



Appeal Decision

Site visit made on 24 August 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 17th October 2022

Appeal Ref: APP/R0660/C/22/3296967

Land at Manor Farm, Hall Lane, Hankelow CW3 0JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Adrian Hulme against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 21 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the widening of an existing access onto a classified road the importation and deposit of waste material for use in the formation of a four metre wide 320 metre long access track across agricultural land located within the open countryside.
- The requirements of the notice are :
 - a) Take up all material deposited on the land in association with the formation of the access track
 - b) Remove all materials arising from compliance with requirement a) from the land
 - c) Restore the land to its condition before the works to from the track took place.
 - d) Reduce the width of the access to no more than 4.6 metres wide by erecting Cheshire railings to either side of the original access point.
- The periods for compliance with the requirements are:
 - a) 2 months after the notice takes effect
 - b) 3 months after the notice takes effect
 - c) 4 months after the notice takes effect
 - d) 5 months after the notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Summary of Decision: Subject to variations, the enforcement notice is upheld and the appeal is dismissed.

Decision

1. It is directed that the enforcement notice is varied by deleting the periods for compliance in full in Section 6 and replacing them with
 - a) 4 months after the notice takes effect
 - b) 4 months after the notice takes effect
 - c) 5 months after the notice takes effect
 - d) 5 months after the notice takes effect
2. Subject to those variations, 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 Matters

3. The appellant submitted a planning application¹ on the 19 January 2022 for “*Provision of a 30.48 x 15.24m general agricultural storage shed, a 30.48 x 6.10m roof on legs structure to provide a covered handling area for vehicle maintenance and cattle welfare and an associated track to be formed from the A529 to the farm yard which is part retrospective.*”(the pending application)
4. The deemed planning application under ground (a) derives from the allegation which is the widening of an existing access and the formation of a four metre wide 320 metre long access track only. The agricultural buildings which form part of the pending application are not therefore part of this appeal.

The appeal under ground (a) and the deemed planning application

Main Issues

5. The main issues are (i) whether the development is in a suitable location having regard to policies relating to agricultural need and development in the countryside (ii) the effect of the development upon the character and appearance of the area and (iii) the effect of the development on highway safety for all users.

Reasons

6. Manor Farm is an agricultural holding without agricultural buildings following the sale of Manor Farm House and conversion and sale of the farm barns to residential use. The planning permission for conversion was granted in 2011. The original access to the farmland off Hall Lane which is a residential country lane remains and consists of a track which leads to a compound towards the middle of the farm.
7. The development, the subject of the appeal, creates a second access track which enters the farm from the A529 which is a 60 mph classified road. From the A529, the appeal track crosses a field heading north and finishes at the other side of the compound to the original access track.

Essential for Agriculture

8. There is no dispute that the appeal site is in open countryside and the development therefore has to be essential for the purposes of agriculture in order to fall within Policy PG6 of the Cheshire East Local Plan (the Local Plan). Policy PG6 states that “*within the open countryside only development that is essential for the purposes of agriculture or for other uses appropriate to a rural area will be permitted*”.
9. The existing farming enterprise largely consists of the growing of maize which the appellant states accounts for around 90% of the farming business, since the sale of the original agricultural buildings. Whilst the appellant refers to having 20 cattle, the Council states that there are 8 cattle recorded at the farm. Whilst any site visit can only be a snapshot in time, there were 2 animals on site at the time of my visit and third parties refer to either no cattle or very modest numbers.

¹ 22/0111N

10. In any event, the existing farm enterprise with the maize production and a very modest number of animals has operated for a period of least 8 years whilst using the existing original track. The appellant indicates that at present organic fertilizer for the maize production is delivered in articulated lorries and that those deliveries are likely to continue for the foreseeable future. He wishes to relocate traffic away from residents to minimise conflict between the farm and residents in proximity to the farm around Hall Lane. By adding the appeal track, the appellant proposes a one way system with vehicles exiting onto the A529 after entering the site through the existing Hall Lane access.
11. However, neither the Council nor third parties support the appellant's view that the original existing Hall Lane access is unsuitable for agricultural vehicles. Third parties acknowledge that agricultural deliveries are to be expected along a countryside rural lane next to a farm. It cannot therefore be the case that the additional appeal track is *essential* (my emphasis) for the existing farm enterprise based upon the preference of the appellant to add the appeal track.
12. The appellant's Highway Access Review refers to the appeal track providing a route to/from the mobile crusher which would negate a requirement for HGVs associated with transporting the crusher and aggregate processing operations to use Hall Lane as presently occurs. This option appears to contradict the suggestion that traffic will operate on a one way system as HGVs associated with the mobile crusher would enter and exit from the A529.
13. The Council and third parties state that the appeal track has been used by heavy goods vehicles to access waste material which were being stored, screened and crushed as part of the mobile crushing business. There is no allegation relating to use within the notice. However, the presence of the concrete crushing business does mean that associated vehicles do require access to and from the farm. I have limited information to support the justification of the appeal track being "essential" as to how the appeal track will be used by non-agricultural traffic other than a statement that such use will be incidental.
14. Any plans to increase the cattle herd are likely to be dependent upon having suitable buildings which do not currently exist. Similarly, the appellant intends to operate a rotational grazing system which would use the appeal track to prevent damage to fields when cattle are moved around. However, this is a future event which may provide a benefit rather than showing that the existing appeal track is essential for agriculture. The same is also true of other perceived benefits such as improving and runoff from the A529 when the appeal track is complete.
15. For the reasons given, I do not find that the development is in a suitable location having regard to policies relating to agricultural need and development in the countryside. It is therefore contrary to Policy PG6 of the Local Plan, which amongst other things, states that within the open countryside only development that is essential for the purposes of agriculture is permitted.

Character and Appearance

16. Photographs produced by the Council show the nature of the access before the development took place. They show the original farm style gate but with no formal track into the fields, only compressed earth from vehicles following the

- same route. The area in the vicinity of the gate and the road similarly had mostly grass with some track marks where vehicles have entered the field.
17. Prior to the development taking place, there was no formal track beyond the field access hence the allegation of the formation of an access track. There is a distinction between an informal access through a field gate across a field and a defined track which constitutes operational development.
 18. The track is currently not completed and its appearance is inconsistent as there are areas where there are more concentrated areas of brick and materials making up the surface. However, even with a final finish, it is still a harsh feature in a countryside location as it cuts directly across a field and is 320 metres in length and 4 metres wide. Whilst the appellant considers that the position, length and width of the track have been designed to accommodate the expansion of the farming enterprise, that expansion has not occurred and cannot justify existing development. The track and widened access is visible from the A529 as the land slopes upwards from the road. There are also public footpaths within the vicinity of the farm. The appellant acknowledges that there would be limited views from the public footpath to the east from dwellings along Hall Lane and from Audlem Road. There is also the wider visual impact of operational development in a rural location with traditional field patterns. Whilst examples of other completed tracks have been provided, I have no details of their circumstances and whether they were the subject of a planning application. I have to consider this track in this location and do not find the other tracks to be comparable.
 19. No conditions have been specifically proposed although the landscape assessment refers to the unfinished state of the track and the laying of surface topping of compacted grey road planings and enhancements to the track and extensive hedgerows. The entrance is currently not the same as a typical farm entrance and the further work which has been suggested by way of condition is extensive and will add to the overall urban appearance. I am not satisfied on the information before me given the location, width and length of the development that what is currently proposed can mitigate the visual harm. As I have already found that the development is not essential for agriculture, this is not a matter which can outweigh the harm to the character and appearance of the area.
 20. For the reasons given, I do therefore consider that the development does harm the character and appearance of the area. It is contrary to Policy SE4 of the Local Plan which provides that all development should conserve the landscape character and quality.

Highway safety

21. The Council considers that the intensification of the use of the widened access is detrimental to highway safety having regard to a lack of visibility and its use by non – agricultural traffic. The development provides for a second access with a formal track in excess of 320 metres at a location off the A529 where the speed limit is 60 mph for agricultural and non-agricultural traffic.
22. The Highway Access Review states that *'The proposed intensification of the upgraded existing access would be associated with the trucks visiting with the aggregate processing site and would typically add a low number of daily vehicle movements by vehicles of a similar type or shorter in length when compared to*

those already used for agricultural purposes'. However, the appellant also refers to Permit hours of 7.30am to 5.30p.m during the week and 7.30a.m. to 2pm at weekends for the non-agricultural use. It is therefore not clear why an assumption is made that there will be a low number of non-agricultural vehicle movements or that those vehicles are similar or smaller in comparison to those used in the existing farming enterprise. There is also the lack of clarity as to whether the appeal track is intended for one or two way traffic and whether HGVs using the a A529 in both directions is safe for all highway users.

23. Visibility may be greater than that at Morris Homes access nearby. However, I have no details of the use of that access and its existence is not in itself a reason why substandard visibility should be accepted for the appeal track. The appellant has not demonstrated that the visibility splays are sufficient to accommodate vehicle movements including HGVs exiting and entering in both directions on a road with a 60mph speed limit.
24. Although also raised under ground (g), the appellant also asked that consideration be given to having a 15 metre apron area abutting the highway edge on the grounds of highway safety. Whether or not a 15 metre apron to the road is required or appropriate to achieve highway safety is simply not known at this stage. The Planning Policy Framework states that development should only be refused on highway grounds if there would be unacceptable impact on highway safety. Nevertheless based upon the limited information before me, I cannot be satisfied that there is not unacceptable impact on highway safety.
25. On the evidence before me, the development does not achieve a safe and suitable access for all users largely due to the lack of clarity about whether the appeal track is for one or two way traffic and the extent of use by HGV vehicles. It would therefore be contrary to the Framework as well as Policy SD1 of the Local Plan which collectively refer to providing safe access and not having an unacceptable impact on highway safety.

Conclusion on ground (a)

1. I have found that the development is not in a suitable location having regard to policies relating to agricultural need and development in the countryside, it harms the character and appearance of the area and I am not satisfied that the development is safe for all highway users. The development therefore conflicts with the development plan as a whole and there are no material considerations to indicate a decision should be made other than in accordance with the development plan. The appeal under ground (a) therefore fails.

The appeal under ground (g)

2. An appeal under ground (g) is that the period for compliance is too short. The Council has allowed for staggered periods of compliance ranging from 2 months to 5 months with 2 months for materials to be taken up and 3 months for the materials to be removed from the appeal site. A period of 4 months has been allowed to restore the land to its previous condition and 5 months to reduce the section of the access closest to the road to its previous width. The appellant proposes staggered timescales of 6 to 9 months partially due to having a working farm with cattle grazing but there are a limited number of cattle.

3. The appellant is however particularly concerned about timings clashing with the harvesting of the current maize crop in late October to early November and the drilling of a new crop of winter wheat. On balance, I consider that 4 months is an appropriate period for the first period of compliance. Such a period would comfortably avoid the maize harvest and would make some allowance for adverse winter conditions. With regard to the next period of compliance, it seems likely that taking up materials and removing them from site is likely to be carried out as a single operation and I will therefore also extend the second period to 4 months. I will amend the third requirement to 5 months to allow a gap following removal. However, it is unlikely to take 9 months to reduce the widened access and I do not consider that the current compliance period of 5 months for that reduction is too short.
4. I will therefore allow 4 months as the period of compliance for the first 2 requirements and 5 months for the other 2 requirements. The last requirement therefore retains its original compliance period. The appeal under ground (g) therefore succeeds to a limited extent with regard to 3 out of 4 of the original timescales and I will amend the notice accordingly.

Conclusion

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

E Griffin

INSPECTOR