



Appeal Decisions

Site visit made on 20 March 2023

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal A Ref: APP/L3625/C/22/3294878

Land Known as Four Acre Upper Woods, Fort Lane, Reigate, Surrey, KT20 7BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Michael Heighes against an enforcement notice issued by Reigate and Banstead Borough Council.
 - The notice, numbered E.01/910, was issued on 9 February 2022.
 - The breach of planning control as alleged in the notice is the development consisting of:-
 1. The importation of large quantities of chalk onto the land (laid in piles for the creation of a proposed track) in the approximate location marked as a black dashed line between point A to B on the plan attached to the enforcement notice.
 2. The creation of a raised chalk track across the land in the approximate location marked as a black dashed line between point C to D on the attached plan.
 - The requirements of the notice are to: 1. Permanently remove from the Land outlined in red on the plan attached to the enforcement notice, any chalk (laid in piles for the creation of a proposed track) in the approximate location marked as a black dashed line between point A to B on the attached plan. 2. Permanently remove from the Land outlined in red on the plan attached to the enforcement notice the chalk track laid in the approximate location marked as a black dashed line between point C and D. 3. Remove from the Land all materials and debris resulting from taking the above steps. 4. Restore the Land to the condition it was in before the breach of planning control took place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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.
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Appeal B Ref: APP/L3625/X/21/3288861

Land known as 4 Acre Upper Woods, Fort Lane, Reigate, Surrey, RH2 9RN
Grid Refs: Easting: 525605, Northing: 152158

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Kingswood Hall Estate against the decision of Reigate and Banstead Borough Council.
 - The application ref 21/02206/CLE, dated 12 August 2021, was refused by notice dated 9 November 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is use as a spine trackway.
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Decisions

Appeal A: APP/L3625/C/22/3294878

1. It is directed that the enforcement notice is corrected by the deletion of the words '*point A to B*' in requirement 1 and the substitution of the words '*point E to point B*'. It is also directed that the enforcement notice is varied by the deletion of the plan attached to the notice and the substitution of the plan attached as Annexe 1 to this Decision.
2. Subject to the correction and variation, Appeal A is allowed insofar as it relates to the track marked C to D on the plan attached as Annexe 1 to this Decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the track between points C – D on the plan attached as Annexe 1 to this Decision at land known as Four Acre Upper Woods, Fort Lane, Reigate, Surrey, KT20 7BA.
3. Appeal A dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the track marked B – E on the corrected plan and planning permission is refused in respect of the importation of large quantities of chalk onto the land (laid in piles for the creation of a proposed track) at land known as Four Acre Upper Woods, Fort Lane, Reigate, Surrey, KT20 7BA on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/L3625/X/21/3288861

4. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

Preliminary Matters

5. I propose to deal firstly with Appeal B because, if I find that there is no established track along the line claimed by the appellant, this will have an impact on the matters to be addressed in Appeal A. If there is such a track then, under the appeal on ground (c), I will need to consider whether the repairs proposed to be undertaken to it can be classified as development permitted by to the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
6. If I find that the track does not yet exist, the deemed planning application made under ground (a) of the enforcement notice will relate only to the development that has already been carried out, i.e. the importation of the chalk piles and the short area of track that has already been constructed. I will not be considering the merits of any track that may be proposed in future as that would go beyond the scope of this appeal.

Main Issues

7. I consider the main issued in these cases to be:

On Appeal B:

whether the Council's decision to refuse the application for a LDC was well founded or whether the trackway has been in use as such for at least 10 years prior to the date of the application for a LDC.

On Appeal A, ground (c):

whether the development enforced is a breach of planning control that requires a grant of planning permission to authorise it and, if it is;

On Appeal A, ground (a):

(i) whether the development that has been carried out represents inappropriate development within the Green Belt and, if so, whether there are any material considerations that outweigh the harm caused by such development, and any other harm, and are sufficient to justify the proposal on the grounds of very special circumstances and;

(ii) the effect of the proposed track on the character and appearance of the Area of Outstanding Natural Beauty (AONB) and Area of Great Landscape Value (AGLV).

Site and surroundings

8. The appeal site is an area of farm and equestrian land south of the M25 motorway in Green Belt countryside, that is also designated as an AONB and AGLV. It is associated with further land and buildings to the north, which are part of the Kingswood Hall Estate, to which it is attached by a bridge over the motorway. There is a track that runs north/south from Margery Lane through the estate to the point at which the appellant claims it connects with the disputed section of track, which he submits then runs west/east to a radio transmitter station in the east. The north/south section of track is accepted by the Council as being an historic route but it disputes that a recently completed section labelled C – D on the plan attached to the enforcement notice is authorised.
9. Piles of chalk have been deposited along the line of the east/west route from the authorised track to the transmitter and the appellant states that these are intended for the repair of the track that he claims has existed on this route since 1994.
10. There are fields to either side of this route and a line of mature trees and shrubs along it to the point where it turns roughly south west and then north towards the transmitter. A significant area of the land included in the enforcement notice, to the south of the route, was granted planning permission for equestrian use in 2020 and this land is now fenced off from the route. There is also fencing along much of the route to the north, following the line of the of the trees and shrubs. There is also evidence of a number of historic field gates along the route of the claimed track.

Reasons

Appeal B

11. The appellant has produced a number of sworn statements from agricultural contractors who attest to the existence of spine track since 1994 along all the routes marked in red and yellow on the plan attached to their declarations. These state that the track has been greened over but the route has remained unchanged since this time and that they have all used it regularly.
12. The Council have produced a series of aerial photographs dating from 1999 to 2021. There is no obvious chalk track visible on any of these photographs (apart from between points C and D in 2021), even those on which the line of the spine track accepted as authorised can be seen.

13. In the 2021 photograph, piles of chalk intended for the repairs can also be seen adjacent to the authorised section, which have subsequently been laid on the land but not included in the February 2022 enforcement notice.
14. Although there is now little evidence of underlying chalk having been laid below the line of the disputed route, this would not be surprising given that there may not have been any improvements carried out to it since the claimed original date of 1994. The existence of the historic gates is evidence that the fields were separated from each other and, as they lie along the line of the route, it is likely that a track ran between them and the line of trees.
15. This view is supported by the undated aerial photograph that the appellant has submitted with sections enlarged showing clear tyre marks along the whole of the disputed route between point A and point E (Gate 4 on the plan submitted by the appellant). This photograph was taken before the chalk piles were brought in and before the equestrian fields were fenced, so is prior to April 2020. Although it does not assist the appellant in respect of the length of time the track has been in place, it does confirm a positive use prior to the importation of the chalk piles.
16. Although tracks are not so evident on earlier photographs, there are no photographs submitted covering the times between 2006 and 2018. The relevant dates for the LDC are 10 years prior to August 2021 and tracks are evident along the length from point A to point E from at least 2018 and from Gate 7 (on the plan submitted by the appellant) to point E from 2003. As the track running from the motorway crossing to point A has been accepted as lawful but is not visible on the photographs, it does not seem to me unlikely that there was a track connecting point A to point E for the requisite period.
17. I saw at the site inspection that the sections of authorised track where chalk has been laid (which must have been sometime after April 2020 as they cannot be seen on the photographs until after this date) have already started to green over and are lying flush with the adjacent ground. This, in my view, corroborates the claim that the fact that other sections of chalk track cannot be readily distinguished in all the aerial photographs does not make the appellant's claim less than probable.
18. An interested party representing the residents of Margery Hall refers to there being no evidence of a 'metalled track' along the route, but the appellant has not made this claim. His case is that there is an original chalk track that is now covered with earth and grass.
19. However, there is little on the photographs, even in 2018, to confirm the existence of a track between point E and point B. If, as claimed in the declarations, this area had been consistently in use for the requisite time, it could, in my opinion, be expected to show some signs of such use on the photographs. It is quite feasible that a chalk base, laid to prevent the ground from over-compaction, could become covered with grass over time but this would still show some signs of wear over the time frame claimed.
20. Turning to the section of track from point C to D, again there is no specific photographic evidence to confirm that this has been in an historic use for the requisite period. I have accepted, on the balance of probabilities, that the route from point A to point E is likely to be authorised through a combination of the statements and photographs but, as with point E to point B, there is no photographic evidence to corroborate the statements, which have tended to focus on the east/west section of track.

21. There is thick vegetation cover over the area in the photographs prior to June 2021 but the chalk that has subsequently been laid can then be clearly seen, indicating that a significant amount of ground cover has been removed. This suggests that, rather than the track being a regular route for over 10 years, it was instead cleared more recently to form a link between 2 existing sections of track.
22. Therefore, although it does not seem unlikely to me that there has been an historic track for at least 10 years along the part of the route from point A to point E, I will not grant an LDC for the remaining sections between point C and point D and point E to point B. In these circumstances, I consider Appeal B should succeed in part and an LDC for the section of track from point A to point E will be issued.

Appeal A

Ground (c)

23. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) confirms in, Schedule 2, Part 9, Class E, (repairs to unadopted streets and private ways), that the carrying out of works required for the maintenance or improvement of a private way is permitted development. Therefore, the chalk piles adjacent to the part of the track I have found to be lawful in Appeal B can legitimately be brought onto the site and used to improve the section from point A to point E. The appeal on ground (c) succeeds to this extent.
24. The section of track that has already been constructed from point C to point D, and the claimed track from point E to point B have not been shown to have been in existence for the time required to gain immunity from enforcement and the appeal on ground (c) in respect of them fails.

Ground (a)

25. As previously noted, I am unable to grant an appeal on ground (a) for works that have not yet taken place. Therefore, the only matters I will be considering on this ground will be the track marked C – D on the enforcement notice plan and the chalk piles sited between point E and point B.
26. In respect of the track from C – D, I saw at the site inspection that this has already started to green over and will soon appear as a natural part of the surroundings. It does not look out of place in this Green Belt countryside location and is now level with the surrounding land. It does not impact on openness and neither does it conflict with the purposes of including land within the Green Belt. If considered as an engineering operation, which I consider it to be, it does not, therefore, represent inappropriate development in the Green Belt.
27. For these reasons, I also consider that this part of the development does not conflict with local and national planning policy aimed at protecting the other special landscape designations of this site (AONB and AGLV) and planning permission will be granted for it. The appeal on ground (a) succeeds to this extent.
28. Nevertheless, the remaining chalk piles that have been brought onto the land to be laid on the route from Point E to point B have no authorised use in

respect of repairs to an established private way and their siting represents an engineering operation that is harming the openness of the Green Belt.

29. Even though the mounds of chalk are themselves beginning to green over, they are clearly an unnatural intrusion in this countryside location and are, in my view, harming the character and appearance of the surroundings. There are no very special circumstances to justify their retention and they conflict with the National Planning Policy Framework section on development in the Green Belt. They also conflict with policies CS2 and CS3 of the Reigate and Banstead Local Plan: Core Strategy (Adopted July 2014) (RBLP:CS), and policies NHE1 and NH5 of the Reigate and Banstead Local Plan Development Management Plan (Adopted September 2019) (DMP) which seek to protect valued landscapes and prevent inappropriate development in the Green Belt.

Conclusions

Appeal A

30. For the reasons given above I conclude that Appeal A should succeed in part only, and I will grant planning permission for the chalk track labelled C - D on the plan attached to the enforcement notice (as varied) but otherwise I will uphold the notice with a variation to add point E as a reference point on that plan and a correction to the allegation so that it refers to the chalk piles laid between point A and point E (rather than point A to point B) where the appeal succeeds on ground (c). I will refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

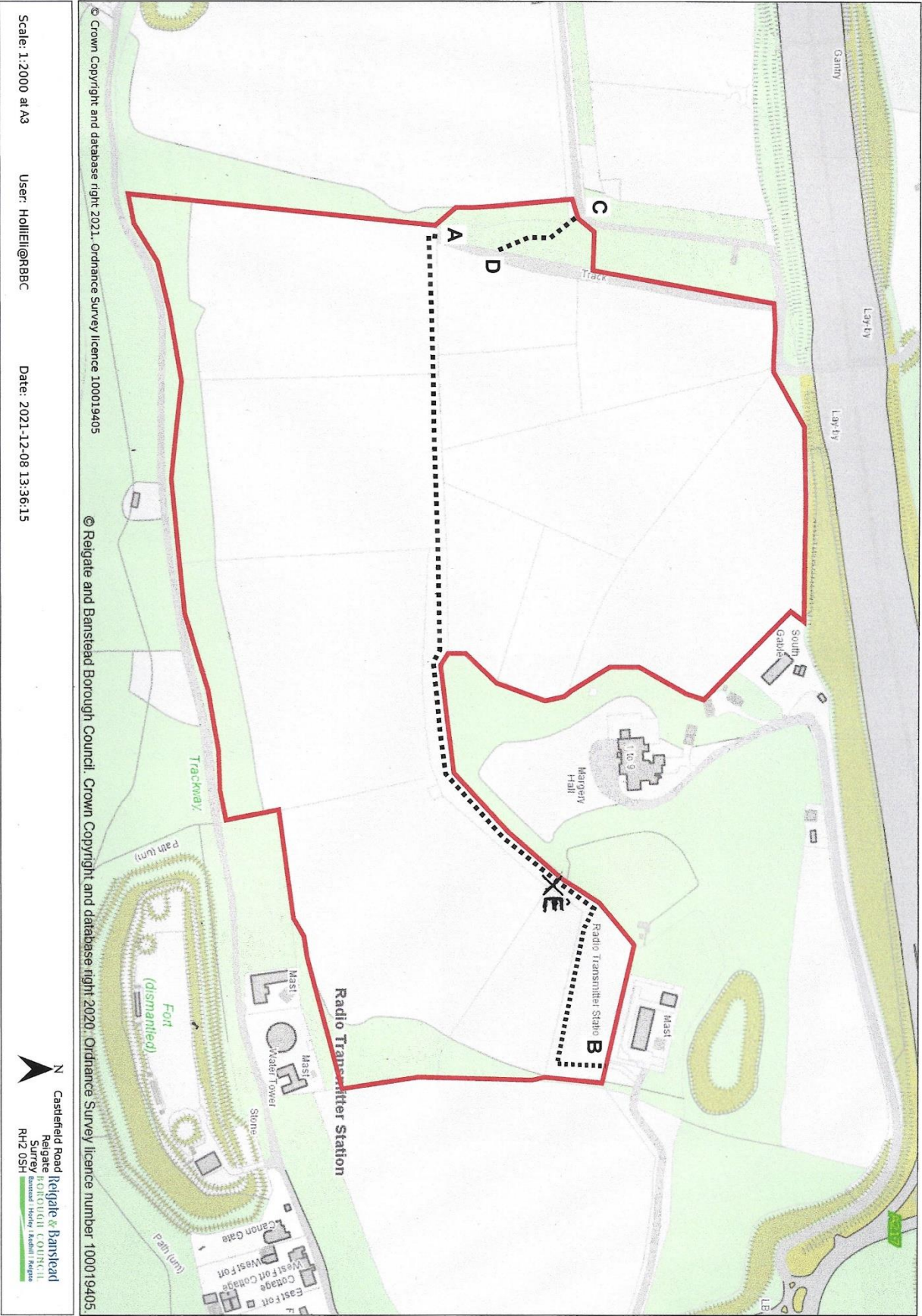
Appeal B

31. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the section of spine track running from point A to point E (as shown on the LDC plan attached to this Decision) was not well-founded and that the appeal should succeed in this respect. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
32. For the reasons given above I also conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a track from point E to point B (as shown on the LDC plan attached to this Decision) was well-founded and that the appeal in respect of this part should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Katie Peerless

INSPECTOR

ANNEXE 1 ENFORCEMENT NOTICE PLAN AS VARIED



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 August 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and dashed black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The section of track has been in existence for at least ten years prior to the application for the Certificate of Lawful Use.

Signed

Katie Peerless

Inspector

Date: 31 March 2023

Reference: APP/L3625/X/21/3288861

First Schedule

Use as a spine trackway

Second Schedule

Track between point A and point E at land known as 4 Acre Upper Woods, Fort Lane, Reigate, Surrey, RH2 9RN, 525605, 152158

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.