



Appeal Decision

Site visit made on 30 March 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2022

Appeal Ref: APP/C1625/C/21/3289567

Land to the West of the Weighbridge Inn, Avening Road, Nailsworth, Stroud, Gloucestershire, GL6 9AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mark Hankins against an enforcement notice issued by Stroud District Council.
 - The notice was issued on 29 November 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the carrying out upon agricultural land located within the Cotswold Area of Outstanding Natural Beauty (AONB), of development of a 5m wide flat surface area together with an engineered embankment, as indicated on the enclosed plan, between two existing field access points and alterations to an existent field access.
 - The requirements of the notice are to: 1) Remove the unauthorised works to create the widened flat area and agricultural access comprising of tarmacadam and crushed stone over a plastic membrane surfacing. 2) Remove all resultant materials, arising from step 1), from the land. 3) Re-instate the land to its former condition prior to the breaches that were the subject of this Notice.
 - The period for compliance with the requirements is: 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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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Decision

1. It is directed that the period for compliance with the requirements is deleted and substituted with "6 (six) months".
2. 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.

Ground (a) and the deemed planning application (the dpa)

Main Issues

3. These are the effect of the development on i.) the character and appearance of the AONB ii.) the biodiversity of Key Wildlife Sites (KWS); and iii.) the safety of highway users.

Reasons

Effect on the character and appearance of the AONB landscape

4. The appeal relates to excavation works adjoining an agricultural access track to the side of Avening Road (B4014). The adjoining land along the south side of the road slopes steeply upwards with woodland planting to the road's edge on

one side, and on the other is the Weighbridge Inn and its car park. On the opposite side, a narrow pavement and mature vegetation separate the road from the valley floor and river. The appeal site is located in open countryside within the Cotswold AONB where great weight should be given to conserving and enhancing the landscape and scenic beauty¹. The Stroud District Landscape Assessment Supplementary Planning Guidance (2000) (the LASPG) identifies the area as 'secluded valleys'.

5. The site sits within a rural valley which is distinctive for its extensive indigenous broadleaved ancient woodland on high banks and steep slopes where the narrow road winds through a canopy of trees. The appeal development has removed trees and boundary vegetation and the excavation works have created a lay-by running parallel to the Avening Road which varies in width. The works have formed an earth embankment which, I am informed, ranges from approximately 0.5m deep at its eastern end rising continuously to approximately 3m deep at the western end.
6. The appeal form states that the 'works are justified in terms of land management, highway safety and land drainage, i.e. farming rules for water, introduced in 2018, require all farmers in England to take steps to stop manure, fertiliser and soil getting into water, to prevent diffuse pollution'. However, no further supporting information has been provided to substantiate the statement. Furthermore, the council note that the description of development on the planning application² to regularise the works was 'Retrospective application for safety and improvement works to existing road access'.
7. The removal of a significant amount of soil and vegetation, the cut of the embankment and the deposit of compacted stone and tarmac to form a hardstanding has scarred the landscape in this setting. Furthermore, at the time of my site visit, part of the area was being used to store several large black plastic wrapped bales. The appeal development by reason of the level of the excavation works carried out is visually harmful and does not respect its surroundings or the wider AONB. Moreover, the use of this area for agricultural storage is uncharacteristic along the enclosed tree lined valley road and is visually jarring within the natural environment. The development is visually conspicuous and insensitive and has a profound eroding effect on the appearance and local distinctiveness of the area.
8. While policy CP15 of the Stroud District Local Plan 2015 (SDLP) deals with the working countryside and provides that development outside of settlements needs to meet one of several criteria, the relevant one being that it is essential to the maintenance or enhancement of sustainable farming, I have not been provided with evidence to justify the development. Nevertheless, I find that the appeal development neither conserves or enhances the landscape and scenic beauty of the AONB and in this respect the development conflicts with the National Planning Policy Framework (the Framework) and policies ES7 and CP14 of the SDLP. These policies seek to protect, conserve and enhance the built and natural environment with policy ES7 referring to Landscape Character and that all development should conserve or enhance the special features and diversity of the different landscape types within the district.

¹ Paragraph 176 of the National Planning Policy Framework

² S.21/0731/FUL

Biodiversity of KWS

9. The appeal site is located within the Hazel Woods KWS, an ancient semi-natural broad-leaved woodland site, and opposite Nailsworth Stream KWS and Longfords Mill KWS. Woodlands are some of the most species rich habitats and much of the designated ancient woodlands harbour important ground flora. Furthermore, the site is designated lowland calcareous grassland listed as priority habitat under Section 41 of the NERC Act 2006. This is a habitat that has been identified as being most threatened and requiring conservation action.
10. The extent of the excavation works has removed a substantial amount of vegetation, and without any evidence to the contrary, this is likely to have caused significant harm to biodiversity. In this respect the works have failed to ensure the maintenance or enhancement of the intrinsic value of the site for biodiversity.
11. The development is contrary to paragraph 180(a)³ of the Framework and policies ES6 and CP14(8) of the SDLP. These policies require development to contribute to the retention and enhancement of important landscape & geological features, biodiversity interests and conserve and enhance the natural environment. Furthermore, policy ES6 specifies that, amongst other things, KWS will be safeguarded from development, unless the benefits of the development outweigh the nature conservation or scientific interest of the site.

Highway safety

12. The appeal development provides a lay-by which appears to also lead on to an existing field track at its western edge. While approximately two-thirds of the appeal site has a width similar to a one-lane road, the remainder is significantly wider and is presently utilised for agricultural storage. The development, although on a straight section of road, is close to a bend at its western end and visibility is compromised. It seems to me that it is likely that the creation of the lay-by provides a safer exit from the track in one direction as vehicles could drive over the lay-by before joining the public highway, thereby extending visibility. However, the appeal development has created an area that will likely be used for agricultural vehicles and, as it is open, also has the potential to be used by general road users. The increased vehicular activity generated by the development is likely to compromise the safety of all road users, particularly when it is being used by farm vehicles, due to the limited visibility along the highway towards the west.
13. In addition to these highway safety concerns the excavation works have not utilised any retaining structures. The bank is steep and in places it has begun to collapse. Further erosion or land slide close to the public highway could also be harmful to highway users. Overall, the appeal development is contrary to Policies CP4(3) and EI12 of the SDLP which seek to create safe streets and requires development to have full regard to the traffic impact on the local highway network.

Other Matters

14. The appeal site is located adjacent to the Industrial Heritage Conservation Area (IHCA) which incorporates Longfords Mill Conservation Area and is a linear

³ Formerly paragraph 175(a) of the Framework

conservation area following the valleys of the River Frome and the Nailsworth Stream. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This is reflected in paragraph 199 of the Framework which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

15. The council considers that although in proximity to the IHCA, the separation distance from the appeal site with the main road in between is such that the development is not considered to cause harm to the character or appearance of its setting. Having read the council's Industrial Heritage Conservation Area Management Proposals Supplementary Planning Document and visited the area, I concur.

Conclusion on ground (a) and the dpa

16. There are no material considerations that indicate the dpa should be determined other than in accordance with the Development Plan. For the reasons given I conclude that the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the deemed application.

The appeal on ground (f)

17. The appeal under ground (f) is that the requirements of the notice exceed what is necessary and for the consideration of whether lesser steps would overcome the breach of planning control. The facts set out in the appeal form simply state that 'a lesser scheme of reinstatement would address the alleged harm'. No alternative scheme has been submitted by the appellant for consideration.
18. Given that the requirements go no further than requiring the appellant to undo what has been done, they cannot exceed what is necessary to fully remedy the breach of planning control. As there are no lesser steps that would achieve the statutory purpose behind the notice, the appeal on ground (f) fails.

The appeal on ground (g)

19. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant argues that it is impractical to carry out the works in such a short space of time in the winter/spring months when ground conditions are poor and that 10 months would be more appropriate.
20. The council was agreeable to extend the time period to 6 months due to the timing of the appeal being early in the year with the spring and summer months ahead. Having regard to both parties and as the appeal has progressed further into the year, a period of six months is a reasonable amount of time to comply with the notice. This would allow for the works to be undertaken through to autumn. Accordingly, the appeal on ground (g) succeeds to that extent.

S A Hanson

INSPECTOR