



Appeal Decisions

Site visit made on 27 February 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th April 2023

Appeal A Ref: APP/T2350/C/22/3301926

Appeal B Ref: APP/T2350/C/22/3301928

Land adjoining Hawkshaw Farm, Longsight Road, Clayton Le Dale, Blackburn, Lancashire BB1 9DW

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Ms Megan Cottam (Appeal A) and Mr Jonathan Howarth (Appeal B) against an enforcement notice issued by Ribble Valley Borough Council.
 - The notice was issued on 25 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, construction and substantial development of an access track, installation of a drainage system on the land, the installation of shipping containers on the land and creation of areas of hardstanding.
 - The requirements of the notice are:
 - (i) remove the containers, drainage works and driveway.
 - (ii) remove from the land all building materials and rubble arising from compliance with requirement (i) above, and restore the land to its condition before the breach took place by levelling the ground and re-seeding it with grass, and plant trees to replace any removed during the unauthorised works.
 - The period for compliance with the steps set out in paragraph 5 are:
 - (i) 12 weeks from the date this notice takes effect.
 - (ii) 52 weeks from the date this notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f), (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. Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeals A and B – Formal Decisions

1. The enforcement notice is corrected and varied by:
 - Correcting requirement (i) by substituting “and driveway” for “,access track and areas of hardstanding”;
 - Deleting requirement (ii) above and substituting it for “remove from the land all building materials and rubble arising from compliance with requirement (i) above; and restore the land to its condition before the breach took place.”
2. Subject to this correction and variation, the appeals are dismissed, the enforcement notice is upheld, and planning permission, subject of Appeal A, is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. I have a duty to ensure that the enforcement notice is in order. Under s176(1)

of the Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms provided I am satisfied that the correction or variation will not cause any injustice.

4. The alleged breach of planning control refers to an 'access track' and the 'creation of areas of hardstanding', yet requirement (i) seeks the removal of a 'driveway'. The reference to 'driveway' in requirement (i) does not square up with and follow logically from the allegation. As there is no doubt between the parties that operational development has taken place in respect of the access track and the areas of hardstanding within the site, no injustice would be caused if I were to correct requirement (i) as set out above. I shall refer to them as such in the remainder of my decision.

Appeal A on ground (a) / the deemed planning application

5. The main issues are: (a) the effect of the proposal on the character and appearance of the area, including the woodland; and (b) whether the proposal is required to assist the maintenance and management of the woodland.

Character and appearance

6. The appeal site relates to an area of woodland, known as the Rann, planted as a Community Woodland in 2003. The woodland lies to the west of Saccary Lane and extends to approximately 2.225 hectares. The appeal site is one part of the woodland that is protected by a Tree Preservation Order (Rann Woodland, Off Saccary Lane, Mellor Tree Preservation Order 2019) (TPO). On the TPO plan, the appeal site is referred to as 'W2'. A private track provides a link between Saccary Lane and the woodland. The private track continues to the north of the woodland, and the route is also a public footpath (3-25-FP-5 and 3-25-FP-6).
7. The surrounding area is rural in character, with a mixture of open fields bound by hedgerows and trees, with pockets of woodlands covering an undulating landscape with sporadic development to the south of the A59.
8. Planning permission was granted in 2005 ("the 2005 permission") to create a stoned path suitable for disabled visitors and a car park area within the woodland area. These were subsequently formed on site, with the car park being next to the access, and the private track that links it to Saccary Lane, with the stone path then extending from the access through the woodland.
9. Prior to the alleged breach of planning control, the stone path was roughly two metres wide. The stone path and the track are in the same position, albeit the latter is now widened and the subject of the notice.
10. The crushed stone track in situ varies in width, but on average it is 3.8 metres. As a result, compared to the 2005 permission, it allows vehicular movements into the woodland beyond the car park area formed by the 2005 permission. However, given the woodland is now in private ownership and the owners are intent on managing and maintaining the woodland, the frequency of vehicle movements will likely remain low.
11. The width of the access track has increased, and land drains have been added around the areas of hardstanding and along the northern side of the access track, but their effect is localised, and they have not, on their own, significantly changed the character of the woodland or caused it harm. The alignment of the track is unchanged from that granted in the 2005 permission, which had an

existing pipe that guided surface water beneath it. This pipe has now been renewed and lengthened. It is also the case that the woodland screens the track significantly regardless of the time of year.

12. Next to, and to the south of the track are two large areas of hardstanding. To form these, earth has been excavated to create a level surface before hard standing has been added. The two areas are separated by a raised mound planted with trees. Whilst the areas of hardstanding are not widely visible in the landscape, owing to the screening provided by the woodland, they detract from the woodland's character by introducing large areas of built form. They also facilitate the siting of two storage containers and the stationing of temporary facilities such as welfare facilities and skips.
13. The storage containers are not of high quality design nor sympathetic to the woodland in terms of their size, nature, scale, massing, style, features or materials. The welfare facilities and skips may be transient features on the land and connected to the woodland and its management and maintenance, but the large area of hardstanding that has been created to station them have caused significant harm to the woodland. Although development in rural areas does exist, this does not justify the harm that is caused here. Adding screening to the elevations of each storage container would not overcome that harm as two large areas of hardstanding would still exist, and these have eroded parts of the woodland.
14. Whilst I have not found the track to have a harmful effect on the character and appearance of the area, and the woodland, it is not physically or functionally severable from the areas of hardstanding and their function to station the containers. This is the case whether the access track has a width as found on site or at a reduced width of 2.75 metres as suggested by the appellant.
15. I conclude, in respect of this issue, that the proposal causes significant harm to the character and appearance of the area, including the woodland. Conflict is caused with Policies DMG1, DME1 and DME2 of the Core Strategy 2008 – 2028 A Local Plan for Ribble Valley (Local Plan); which jointly seek to ensure development proposals are of a high standard of building design and sympathetic to existing land uses to avoid significant harm to important landscape features.
16. Despite reference by the Council to Key Statement EN2, this policy relates to the Area of Outstanding Natural Beauty (AONB) and as the site is not within the AONB or its setting, the policy is not relevant.

Maintenance and management of the woodland

17. The appellant considers that the proposal is necessary so that they can properly care for and maintain the woodland as it is affected by ash die back, with a significant number of trees affected. Without proper care and management, the woodland will deteriorate. It is the appellant's intention to replace infected trees with native species such as oak, hawthorn and silver birch as part of a good practice.
18. To achieve the care and management outlined, a range of equipment is required. I agree that it would be advantageous for the appellant to store equipment on the site. The list of tools, materials and equipment documented by the appellant's arboricultural advisor also seems to be reasonable. Given both factors, a robust storage facility would be advantageous to deter theft.

19. There is, however, no analysis to support the notion that the storage containers are the only possible solution to achieve this. Nor am I satisfied that two large areas of hardstanding are necessary to provide a suitable base for them or any other storage facility, and for welfare facilities or to position skips whilst certain works are carried out. This is because the existing area of hardstanding near to the access, formed following the 2005 permission, could accommodate any welfare facilities and skips as and when the need arises. While this area is not in the centre of the appellant's part of the woodland, the welfare facilities and the skip do not require the same degree of deterrent through their location as the storage facilities.

Conclusion on ground (a)

20. Whilst there is a need to manage and maintain the woodland, this does not outweigh the harm caused to the character and appearance of the area, including the woodland. I find that the proposal does not accord with the development plan as a whole and there are no material considerations that indicate that I should take a decision other than in accordance with it. As such, ground (a) therefore fails and the deemed application for planning permission is dismissed.

The appeals on ground (f)

21. The appellants consider, under their appeals on ground (f), that the notice's remedial steps go beyond what is reasonably necessary to remedy the identified harm. In this case, the notice seeks to remedy the breach.
22. Given the 2005 permission and the existence of a two metre wide stone path through the woodland and a car park, it would be unreasonable for the appellants to completely remove the access track as it would go beyond what is necessary to remedy the breach. Also, removing the renewed section of drain beneath the two metre wide track would be excessive. The path and the drain would still be useful in terms of caring for, maintaining and enjoying the woodland. ~~As the construction details of the track are available, I consider that the notice can be varied so that it is reduced to its original width.~~
23. Although I have not found the wider access track subject of ground (a) to be harmful, reducing the access track in situ to a width of 2.75 metres as suggested by the appellant would not remedy the breach, and I am not clear that the notice could be varied with sufficient clarity given that part of it appears to overlap with one of the large areas of hardstanding.
24. Requirement (ii) stipulates that the ground is to be levelled and re-seeded with grass, and trees planted to replace any removed during the unauthorised works. Although these aspects of requirement (ii) do respond to the condition and makeup of the site, the requirement is not precisely targeted considering the 2005 permission and is excessive. It also means that the appellant does not know exactly what they would need to do to comply with each part of the requirement without going beyond what is necessary to remedy the breach.
25. Therefore, it would be appropriate to vary requirement (ii) so that it targets what is necessary to remedy the breach. I consider that the notice can be varied so that the access track, the drain beneath it and the remaining areas of land are all restored to their previous condition. On this basis, the appeals on ground (f) succeed.

The appeals on ground (g)

26. The time periods for compliance with the enforcement notice fall into two parts. The appellants do not raise issue with the time period set out in respect of requirement (ii). The appellants are, however, seeking a longer time period of six months for requirement (i). This is because they say that large vehicles or heavy equipment will be required to remove the containers, the drainage works and the access track, and using heavy equipment would be difficult if ground conditions are wet or frozen.
27. Although adverse weather conditions could create short term difficulties in carrying out requirement (i), the time period is also long enough to allow for a suitable weather window to materialise to allow the works to be carried out. The time period set out on the notice also poses no difficulty providing the works are undertaken in a suitable sequence, particularly as there does not seem to have been any difficulty in moving the storage containers off site recently. Taking these factors together, I consider the time period in the notice provides ample flexibility and opportunity to work around any adverse weather and ground conditions. For these reasons, the appeals on ground (g) fail.

Other Matters

28. I note the comments made about the use of the land, but that is a matter not alleged in the notice subject of these appeals. Nor is there a substantive body of evidence before me to indicate that the allegation as set out on the notice is incorrect. I also note that the appellant, in respect of Appeal A did not seek planning permission under ground (a) for a change of use of the land.
29. Although concerns are raised about ecological species being affected, and local roads being obstructed, there is little evidence before me to support the stated concerns even though I recognise that the highway authority contends that insufficient information has been provided by the appellants. I cannot therefore agree that the residual cumulative impacts of the development are severe in terms of the National Planning Policy Framework.

Conclusions

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

Andrew McGlone

INSPECTOR