



Appeal Decision

Site visit made on 10 May 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th MAY 2022

Appeal Ref: APP/P1940/C/21/3284240

Land Adjoining Blenheim Cottage, Bucks Hill, Kings Langley, Hertfordshire WD4 9AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Cash against an enforcement notice issued by Three Rivers District Council.
- The notice was issued on 1 September 2021.
- The breach of planning control as alleged in the notice is without planning permission the creation of a new widened access to the land with associated fencing, posts and metal gates ("the works").
- The requirements of the notice are: 1) Remove the timber fencing, timber posts and the left hand side metal gate (as shown on photograph 1 attached to the notice) from the land. 2) Re-position the right hand side metal gate as shown on photograph 1 in its former position (as indicated between points Y and Y on photograph 1. 3) Following compliance with step 2, construct immediately adjacent to the highway (Bucks Hill) and the re-positioned metal gate an earth verge on the Land between points X and X shown on photograph 1 which is the same height, width, depth and profile as the "existing verge" (the location of which is shown annotated on photograph 2 also attached). 4) Following compliance with steps 2 and 3 above, plant a native, mixed species hedge (comprising of bare root whips 40-60 cm height, planted as a double staggered row, at 4 plants per metre including protective tree guards and mulched with composted bark chippings, or similar, to a depth of 15 cm) on top of the newly created earth verge between points X and X shown in photograph 1. 5) Following compliance with step 4 above, re-plant any part of the mix species hedge where it dies or is dying within 5 years from the date this Notice takes effect, in accordance with the requirements of step 4 above.
- The period for compliance with the requirements is 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. 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.

Decision

1. 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.

Preliminary Matter

2. At s177(1)(a), the Act provides for the granting of planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. The allegation in the notice is one of operational development, not a material change of use. Any use of the appeal site for purposes other

than agriculture does not comprise part of the breach described in the notice. Therefore, the deemed planning application arising from the ground (a) appeal can only be in respect of the formation of the widened vehicular access in connection with the lawful agricultural use of the site. Matters relating to any future use of the site for non-agricultural purposes or in respect of a possible alternative vehicular access position are not within the remit of this appeal.

Ground (a) appeal

Main Issues

3. The site is located in the Metropolitan Green Belt. Therefore, the main issues in this ground of appeal are as follows:
 - Whether the widening of the access constitutes inappropriate development, having regard to the effect on the openness and purposes of the Green Belt, the Development Plan and the National Planning Policy Framework (the Framework).
 - The effect on the character and appearance of the site and its surroundings.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify granting permission for the widened access.

Reasons

Whether inappropriate development

4. The site comprises an agricultural field laid to pasture. Apart from where it skirts around two residential properties, the site has a long frontage onto a country lane. An established maturing hedge on a low vegetated bank runs for most of the site frontage, alongside a narrow grass verge flanking the lane. The site occupies a predominantly open countryside setting and is beyond the more built-up part of the hamlet of Bucks Hill.
5. The works to widen the access have involved engineering operations. At paragraph 150, the Framework advises that such operations are not inappropriate development where they preserve openness and do not conflict with the purposes of including land within the Green Belt. Policy CP11 of the Council's Core Strategy (CS) is consistent with the Framework in this respect.
6. Prior to being widened, the site access consisted of a single metal field gate and supports set back a short distance from the lane, approximately in line with the centre of the hedge and bank. There was a grassy surface similar to the highway verge between the gate and the edge of the carriageway. The widening works have increased the access to around three times its original width. A substantial section of the frontage hedge and bank has been removed, the grass surface scraped away and the landform reprofiled to a smooth gradient to create an apron which has angled splays and which is covered with compacted earth, sand and gravel. Timber post and rail fencing has been erected along the outer edges of the apron and double gates have been installed, set well back from the lane.

7. The fencing and additional gate erected as part of the widened access are modest and lightweight structures with slender profiles. However, their presence means that part of the site is now covered with or enclosed by built features where none existed previously. Moreover, the access apron has an expansive width, a more levelled out gradient, geometric lines and a compacted, mostly non-vegetated surface. As a result, forming the apron has introduced an obviously man-made, hard feature where there was previously a section of maturing hedge and a grassed area. In any event, it is highly probable that the apron would be covered with a hardsurface at some stage, for example to prevent mud or loose material from being deposited on the carriageway, or to provide a firmer surface for larger agricultural vehicles accessing the site. The widened access is readily apparent in the surroundings, the above factors giving it an engineered and more suburban appearance entirely at odds with the softer profiles and rural qualities of the predominantly hedge-lined lane.
8. Therefore, taken as a whole the works to widen the access have led to an appreciable reduction in and a significant degree of harm to the openness of the Green Belt, spatially and visually. At paragraph 137, the Framework advises that openness is an essential characteristic of Green Belts. No details were provided in respect of possible alterations to the layout or scale of the widened access, repositioning the gates or introducing landscape planting. In any event, none of these matters would address the adverse effects on openness identified above. Furthermore, given its engineered and more suburban qualities the widened access amounts to encroachment into the countryside, in conflict with one of the purposes of including land within the Green Belt set out in paragraph 138 of the Framework.
9. For the above reasons, the widened access is inappropriate development in the Green Belt, being inconsistent with the Framework at paragraph 150 and failing to accord with CS Policy CP11. At paragraph 147, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I attach substantial weight to the harm to the Green Belt, in accordance with the Framework at paragraph 148.

Character and appearance

10. The site is located in part of the countryside where an extensive patchwork of open fields and occasional tracts of woodland are interspersed by straggles of residential development and groups of farm buildings. Field accesses in the vicinity are generally informal, small-scale and discreet, with limited gaps in frontage planting. These factors all contribute significantly to the secluded rural character and appearance of the site and its surroundings, notwithstanding the presence of the M25 in the wider area.
11. I understand that the frontage hedge meets the relevant criteria affording it protection by the Hedgerow Regulations 1997. Removing a substantial section of the hedge and bank has significantly eroded features which contribute markedly to the rural qualities of the surroundings. Furthermore, the substantial scale of the widened access, together with its engineered and more suburban appearance are characteristics entirely at odds with those of the pre-existing access and other field accesses in the vicinity. As a result, the widened access is viewed as an obvious, alien feature in its setting and it

contributes to a more built-up feel which significantly undermines the rural characteristics of the site and its environs. Possible alterations to the layout or scale of the widened access, repositioning the gates or introducing planting would not address the visual harm identified above.

12. Therefore, the widened access has caused unacceptable harm to the character and appearance of the site and its surroundings. The failure to have regard to the local context, to conserve the character and qualities of the area, or to conserve natural assets does not accord with criteria in CS Policy CP12, whilst the loss or deterioration of the protected hedgerow does not accord with criterion in Policy DM6 of the Council's Development Management Policies Local Development Document.

Other considerations

13. Widening the access has improved inter-visibility between drivers of vehicles emerging from the site and those travelling along the lane. However, visibility from the pre-existing access was probably little different to that of many field accesses. The lane has a relatively straight alignment on either side of the site access and there is a speed limit of 30 mph. Consequently, drivers of vehicles approaching the site would have had reasonable advanced warning of any vehicles using the pre-existing access. Moreover, given that the site is most likely used for grazing, the number of vehicles using the access on a daily basis is in all probability limited. Whilst the lane might be busier at other times of day, traffic levels were light when I visited. There was little evidence of previous poor highway safety conditions in the vicinity; for example, there was no evidence of incidences of traffic accidents or near misses that might have been attributable to the pre-existing access. The presence of a wide residential access almost opposite is unlikely to have had implications for safe use of the pre-existing access. Therefore, any benefit to highway safety due to the widened access is limited.
14. There is no firm evidence to indicate that the pre-existing access restricted the agricultural use of the site. Given the relative distances involved, it is highly unlikely that statutory undertakers would seek to utilise the widened access in conjunction with their maintenance and repair of infrastructure in the vicinity. Therefore, I afford these matters little weight.
15. Whilst reference was made to Articles 9, 10 and 11 of the Human Rights Act 1998, only Article 1 of the First Protocol is engaged in this instance. There would be interference with the appellant's right to peacefully enjoy their property arising from refusing to grant permission for the widened access by dismissing the appeal and upholding the notice. However, this would be in accordance with the law and in pursuance of the legitimate public interest aims of upholding the Development Plan and national planning policy. Therefore, such interference is justified and as no lesser alternatives would achieve the public interest aims, is also proportionate.
16. Furthermore, I have had due regard to the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and people who do not share it. I understand that the appellant's ethnicity affords them protected characteristics for the purposes of the PSED. Dismissing the appeal and upholding the notice would

have limited adverse effect on the appellant, whilst the planning harm caused could not be overcome by alterations or by imposing conditions. Given these circumstances, dismissing the appeal and upholding the notice would be proportionate, and doing so is necessary to foster good relations in accordance with the PSED.

17. Having regard to my findings on the main issues and in respect of the other considerations set out above, I do not intend to examine whether the works involved in widening the access involve intentional unauthorised development.

Planning balance

18. Forming the widened access has involved inappropriate development in the Green Belt. Any benefit to highway safety and the other considerations do not clearly outweigh the totality of the harm to the Green Belt and the harm caused to the character and appearance of the site and its surroundings. Accordingly, the very special circumstances necessary to justify granting permission for the widened access do not exist.

Whether a temporary planning permission could be granted

19. A temporary permission of up to five years would perpetuate the harm to the Green Belt and the other harm set out above for an unduly extended period. Moreover, as there is little evidence to indicate that the planning circumstances at the site would have changed in the meantime, it is entirely possible that an application would be made to retain the widened access in future. In any event, the Planning Practice Guidance advises that a condition requiring the removal of development which as in this case is clearly intended to be permanent, is unlikely to pass the test of reasonableness¹. Consequently, in the absence of substantive evidence to indicate why the harm identified above should be allowed to continue, a temporary permission would not be justified.

Ground (a) conclusion

20. The widened access does not accord with the Development Plan and is inconsistent with the Framework. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (f) appeal

21. The ground of appeal is that the requirements of the notice are excessive.
22. An enforcement notice can have two purposes. Firstly, it can seek to remedy the breach of planning control, including by restoring the land to its condition before the breach took place. Secondly, the notice can seek to remedy any injury to amenity caused by the breach. The notice requires no less than the removal of all the works involved in widening the access and the restoration of the site to its condition prior to those works taking place. Therefore, although the notice does not state as such, its purpose must be to remedy the breach.
23. The possibility of alterations to the layout or scale of the widened access, repositioning the gates, introducing landscaping or the grant of a temporary permission have been dealt with on ground (a). In the context of ground (f), not removing the works in their totality would mean that part of the operations that sustain the breach would remain in situ. Therefore, the breach would not

¹ Paragraph: 014 Reference ID: 21a-014-20140306.

be remedied in its entirety, as the site would not be restored to its condition prior to the breach taking place.

24. The notice requires the metal gate to be set up in its former position, not immediately adjacent to the highway. There is no question of a lack of precision in the steps in this or in any other respect. The appellant can tell from the notice what they are required to do.
25. The notice steps represent the minimum that is necessary to remedy the breach. The requirements in the steps are proportionate and are not excessive having regard to the purpose of the notice. No alternatives that would remedy the breach whilst stopping short of what the notice required were drawn to my attention and to my mind, there are none.
26. For the above reasons, the ground (f) appeal fails.

Ground (g) appeal

27. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
28. The remedial works are relatively small-scale and straightforward. Such works are unlikely to involve the use of specialist items of plant or equipment. Based on the likely timescale in which the access was widened, the remedial works would probably not take more than a few days at most to complete. There are likely to be a wide range of contractors possessing the relevant knowledge, skills and experience in the immediate and wider area who could undertake the works, given a few weeks' notice.
29. Therefore, three months offers ample time in which the appellant can arrange for and have the remedial works carried out. It follows that extending the time for compliance would achieve little beyond perpetuating the breach and the planning harm caused.
30. As the time for compliance with the notice requirements is reasonable, the ground (g) appeal also fails.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR