



Appeal Decisions

Site visit made on 27 April 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal A Ref: APP/P2935/C/21/3288406

Appeal B Ref: APP/P2935/C/21/3288407

Appeal C Ref: APP/P2935/C/21/3288408

Land at School House Farm, Consett, Northumberland

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Peter Snailum (Appeal A), Miss Carol Brown (Appeal B) and Mr William Snailum (Appeal C) against an enforcement notice issued by Northumberland County Council.
- The enforcement notice was issued on 3 November 2021.
- The breach of planning control as alleged in the notice is Without planning permission the construction of an access track, as shown in the approximate position and outlined in red on the attached plan.
- The requirements of the notice are (i) Restore the Land to its condition before the breach took place by planting grass seed.
- The period for compliance with the requirements is 12 weeks.
- The appeals are made on the grounds set out in section 174(2) (e), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Procedural Matters

1. The appellants' considered that three landowners, who use part of the route covered by the notice to gain access to their respective plots, had been prejudiced as a result of not being served with a copy the notice. They were not therefore given the opportunity to appeal. The landowners in question were identified as relating to the William's Farm and Starvall sites, and the plot further to the north apparently owned by a Mr Dale.
2. The Council conceded, in its representations, that the northern end of the red line marking the breach of planning control, as shown on the notice plan, is only approximate; and that it should actually have started further south between the plots known as Starvall and William's Farm. At the site visit, the Council indicated the position where it thought the northern end of the red line should actually start. That position would suggest that the red line should not affect the access routes to the respective plots as referred to above.
3. The Council has provided an amended plan to correct the position of the alleged access track. The appellant (Mr P Snailum) says that if this plan is accepted it would prejudice those served with the notice because it is based on there being an arbitrary break in the road, when any works carried out were always on the whole of the road at the same time; secondly that the owners of

William's Farm would continue to be affected as the red line continues to cover part of the road in front of their property which they are legally entitled to take access over and have used for purposes such as parking, deliveries and vehicle manoeuvring; and thirdly that the route has been inaccurately defined on the revised plan.

4. However, the fact that the notice does not relate to the access track in its entirety, does not make it invalid. Even if legal rights to use the track extend further than the part 'attacked' by the notice, this does not mean it was not expedient for the Council to serve the notice in the manner that it did. Secondly the appellant has not provided evidence to corroborate the claim that the owner of William's Farm will continue to be adversely affected by the revised plan. Notably the owner of that site has made representations as a third party, stating that they are permitted to gain access to their land. They would continue to be able to gain access, if the notice as corrected by the revised plan were to be upheld, and do not specifically refer to using the track in front of their property as claimed by the appellant. I am also satisfied that the revised plan adequately reflects the route of the alleged track.
5. I am therefore satisfied, on the balance of probability, that if I substituted this plan, it would not result in prejudice to the landowners of the three sites referred to above. I also have no reason to conclude that it would result in injustice to those already served with a copy of the notice.
6. The appellants have challenged the requirement to plant grass seed, as they say the land has not been grassed since 1993. I shall deal with this as a hidden ground (f) appeal, namely that the steps required by the notice to be taken exceed what is necessary to achieve the purpose.
7. The appellants have not appealed on ground (a), that planning permission ought to be granted. The merits of the development, including its visual impact, are not therefore before me for consideration in this case.

Reasons

The appeals on ground (e)

8. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. S172(2) of the Act requires that the notice be served on owners, occupiers, and anyone with an interest in the land subject to the notice.
9. The appellants' concern in this regard is firstly that the three landowners referred to above were not served with the notice, and secondly that the notice has been mistakenly served on two individuals who have no legal interest in the land. The question of failure to serve the notice is dealt with in the 'procedural matters' section above.
10. With regard to the second point, even if this is the case there is no suggestion that the parties in question have been prejudiced by a failure to serve the notice. The appellants have been able to submit an appeal against the enforcement notice and argue it fully in the course of these appeal proceedings. I am satisfied that the service of the notice on any parties that do not have an interest in the subject land could not result in prejudice. The ground (e) appeals fail.

11. The appellants indicate that the land affected by the notice relates to different deeds and therefore ownerships. This, however, in itself does not undermine the notice in any way.

The appeals on ground (b)

12. The appeals are that the matter alleged to constitute the breach of planning control has not occurred as a matter of fact. The burden of proof rests with the appellants, with the standard of proof being the balance of probability. In order to succeed the appellants would need to demonstrate that on the balance of probability the alleged development had not occurred.
13. However the appellants' case is that the track has been in use for more than four years. This point relates to a ground (d) appeal, referenced later in this decision letter, and clearly there is no dispute that the access track has been constructed as matter of fact. The ground (b) appeals therefore fail.

The appeals on ground (c)

14. The appeals on ground (c) are that the matter alleged does not constitute a breach of planning control. The appellants' ground (c) argument is that they consider the track to be 'permitted development'. However, little further detail is provided to explain the reason for this.
15. Part 6 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), subject to limitations and conditions, states that certain types of works and operation which are reasonably necessary for the purposes of agriculture within that unit are permitted development.
16. The appellant (Mr P Snailum) has referred in his evidence to previous appeal decisions relating to different matters at School House Farm¹. The Inspector who dealt with that case, within her decision letter, refers to the appellant explaining that he breeds thoroughbred horses. The Inspector observed that the breeding and keeping of horses does not fall within the definition of agriculture, as set out within s336 of the Act. There is no information presented that would lead me to take a contrary view or to suggest that the other appellants use the track for agricultural purposes. I therefore conclude that the alleged track would not constitute agricultural permitted development.
17. Part 9 Class E of the GPDO allows, amongst other things, for the carrying out of development within the boundaries of an unadopted private way, works required for its maintenance or improvement. According to the appellant (Mr P Snailum), the access track has been periodically re-layed over time, as it deteriorated or became too muddy. He refers to the top layer being scraped off, and hardcore being relayed. It is claimed that the alleged breach of planning control relates to such repair works. It is therefore necessary to consider the evidence for the track being a pre-existing private way.
18. The appellant, Mr P Snailum, claims that he purchased School House Farm in 1989. He says that the southern section of the access track route has been in use since then and that he first dug out and laid dolomite hardcore to form the northern part of the track in 1996.

¹ Appeal refs: APP/P2935/C/20/3265576 and APP/P2935/C/20/3265580

19. In support of the case the appellants have submitted a number of documents. These include an aerial photograph, dated 5 September 2016, which is claimed to show the access track around the buildings near the southern part of the site. Two photographs, said to date from June 2017, though not officially date stamped, are also provided, which are claimed to show part of the dolomite track in the background.
20. As to the aerial photograph, it appears that part of the appeal site close to the cluster of buildings, around School House Farm, and extending further to the north and west is shaded and aligned in such a way as to suggest that it is showing signs of wear and /or the dolomite colouring consistent with being part of the access track. This is despite the presence of what appear to be some intervening grassed areas along part of the route.
21. Having checked the location of the two photographs during my visit, I also concur they show part of the track to be present. However in the absence of an official date stamp, there is insufficient evidence to verify or correlate the claimed date of these images. Whilst the appellant has referred to the absence of a fence (which is now in place) to the north of the photograph location as evidence of its timing, this difference is not readily apparent from the image provided, and in any event would not add significant weight to the claimed date of the photographs.
22. I am mindful that a number of third parties have referred to the use of the track over several years in order to gain access to School House Farm. One of the appellant's contractors describes having used the track since 2016 in order to deliver horse feed; a second (the appellant's farrier) refers to using part of the route since 2017. A previous owner of School House Buildings Farm referred to the northern part of the track being used for several years, also that this was the only way to gain access to the appellant's land (Mr P Snailum) during the foot and mouth epidemic in the early 2000s.
23. When specifically asked to clarify its comments whether it accepted that access had been taken over the route of the alleged track at times indicated by the appellant and third parties, the Council did not specifically dispute such access patterns. Despite not accepting that there was previously a 'way' to maintain or improve, the Council does accept that access to the land where the new track has been created was always there, but that the formation of the track is new.
24. Drawing the above considerations together, although the picture is by no means clear cut, I am persuaded that, on the balance of probability, the alleged development simply represents the maintenance or improvement of a previously formed private way. It would therefore have constituted permitted development under the GPDO. It seems to me that the pre-existing 'way' has been in place since at least September 2016.
25. I therefore conclude, on the balance of probability, that planning permission would not have been required for the alleged construction of an access track and that consequently there has not been a breach of planning control.

Conclusion

26. From the evidence before me, I conclude that the plan attached to the notice is incorrect, but that it can be corrected without resulting in injustice.

27. On the balance of probabilities, the appeals on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
28. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (d) and (f) do not need to be considered.

Formal Decision

29. It is directed that the enforcement notice be corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
30. Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

Roy Merrett

INSPECTOR



Plan

This is the plan referred to in my decision dated: 10 June 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

Land at: School House Farm, Consett, Northumberland

References: APP/P2935/C/21/3288406, 3288407 & 3288408

Scale: Not to scale

