
Appeal Decision

Site visit made on 21 September 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal Ref: APP/M0933/C/21/3277772

Land at Ginnyring Cottage, Grizebeck, Kirkby-in-Furness LA17 7XH

- 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 Robert Maddock against an enforcement notice issued by South Lakeland District Council.
- The enforcement notice was issued on 19 May 2021.
- The breach of planning control as alleged in the notice is, without planning permission, unauthorised operational development including the formation of an area of hardstanding and creation of a new access to the side of the Property/Land in the position outlined in red on the attached Plan.
- The requirements of the notice are:
 1. Permanently remove from the Land, the area of hardstanding situated within the red line boundary on the attached plan.
 2. Permanently close of [*sic*] the access, by installing fixed boundary treatment along the blue line of the attached plan.
 3. Permanently remove from the Land all building materials, all rubble and associated materials arising out of compliance with (A).
 4. Restore the Land to its condition before the breach took place by re-profiling the ground to the level it was at prior to the breach taking place and re-seeding it with grass; and
 5. Comply with (A), (B), (C) and (D) within 13 (thirteen) weeks from the date this Notice takes effect.
- The period for compliance with the requirements is 13 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations as set out in the Formal Decision below.

Preliminary Matters

1. The appeal was initially made on grounds (b), (c) and (f). However, the appellant subsequently added an appeal on ground (d) which was forwarded to the Council prior to the appeal start date. I have therefore considered the appeal on ground (d).

Appeal on ground (b)

2. An appeal on ground (b) is made on the basis that the matters alleged to constitute a breach of planning control as stated in the notice have not occurred. The notice alleges operational development comprising the formation of an area of hardstanding and the creation of a new access.

3. Whilst the key point is what existed at the time the notice was issued, I was able to see from my site visit that the Land comprised an area of hardstanding between the footpath and the front boundary fence of Oakfield House. The surface appeared to comprise a hardcore gravel base topped with loose slate. In addition, I saw that, although they did not appear deliberately lowered to ground level as with the adjacent vehicle crossover for Oakfield House, the kerbstones on the road adjacent to the Land appeared damaged, and in some instances missing. My observations of the Land appear to reflect its condition in photographs from the Council which are dated 16 November 2018.
4. The appellant states that there has been no creation of hardstanding since before 2008. However, the appellant goes on to say that the Land was given a refreshed covering of gravel and then covered in slate by the developers following construction of the adjacent Oakfield House.
5. The appellant's case is that the access is one which previously existed, as prior to the construction of Oakfield House, the land was accessed by a farm gate. However, the appellant's photographs show that the farm gate covered the area which is now the access to Oakfield House. The photographs also show a fence between the Land and the footpath has been removed from the area where the blue line is drawn on the plan attached to the notice. This opens up the Land to the highway. Whilst on my site visit some rose bushes had been planted along the edge of the Land where it abuts the footpath, it appears to have been open to the path at the time the notice was issued.
6. As a result, the evidence before me leads me to conclude that the formation of an area of hardstanding and the creation of a new access through the removal of the fence and the laying of the hardstanding has occurred as a matter of fact.
7. The appeal on ground (b) therefore fails.

Appeal on ground (c)

8. In an appeal on ground (c), it is for the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control stated in the notice does not constitute a breach of planning control.
9. Section 55(1) of the 1990 Act states that development includes the carrying out of engineering operations on land. Section 336(1) of the Act sets out that engineering operations include the formation or laying out of means of access to highways. In this instance, an area of hardstanding has been created through the laying out of gravel and slate to facilitate the formation of an access to a highway. As a result, I am satisfied the works as enforced against amount to engineering operations and thus development for the purposes of section 55(1) of the Act.
10. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development described as 'permitted development' in Schedule 2.
11. Class F of Part 1 of Schedule 2 sets out that the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted development. The Council incorrectly concludes that since the hardstanding in this case is not

situated on land between a wall forming the principal elevation of the dwellinghouse and highway as set out in F.2 of Class F, it would fail to be permitted development under Class F. However, the criteria under F.2 is simply conditional, requiring that where the hard surface is on land between the principal elevation and the highway, it is made of porous materials. It does not say that development in such a location would not be permitted. Therefore, in isolation the provision of hardstanding on the land would be permitted development under Class F.

12. However, the evidence before me suggests that the provision of hardstanding was done to facilitate the formation of a means of access to a highway. Indeed, the appellant indicates that the hardstanding is used for parking and vehicular access. Class B of Part 2 of Schedule 2 of the GPDO states that the formation of a means of access to a highway which is not a trunk road or a classified road is permitted development. In this instance, the access is onto the A595 – a classified road. As such the development would not fall within the parameters of permitted development under Class B. The development subject of the notice would not therefore be granted planning permission by virtue of Article 3(1) of the GPDO. As a result, it would have constituted a breach of planning control at the date the notice was issued.
13. The appeal on ground (c) therefore fails.

Appeal on ground (d)

14. An appeal on ground (d) is made on the basis that, at the date 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 stated in the notice. The standard of proof is the balance of probabilities and the onus of proof rests with the appellant.
15. Section 171B of the 1990 Act sets out the relevant time limits for enforcement action to be taken. Section 171B(1) sets out that where there has been a breach of planning control consisting of the carrying out without planning permission of engineering operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. It is necessary therefore for the appellant to demonstrate that the formation of hardstanding and creation of access was substantially complete on or before 19 May 2017.
16. The appellant has provided photographs which they say show that from 2008 the Land was in use as a parking and access area and has been continuously used as such. However, the notice does not attack the use of the land as a parking and access area.
17. The appellant indicates that the Land was resurfaced to its current form in 2018. Photographs have been provided which the appellant says are dated 2008, 2011, 2017 and 2021, albeit the photographs are undated and no indication of what time during those years they were taken is provided. Nevertheless, the photographs said to be taken from 2017 show the land was covered by a mix of grass and some pockets of gravel. In addition, the fence which enclosed the Land from the adjacent footpath is in situ, as are trees and bushes. As a result, the evidence leads me to conclude on the balance of probabilities that the hardstanding and access were not substantially complete until after 19 May 2017.

18. The appeal on ground (d) therefore fails.

Appeal on ground (f)

19. An appeal on ground (f) is made on the basis that the requirements of the notice are excessive. Section 173(4) of the 1990 Act is clear that a notice can have one of two purposes. They are either to remedy the breach of planning control or, as the case may be, any injury to amenity which has been caused.
20. The notice alleges development consisting of the formation of an area of hardstanding and creation of a new access. It requires that removal of the hardstanding, the closure of the access and restoration of the land to its condition prior to the breach taking place. On that basis, it seems to me that the purpose of the notice is to remedy the breach by restoring the land to its condition before the breach took place under section 173(4)(a) of the Act.
21. The first requirement to remove the hardstanding would not go beyond what is necessary to remedy the breach since the hardstanding forms part of the breach. Nor would the third requirement to remove from the land all materials arising out of those work be excessive.
22. The notice requires positive action to install fixed boundary treatment along the boundary of the Land with the footpath. Although not specified within the breach, it seems to me that the removal of the previous fence constituted works which facilitated the engineering operation to create the access. Since the requirement to reinstate a fixed boundary treatment would serve the function of ceasing the use of the access, the requirement would not go beyond what is necessary to remedy the breach.
23. The notice requires the land to be restored to its former condition specifically by re-profiling the ground and re-seeding it with grass. However, there is no evidence before me that the works which constitute the breach of planning control included any re-profiling of the ground. Moreover, photographs from prior to the breach taking place show that there was some form hardcore or gravel spread intermittently across the Land. The requirement to re-profile the ground and re-seed it with grass would therefore go beyond what is necessary to remedy the breach. Case law has established that in many cases the landowner will be the person with the best knowledge of what the previous condition was. Thus, I can vary the notice so it requires the land to be restored to its condition before the breach took place.
24. The final requirement to comply with the remainder of the requirements in 13 weeks is excessive since section 6 of the notice sets out the time for compliance. I can vary the notice to delete the requirement accordingly.
25. The second requirement has a small typographical error which I can correct without injustice. In addition, as written the second requirement seeks the installation of fixed boundary treatment along the blue line of the attached plan. For reasons which are self-explanatory, it ought to refer to that part of the Land shown as the blue line on the attached plan. I can vary the notice accordingly without injustice to the appellant or the Council.
26. Similarly, the use of the word permanently within the requirements of the notice is unnecessary, having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not

discharge the notice. The notice can be varied to delete the words without injustice to the appellant or the Council.

27. Otherwise, the appeal on ground (f) fails.

Formal Decision

28. It is directed that the enforcement notice is varied by:

- the deletion of the word “permanently” from paragraph 5(a), 5(b) and 5(c) of the notice;
- the deletion of the first instance of the word “of” from paragraph 5(b) of the notice and its substitution with the word “off”;
- the insertion of the words “that part of the Land depicted as” between the words “along” and “the” in paragraph 5(b) of the notice.
- the deletion of the second instance of the word “of” from paragraph 5(b) of the notice and its substitution with the word “on”;
- the deletion of the words, “by re-profiling the ground to the level it was at prior to the breach taking place and re-seeding it with grass”, from paragraph 5(d) of the notice; and,
- the deletion of paragraph 5(e) of the notice in its entirety.

29. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR