The Planning Inspectorate

Appeal Decisions

Site visit made on 31 January 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

Appeal A Ref: APP/Y3615/C/22/3300655
Land known as land to the rear of 120 – 130 Potters Lane, Send, Woking, GU23 7AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kevin Watts against an enforcement notice issued by Guildford Borough Council.
- The notice, numbered EN/21/00440, was issued on 17 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development consisting of an engineering or other operation to construct a tarmac access/crossover, the installation of drainage and the laying of hardcore material to create a hardsurface/track and the carrying out of operational development to partially construct steel and brick posts/piers.
- The requirements of the notice are to:
  i) Dig up and remove from the Land the tarmac access/crossover that has been constructed, including the removal of the kerbstones.
  ii) Dig up and remove from the Land any drainage that has been installed, including any subterranean drainage system (i.e. pipes) and the drainage gully.
  iii) Remove from the Land the steel posts and partially constructed associated brick piers around the posts.
  iv) Remove from the Land the hardcore laid within the hatched area of the attached plan.
  v) Remove from the Land all materials brought on to the Land in association with the unauthorised development.
  vi) Remove from the Land all materials, debris and waste resulting from compliance with steps i) to v).
  vii) Replace any removed material with topsoil to level it with adjacent land and then seed the area with grass seed.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Appeal B Ref: APP/Y3615/W/22/3297665
Land rear of 120-130 Potters Lane, GU23 7AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Kevin Watts against the decision of Guildford Borough Council.
- The application Ref 21/P/01443, dated 23 June 2021, was refused by notice dated 8 November 2021.
- The development proposed is described as '*retrospective application for the introduction of a new access point to the site in order to provide safer access for vehicles and pedestrians*'.

Decisions

Appeal A

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

    - Deleting the word 'hardsurface/track' in section 3 and replacing with 'hard surface/track'.

2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

3. The appeal is dismissed.

Appeal A - Applications for Costs

4. An application for costs was made by Guildford Borough Council against the appellant. That application is the subject of a separate decision.

Preliminary Matters

Appeal A

5. The allegation refers to a 'hardsurface/track', which is evidently a typo. Hard surface are two separate words. I am able to correct the notice accordingly, under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

6. I have noted the objections made in respect of Appeal A, on matters including highway safety, existing provision, planning history, use, character and appearance, effect on the Green Belt and drainage. However, I am unable to consider the planning merits of the development under Appeal A since the prescribed fees have not been paid within the specified period. Consequently, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed. Nevertheless, for the avoidance of doubt, I have considered the planning merits of the access under Appeal B.

Appeal B

7. The Council has confirmed that Policies G1 and G5 of the Local Plan 2003, referred to in its reason for refusal, have been replaced by Policy D4 of the Guildford Borough Local Plan Development Management Policies (LPDMP), which was adopted on 22 March 2023. As my decision must be made on the basis of the development plan in place at the time of my decision, I offered the appellant opportunity to comment on that material change in circumstances. No response was received.

Appeal A on Ground (c)

8. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control. The onus lies with the appellant to make his case on the balance of probabilities.

9. The case made relates to Class A of Part 6 of Schedule 2 of the GPDO[1] which, subject to limitations and conditions, provide permitted development rights to agricultural units of five hectares or more for engineering operations which are reasonably necessary for the purposes of agriculture within that unit. It is argued that Class A gives permitted development rights for farm roads and accesses and that the conditions are satisfied.

10. However, whilst the land connected to the access is a field, it is not shown, despite the onus being with the appellant to do so, that it forms part of an agricultural unit of five hectares or more, such that Class A permitted development rights are applicable.

11. The Council has measured the land edged red on the plan attached to the enforcement notice (which approximately follows Land Registry plans) at about 4.3 hectares. The Council also refer to the appellant's planning application[2] for the access (subject to Appeal B) which states that the site area is 3.68 hectares, albeit acknowledging that does not include all of the land within the ownership of the appellant. No evidence is provided by the appellant which disputes the Council's figures.

12. Such areas do fall within the size parameters of Class B of Part 6 of Schedule 2 of the GPDO which provides permitted development rights for the carrying out on agricultural land comprised in an agricultural unit of development including the provision of a sewer, main, pipe, a private way and a hard surface, where the development is reasonably necessary for the purposes of agriculture within the unit. The appellant asserts that the additional area of hard surfacing/track behind the access and associated drainage complies with Class B(e).

13. However, even if the alleged development (not just the track and drainage as argued) met the associated limitations and conditions of Class B, it has not been shown, again despite the onus being with the appellant to do so, that the land forms part of an agricultural unit and that the development is reasonably necessary for the purposes of agriculture within the unit.

14. I therefore conclude that the appellant has not demonstrated that any of the matters alleged in the notice are not in breach of planning control, on the balance of probabilities. The appeal on ground (c) fails.

Conclusion on Appeal A

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, as corrected.

Appeal B

Introduction and Main Issue

16. The access is located on the edge of the village of Send, within the Green Belt. The main part of the appeal site comprises a field to the rear of Nos 120-130 Potters Lane. It is connected to Potters Lane by two tracks, one running between Nos 122 and 124 and another to the south of No 130. The former links to the original access, the latter to the new access and the subject of this appeal.

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015
[2] Ref: 21/P/01443

17. It is proposed that the original access be closed and replaced with the new access. On that basis the Council has concluded that the development would not amount to inappropriate development within the Green Belt and would not, in that regard, conflict with relevant development plan policy or the National Planning Policy Framework (NPPF). Based on the evidence and my own observations, I find no reason to arrive at a differing position.

18. The main issue therefore is the effect of the development on the character and appearance of the area.

Reasons

19. The access point onto Potters Lane lies beyond the discernible edge of the village of Send in an area of open countryside with established roadside hedgerow enclosing agricultural fields. Despite the adjacency of the houses to the north, the overall character of the area is rural, due to the lack of footways, the dwellings being set well back from the road and within spacious plots with soft front edges to the lane formed mainly by hedgerow or to a lesser extent, open plan lawns.

20. Planning permission was refused for the retention of an access in 2004 and following enforcement action it was removed. The appellant acknowledges that the access was later reinstated as he considered the access between Nos 122 and 124 to be dangerous. The access is not therefore a modification of a lawful, historical access. Rather, it, and all that it entails, is new. It comprises a relatively wide and deep bellmouth area of tarmac with dropped kerbing across its frontage and kerb edging along its sides. The uncompleted track beyond is enclosed by steel gates and posts at the back of the access, with taller, flanking steel posts behind.

21. Within its rural context, those engineered characteristics appear urbanising, out of place and harmful. The associated loss of vegetation across the frontage has further undermined the rural character of this part of Potters Lane.

22. Although there are numerous access points to the north, they are, in the main, low key, melding into the lane with limited edging. The dropped kerb therefore provides a stark delineation between the mouth of the access and lane.

23. The gate is set back within the access so is largely obscured other than in more direct views. It also has some similarities to metal type agricultural gates. Nevertheless, it is double width and more robust than a conventional five bar gate. It also forms part of an access which is very visible from Potters Lane.

24. The appeal access does share similar characteristics to a number of other agricultural accesses in the general vicinity, which have been referred to by the appellant. However, none can be seen in conjunction with the appeal site. They also serve to reinforce the urbanising harm that occurs compared to other, typically more recessive agricultural style accesses. I am also unaware of their planning status. They do not therefore justify the additional harm arising in and around the appeal site.

25. I therefore conclude that the development is harmful to the character and appearance of the area and contrary to Policy D1 of Guildford Borough Local Plan: strategy and sites 2015-2034, Policy D4 of the LPDMP and paragraph 130 of the NPPF. Those policies state, amongst other things, that all new

developments will be required to achieve high quality design that responds to the distinctive local character of the area in which it is set.

Other Matters

26. The appellant explains that the primary reason for creating the new access is due to the purported high degree of danger for vehicles and pedestrians to enter and exit the original access.

27. In that regard, I note that the County Highway Authority has advised that the proposed access results in an improvement in visibility for vehicles compared to the original access and that it is suitable for agricultural use. That is consistent with my own observations.

28. Whilst the appellant states that it is generally accepted that vehicles are travelling at approximately 40mph around the original access, I have no evidence, such as a speed survey, to substantiate that submission. Indeed, even though both access points are along parts of the lane with a 30mph posted speed limit, the new access is located at the edge of the village, close to where the national speed limit applies. Consequently, vehicular speeds are likely to be higher close to the new access than the original access, which is positioned further into the village. Nevertheless, approaching vehicles from the south along Potters Lane will have a longer sight line of vehicles exiting the new access than from the original.

29. Although it is advantageous in highway safety terms for there to be sufficient width to allow one vehicle to enter the site if one is leaving, the appellant's Access Statement acknowledges that the site generates very low traffic flows and that off peak access will only be required once or twice a week and that there would be a maximum of two vehicles per visit. In those circumstances vehicular conflict is much less likely.

30. The depth of the new access will allow for vehicles to leave the highway and to park in front of the gates, prior to opening them. However, that benefit equally applies to the original access, without the associated urbanising harm.

31. The appellant states that there is an extensive history of road traffic accidents along Potters Lane and the surrounding roads, many of which have been classified as serious incidences with some fatalities. However, supporting evidence is limited to a 'crash map' which shows one incident along this part of Potters Lane. I have no further information of what that incident was or whether it involved the original access. Nor has it been shown that this particular stretch of road is inherently unsafe in highway safety terms. Moreover, despite the appellant's concerns over the original access, the new access is evidently unused.

32. Nevertheless, the geometry of the new access significantly improves visibility for vehicles leaving the site, compared to the original access. That in turn makes vehicular conflict along this part of Potters Lane less likely. In that regard, the development complies with paragraph 110 of the NPPF which states that it should be ensured that safe and suitable access to the site can be achieved for all users.

33. However, given the very low level of traffic generation to and from the field and lack of evidence of traffic incidents, those highway safety benefits do not

outweigh harm I have found to the character and appearance of the area arising from the creation of the new access and resultant policy conflict.

Conclusion

34. For the reasons set out above, and having regard to all other matters raised, I conclude that the access is contrary to the development plan taken as a whole, and the NPPF. The material considerations do not indicate a decision other than in accordance with the development plan and dismissal of the appeal.

Richard S Jones

INSPECTOR