



Appeal Decision

Site visit made on 16 November 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2022

Appeal Ref: APP/F2415/C/21/3287649

Land Adj to Main Road, Claybrooke Magna, Leicestershire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Lambertide Investments against an enforcement notice issued by Harborough District Council.
 - The notice was issued on 15 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission:
 - a. The creation of a vehicular access from the Land onto a classified road (Main Road - B577) in the approximate position marked by a red arrow on the Plan
 - b. The associated removal of vegetation and engineering works, conducted in order to create the vehicular access including the new gravel hard surface laid for the access track, shown hatched blue on the Plan
 - The requirements of the notice are to:
 - a. Cease the use of the Land for the purposes of vehicular access and egress from, or to, the classified road (Main Road - B577);
 - b. Permanently prevent vehicular access across the Land by erecting a fence or wall of a similar height (or lower) to the fence/gate that was in situ immediately prior to the unauthorised works that were undertaken to create the access to the classified road (Main Road - B577).
 - c. Break up the gravelled area in the approximate position hatched blue on the Plan, and remove the resulting debris from the Land, returning the Land to its profile prior to the unauthorised works taking place, as shown in figure 2 attached to this notice.
 - The periods for compliance with the requirements are: 1 (one) month for compliance with 5a and 5b, 6 (six) months for compliance with 5c.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:

- At section 5 of the notice, the deletion of requirement a, which states 'Cease the use of the Land for the purposes of vehicular access and egress from, or to, the classified road (Main Road - B577);'
- At section 5 of the notice, the deletion of requirement b, which states 'Permanently prevent vehicular access across the Land by erecting a fence or wall of a similar height (or lower) to the fence/gate that was in situ immediately prior to the unauthorised works that were undertaken to create the access to the classified road (Main Road - B577).'
- At section 5 of the notice, requirement c, the deletion of the words 'returning the Land to its profile prior to the unauthorised works taking place' and the insertion of 'restore the land to its condition before the breach took place', so that requirement c reads 'Break up the gravelled area in the approximate position hatched blue on the Plan, and remove the resulting debris from the Land and restore the land to its condition

before the breach took place, as shown in figure 2 attached to this notice.'

- At section 6 of the notice, the deletion of the words '5a. and 5b. requirements is 1 (one) month, with' and the insertion of 'requirement' and 'is' so that it reads 'The time for compliance with requirement 5c. is 6 (six) months.
2. Subject to the corrections above, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appeal was lodged in the company name of Smee Holdings Limited, however, it has since been confirmed that the appeal is being made in the name of Lambertide Investments. I have therefore referred to Lambertide Investments in the banner heading above.
4. I have a duty to get the notice in order, if I can. Section 173 of the Town and Country Planning Act 1990 (as amended)(the Act) sets out that a notice may remedy the breach by...discontinuing any use of the land or by restoring the land to its condition before the breach took place. The alleged breach is the creation of a vehicular access, which is operational development. The requirement to cease the use of the land for the purposes of vehicular access and egress therefore goes beyond the breach. Deleting requirement (a) would address this without expanding the scope of the requirements.
5. Photographs provided by the Council show that a gate was *in situ* prior to the works and so, requiring the appellant to erect a fence or a wall of similar height to the fence/gate that was *in situ* immediately prior to the works would exceed remedying the breach. Deleting requirement (b) and correcting requirement (c) to require the restoration of the land to its condition before the breach took place would address this without expanding the scope of the requirements.
6. The parties have been given the opportunity to comment on the implications of the above suggested corrections through the appeal. Since the corrections would not make the requirements more onerous, I am satisfied that they would not cause injustice to either party and shall delete requirements (a) and (b) and correct requirement (c). Since there is no longer a need for the notice to refer to requirements (a) and (b) in section 6 of the notice, TIME FOR COMPLIANCE, I shall delete references to these, including the period for compliance which relates to requirements (a) and (b) only. Since the compliance period for requirement c would remain unchanged, there would be no injustice to either party in making such a correction.
7. The appellant asserts that the works that have been carried out constitute the re-surfacing and upgrading of an existing accessway, not the creation of a new vehicular access track. Although the appellant has only appealed under grounds (c) and (d), I consider this to be a hidden ground (b), which is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. Since the Council has addressed this point in their evidence, I shall consider it accordingly.

Grounds (b) & (c)

8. As set out above, an appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. The burden of proof is firmly on the appellant, to make their case in respect of the legal grounds of appeal, with the standard of proof on the balance of probabilities.
9. The appellant asserts that the works that have been carried out constitute the re-surfacing and upgrading of an existing accessway, not the creation of a new vehicular access track, and as such do not amount to development. I shall consider the latter point under ground (c) below.
10. The appellant has drawn my attention to land registry documents which show that the appeal site together with a parcel of land to the rear of the timber yard, was sold together. Historically, it is stated that the land in this title land had no connection to the timberyard, which remains the case in practice as the land is let to a separate tenant to that of the timber yard.
11. The appellant asserts that without this access, the adjacent field would be landlocked and would render the very reason of having the strip of land included within the land registry title redundant. However, this in itself does not demonstrate there was a vehicular access onto the highway. There is no indication that the sale of land was dependent upon the provision of an access onto the road. It is not unusual for companies to acquire land which is adjacent to an existing site to allow operations to expand. Moreover, land is often sold without rights or benefits which landowners may then seek to acquire.
12. I have been provided with a series of letters signed by employees of Whitmore's Timber, which state that 'all three of the entrance gates have been available for vehicle and pedestrian access throughout my time at Whitmore's.' However, there is no plan attached to the letters to show which accesses the individuals concerned are referring to. Furthermore, the individuals state that the entrance gates have been available for vehicle and pedestrian access, not that they have all been used by vehicles. A letter signed by the general manager states that the gate and access road have accommodated Plant machinery, Heavy goods vehicles, Light haulage, Farm tractors, Farm animals, Trailers, Cars and Pedestrians. However, as with the other letters, no plan is attached.
13. Photographs provided by the Council show that the land was previously grassed over, with vegetation along the verge. Although gates are evident in Google Street View images dated 2009 and 2011, given the modest size of the gates which were previously installed, I consider it highly unlikely they would have accommodated heavy goods traffic. Furthermore, given the extent of vegetation along the verge, which would have physically prevented vehicles from using the gates, it seems highly unlikely that the gates were used to provide vehicular access to the site. This undermines the General Manager's assertion that the 'gate and access' have accommodated the vehicles indicated above, or the appellant's assertion that the 'vehicular access' has been in use 'throughout'.
14. Officer photographs taken on 13 July 2021 show the verge comprised a slightly raised bank of earth where the vegetation has been cut back. The bank is likely to have impeded vehicular access into the site. I saw that the bank has since

been removed and has been laid with gravel, to create the bell mouth of a substantial access into the site. The works which have been carried out are extensive and form part of an access to the main road. Given the size of the track which has been created, a significant volume of material would have been required to surface it and would have involved an element of pre-planning. When considering the works as a whole, in my view, what took place would be properly characterised as the formation of a means of a vehicular access to a highway.

15. Thus, I find, on the balance of probabilities, the matters stated in the notice as constituting the breach of planning control have occurred, as a matter of fact and the appeal under ground (b) must fail.
16. An appeal under ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. Section 55(1) of the Act describes development as the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 336(1) of the Act states that "engineering operations" includes the formation or laying out of means of access to highways. The works which have been carried out, which include the creation of a vehicular access, are therefore development for the purposes of the Act.
17. Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO), permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road. Main Road, the B577, is a classified road and so planning permission is not granted by the GPDO.
18. Even if I were to accept the appellant's argument, that the works carried out constitute the upgrading of an existing access, Article 3(6) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) states that the permission granted by Schedule 2 does not, except in relation to development permitted by certain classes of Part 9 and Class A of Part 18 of that Schedule, authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road. There is no suggestion that the works would fall under either Part 9 or Part 18.
19. Thus, for the reasons given above, the works constitute development for which planning permission is required. Consequently, the appeal under ground (c) must fail.

Ground (d)

20. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. I have considered the appellant's arguments that an access has been *in situ* historically above, and have found the works which have been carried out constitute development for which no planning permission exists. For the appeal to succeed under ground (d), therefore, the appellant would need to show, on the balance of probabilities, that the works had been substantially completed on or before 15 November 2017¹.

¹ Namely 4 years prior to the issue of the enforcement notice.

21. In an aerial photograph, dated 2018, the land appears well vegetated, which suggests the works had not commenced at that point. A Google Street View image, dated April 2021, shows that while vegetation within the site had been removed, gravel does not appear to have been laid. Furthermore, gates which are currently *in situ* had not been erected at that point. Significantly, in response to a Planning Contravention Notice, the appellant advised that works to 'upgrade and re-surface the access' took place in Summer 2021.
22. I therefore find, on the balance of probabilities, that the works were not substantially completed on or before 15 November 2017. Consequently, the appeal under ground (d) must fail.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

M Savage

INSPECTOR