cannot require the resumption of a use. The requirement also then makes reference to an access, when the notice only concerns the creation of a

track. Injustice to the parties however does not arise from omitting these references from the requirement.

The ground (a) appeal

Main Issue

4. The main issue is whether the track is harmful to the character and appearance of the area.

Reasons

5. The site relates to an otherwise attractive and open parcel of land situated in the countryside beyond the Green Belt. The track enforced against crosses the site and is constructed from road scalplings and gravel. It utilises a previous field gateway onto Partridge Lane.
6. The track is a particularly wide and straight feature that dissects through the middle of the site. It has introduced a form of development that is conspicuous within its otherwise rural and open landscape setting. It is not appropriate in terms of its scale and appearance in relation to other access tracks and forms of development in the area. It therefore represents an urban feature that fundamentally encroaches into an undeveloped area of countryside, which is detrimental to the rural character of the area.
7. Whilst I appreciate the appellant contends the track is required for larger vehicles that may visit the property, there is already an access track, from which I accessed the appeal site during my site visit. There is then very limited evidence before me as to why larger vehicles cannot also use this shared access to safely reverse and so I do not accept this provides a need that outweighs the harm to the character and appearance of the area that I have identified. That there is an existing gateway, and it is said there was a length of chalk track, albeit disputed by the Council, does not alter my findings in relation to the track the subject of the notice.
8. I conclude that the track is harmful to the character and appearance of the area in contravention of Policies ENV3, ENV22 and ENV23 of the adopted Mole Valley Local Plan (the LP) and Policy CS1 of the adopted Mole Valley Local Development Framework Core Strategy. These policies, amongst other things, require development to not adversely affect the open character of the countryside, be appropriate in terms of scale and appearance, respect its setting and to accord with the Council's spatial strategy for where development will be directed. For the same reasons the development is contrary to the conserving and enhancing the natural environment aims of the National Planning Policy Framework.

Other Matters

9. The Council is also concerned about whether adequate visibility splays can be provided, although this then does not form a reason for issuing the enforcement notice. Whilst there remains limited evidence before me, I could see during my site visit that the access had very restricted visibility onto the highway. However, as I am dismissing the ground (a) appeal for the above reason, I need not consider Policy MOV2 of the LP which concerns the movement implications of development, further.

Conclusion

10. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should fail.

The ground (f) appeal

11. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
12. The appellant has provided very little evidence as to why the requirement of the notice is excessive. The notice goes no further than requiring the removal of the material used to lay the track, and following my correction, merely restore the land to its former condition.
13. The appeal on ground (f) therefore fails.

Overall Conclusion

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

Formal Decision

15. It is directed that the enforcement notice be corrected by:
- deleting the words '*and use prior to the access having been created*' from paragraph 5. (1) of the notice.
16. Subject to this correction 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