



Appeal Decision

Inquiry held on 27 & 28 September 2022

Site visit made on 28 September 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal Ref: APP/K2420/C/21/3289687

The Paddocks, Bungalow Farm, Leicester Road, Earl Shilton, Leicestershire LE9 7TJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr William Willett against an enforcement notice issued by Hinckley and Bosworth Borough Council.
- The notice, numbered EN20/00278/UNBLDS, was issued on 25 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the formation of a new vehicular access from the land onto Hinckley Road (the A47), which is a classified road.
- The requirements of the notice are: (1) Cease the use of the land for the purposes of vehicular access and egress from or to the classified road; and (2) Break up the hardstanding in the approximate position shown hatched on the plan and remove the resulting debris from the land.
- The periods for compliance with the requirements are: (1) 1 month after the notice takes effect; and (2) 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of 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.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mr William Willett against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Preliminary matters

2. The site address above is from the Royal Mail and is agreed with the parties as an alternative to that given in the notice, which identifies Leicester Road (the A47) as Hinckley Road.
3. The Inquiry sat for 2 days. All evidence on ground (d) was given on affirmation.
4. The alleged breach of planning control involves highway land, but a copy of the notice was not served on Leicestershire County Council, the Highway Authority. However, the County Council was aware of the notice and does not oppose it, having provided an officer as a witness for the Borough Council. Accordingly, no substantial prejudice has arisen from any error in service.

The appeal on ground (d)

5. To succeed on this ground, the appellant needs to show, on the balance of probability, that the formation of the new vehicular access was substantially completed on or before 25 November 2017, 4 years before the notice was issued (the Relevant Date). If that can be shown, the access will be immune from enforcement action.
6. Bungalow Farm comprises a dwelling, a holiday park with static caravans, a touring caravan site and a stable block. It originally had a single access from the A47, on the inside of a slight bend in the road ("the original access").
7. The Council became aware of the new vehicular access in November 2018. However, the appellant states it was originally formed in 2012 and that the Council had instead noticed an improvement he had made to it by laying hardstanding ("the 2018 works").
8. Robert Townsley, who rented Bungalow Farm in 2012, wrote that a kerb was formed, and stones laid, and an opening was made in the boundary wall with a gate installed in that opening. He wrote that this work was carried out by another person, Shea Prtenjaca, with assistance from other unnamed persons who were carrying out highway works in the area, and who installed kerbs and laid stones. Mr Prtenjaca wrote to confirm this, although he described the works as replacement kerbs and hardcore.
9. A statutory declaration by the appellant's son, William Willett Junior, who managed the touring caravan site while his father was in Canada, provides further confirmation of what Mr Townsley and Mr Prtenjaca wrote, although he described the works as installing lower kerbs and putting gravel down.
10. Mr Townsley's and Mr Prtenjaca's submissions are not statutory declarations, which limits the weight that can be afforded to them. While Mr Willett Junior's statutory declaration can be afforded greater weight, neither he, nor Mr Townsley, nor Mr Prtenjaca appeared in person, so their evidence has not been tested. The appellant gave evidence in person but his account that the new vehicular access was formed in 2012 is what was reported to him because he was in Canada at the time and did not return to Bungalow Farm until 2015.
11. Aerial images show that a gap had been made in the boundary wall, adjacent to the new vehicular access, by April 2015 and a photograph attached to William Willett Junior's statutory declaration shows a metal gate in this gap in March 2014. While neither may be definitive proof of a vehicular access to the carriageway of the A47, no other reason for those works has been suggested.
12. Evidence that the new vehicular access existed before the Relevant Date is provided by others. In her August 2022 statutory declaration, Lucy Vellam confirms that she had used it since May or June 2013 when visiting a stable she rented at Bungalow Farm. In their statutory declarations made the same month, Adele Thompson and Teresa Lee confirm they had used the new vehicular access since 2014, also when visiting stables and, in Ms Lee's case, towing a horse box. Alan Johnson's statutory declaration, also from August 2022, confirms he used the new vehicular access since 2014, when staying at Bungalow Farm in his caravan. However, none of these people appeared in person and their evidence has not been tested.

13. John Hall's statutory declaration confirms that he has used the new vehicular access when staying at Bungalow Farm in a touring caravan. Mr Hall appeared at the Inquiry and gave oral evidence, which was tested and to which I therefore afford substantial weight. He explained that he had used the original access at first but, owing to the gradient, the back of his caravan had caught the ground. Scrape marks visible in the surface of that access support this. When Mr Hall was asked to use the new vehicular access instead, he found it preferable because it was more level, and he used it every year since 2014.
14. Aerial images from 2014, 2015 and 2018 give little indication that the new vehicular access existed in the area edged in red on the plan attached to the notice or was in use. The images include no signs that vehicles had crossed the highway verge within the red edge or the area behind the gate. However, and critically, Mr Hall confirmed that he had towed his caravan across both, along a track under tree canopies, and through a yard to reach the touring caravan site since 2014. He also confirmed that the vegetation behind the gate, which covered rubble, grew back quickly.
15. Ms Vellam's and Ms Thompson's August 2022 statutory declarations identify the vehicles they drove through the new vehicular access from 2013 and 2014 respectively¹. This adds to Mr Hall's evidence that the new vehicular access was substantially complete, sufficient to be used by vehicles, more than 4 years before the notice was issued.
16. A transport statement in support of the planning application, made in 2016, for the holiday park² does not refer to the new vehicular access. However, as it was proposed that the holiday park would use the original access, it has not been shown that there was any reason for the statement to consider the new vehicular access.
17. In contrast to the appellant's evidence, a member of the public, commenting on an application made in January 2019³, stated there had not been "an existing gateway" in the position of the new vehicular access before 2018. However, it is unclear whether the gateway is a description of the new vehicular access alleged in the notice. As the author did not appear at the Inquiry, this evidence could not be clarified or tested, and I can only afford limited weight to what was written.
18. On the balance of probability, the appellant's evidence, particularly that given orally by Mr Hall, is sufficiently precise and unambiguous to demonstrate that the new vehicular access was being used, and therefore must have been substantially complete, before the Relevant Date. It would seem the 2018 works were further operational development, which made the new vehicular access more prominent and resulted in it being reported to the Council and, in error, the neighbouring local planning authority. However, that does not alter the fact that no enforcement action could be taken on the date the notice was issued in respect of the earlier formation of the new vehicular access.
19. For these reasons the appeal on ground (d) should succeed.

¹ Volkswagen Golf (2013), unspecified Audi (from 2014), Mercedes C Class with lowered suspension (from 2017)

² 16/1478/FUL, submitted to Blaby District Council

³ 19/00071/CLUE, refused 13 November 2020

Conclusion

20. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.
21. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Formal Decision

22. The appeal is allowed and the enforcement notice is quashed.

Mark Harbottle

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rowan Clapp of Counsel

He called

William Willett

John Hall

Tim Rose BA (Hons)

MCIHT MTPS

Director, Mewies Engineering Consultants Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Ian Ponter of Counsel

He called

Christine Zacharia

BTP MRTPI

Team Leader, Planning Enforcement, Hinckley and
Bosworth Borough Council and Harborough District
Council

David Hunt

Senior Transport Planner, Leicestershire County
Council