



Appeal Decision

Site visit made on 5 April 2023

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 April 2023

Appeal Ref: APP/P2365/C/22/3300148

Land at Wellfield, Vicarage Lane, Westhead, Ormskirk L40 6HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Stephen Richards against an enforcement notice issued by West Lancashire Borough Council.
- The enforcement notice was issued on 26 April 2022.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on Planning Permission Ref. 2017/1067/FUL dated 1st February 2018 for "Temporary hard surfacing to existing United Utilities access track (retrospective)".
- The conditions in question are Nos 1 and 2 which state that:
Condition 1
- "This permission is valid for a limited period only expiring on 31st January 2020 by which date the hardstanding hereby authorised shall be removed from the site and the land shall have been restored in accordance with a scheme that shall previously have been submitted to and approved in writing by the Local Planning Authority."
Condition 2
- "Within six months of the date of this permission a scheme for the restoration of the site pursuant to condition 1 shall be submitted to the Local Planning Authority for assessment. At the minimum the scheme shall include the closing up of the entrance to Vicarage Lane, removal of the hardstanding and reinstatement of landscaping and boundary treatments."
- The notice alleges that the conditions have not been complied with in that:
a) no scheme for the restoration of the site was submitted to the Local Planning Authority for assessment within six months of the date of the granting of the planning permission as required by condition 2; and
b) the hardstanding approved under the planning permission was not removed by the 31 January 2020 as required by condition 1.
- The requirements of the notice are:
 - i. To remove the hardstanding laid along the length and width of the track shown by black hatching on the attached plan (the Track) and thereafter return the Track to the condition as shown in the attached photograph dated 28 February 2017; and
 - ii. All materials to be removed from the site arising from the removal of the hardstanding.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the 1990 Act 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Background and Preliminary Matters

1. The appeal concerns the laying of hardstanding along an access track. The appellant explains there are three levels of track. The first was a historic agricultural track, which ran from a farm gate on Vicarage Lane towards what is now a modern agricultural building. This track was then utilised and improved by United Utilities in connection with works for a new water pipeline. The improvements involved laying crushed stone along the length of the agricultural track. A third layer was added using surplus tarmac resulting from nearby highway resurfacing works. The appellant gained planning permission retrospectively for the tarmac surface, albeit subject to a condition requiring its removal by 31 January 2020 and a further condition relating to land reinstatement. It is these conditions that form the basis of this appeal.
2. The appellant indicates that the majority of the access track is within the curtilage of the dwelling known as Wellfield and would benefit from 'permitted development rights' under Article 3(1) and Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to alterations relating to condition F.2 which concerns the permeability of the surface. I have considered this matter as a possible fallback position as part of the ground (a) appeal.
3. It is also suggested that the works to improve the farm track, carried out by United Utilities, were exempt from planning controls. Whether or not that was the case is not relevant since the matters before me concern the temporary hard surfacing to the United Utilities track, which was the approved development. I understand the tarmac was laid at the request of the appellant to facilitate the construction of a replacement house at Wellfield, during a two-year construction period, pursuant to planning permission ref 2015/1097/FUL.
4. The appellant points out that the second part of condition 2 did not relate to the application as it required closing the previously existing farm access and reinstatement of boundary treatments. Also, the condition requires assessment and not approval. It is indicated the condition is unlawful. I have considered whether this matter should be addressed as a further appeal on ground (c), which would be the matters alleged do not constitute a breach of planning control because the condition was invalid. However, the requirements of the notice do not seek compliance with condition 2. Consequently, the provisions of Section 173(11) of the 1990 Act would be relevant¹, meaning that once the notice is complied with deemed planning permission is granted for the development originally permitted without complying with condition 2. Hence, whether that condition was unlawful, or otherwise invalid, has no bearing on this appeal. It is, of course, open to me to consider the re-imposition of any such condition as part of my assessment of the deemed planning application.
5. The appellant further claims that condition 1 is also unlawful since it refers to "hardstanding" and is not sufficiently precise and reasonable about which layer of hardstanding should be removed. However, the planning permission is clear in that it concerned "the temporary hard surfacing to existing United Utilities access track". The full wording of condition 1 refers to the "hardstanding

¹ This states that where an enforcement notice in respect of any breach of planning control could have required any works to be removed but fails to do so and, all the requirements of the notice have been complied with, then so far as the notice did not require, planning permission shall be treated as granted in respect of the development consisting of the works.

hereby authorised”, meaning the hard surfacing to the existing track as approved. I am satisfied the condition is precise and reasonable, therefore.

6. The appellant has submitted a plan showing the track as built with intermittent gravel patches (ref SR/04785/005). The enforcement notice plan shows a continuous track extending further towards the agricultural building at the rear of the house. The differences are relatively minor, and in any event, there is no injustice to the appellant since it would not be possible to remove any tarmac that does not exist. The plan serves to identify the track only, and it is not necessary for me to use my powers of correction under Section 176(1) of the 1990 Act, in this instance.

The ground (a) appeal and the deemed planning application

Main Issues

7. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the temporary hard surfacing to the existing United Utilities access track without complying with conditions 1 and 2 of planning permission ref 2017/1067/FUL, dated 1st February 2018. Although the description of development includes the word “temporary”, the development would only be temporary if controlled through a relevant planning condition. Therefore, if planning permission were to be granted without any such condition, there would be no mechanism to require the removal of the hard surface. The planning permission would be permanent.
8. Consequently, the matters before me are the retention of the access track as built, which comprised an engineering operation. The main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies, and the effect on the openness of the Green Belt;
 - Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether the development is inappropriate development in the Green Belt and the effect on openness of the Green Belt

9. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
10. Paragraph 150 of the Framework advises that certain forms of development are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes engineering operations. The Courts have held that openness of the Green Belt has a spatial aspect as well as a visual aspect. The absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension.

11. The tarmac hard surface runs from the vehicular access on Vicarage Lane and extends towards the house. It runs across an open area of land, and it can be seen from Vicarage Lane and from a footpath that lies to the east. The hard surface has a suburban appearance due to its materials. I appreciate that there was a previous farm track that followed a similar route across the land. Nonetheless, a historic farm track would not have been engineered and finished to the same standard as the tarmac surface which exists today. Similarly, the addition of crushed stone resulting from the United Utilities works would not have had a comparable appearance. Farm tracks are often strengthened with crushed stone and such features are not an uncommon feature in semi-rural areas. Also, loose stone surfaces can weather over time as vegetation grows which softens the appearance. In contrast, the tarmac has the appearance of a small road, and it stands out as an alien feature.
12. Overall, I consider that there is visual harm resulting from the tarmac surface which does not preserve openness. Furthermore, the enhanced track represents encroachment into the countryside due to its over-engineered and suburban appearance, which would conflict with the Green Belt purposes. Hence, the development would not fall within the exceptions set out in the Framework.
13. The appellant has offered an alternative scheme which would comprise the replacement of the non-permeable tarmac surface with permeable tarmac plus "an appropriate gravel surface in natural colouring (50mm to 75mm thickness)" along its length (Drawing Ref SR/04785/002). I am not satisfied that permeable tarmac would overcome the visual harm identified, however. There is a risk that the scheme offered would be similarly over-engineered and thus equally as visually intrusive.
14. I conclude that the development is inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and this harm carries substantial weight.

Other considerations

15. The appellant suggests there is a fallback option as the majority of the track is within the curtilage of the house and, therefore, a similar track would benefit from permitted development rights. I appreciate that the red line in the location plan related to the planning permission for the replacement dwelling was extensive (Ref FF/04408/001 Rev A), but this does not automatically confer curtilage. This consideration carries limited weight, therefore.
16. I note there are protected trees along the original access to the house. It seems the Council considered this to be a special circumstance of considerable weight when it granted temporary permission for the tarmac surface. The reasoning was the original access would not be used by construction vehicles during the redevelopment of Wellfield, thus removing the risk of possible damage to the protected trees. No such circumstance exists now, as the redevelopment is complete.

Conclusion

17. I conclude that the development is inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. The other considerations advanced by the

appellant carry limited weight and do not clearly outweigh the totality of the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The development is unacceptable in principle and the harm could not be mitigated through the imposition of planning conditions, therefore.

18. The development would be harmful to the Green Belt and contrary to Policy GN3 of the Local Plan (2012-2027), which seeks to protect the local landscape. As a result, it would not accord with the development plan taken as a whole.

The ground (f) appeal

19. Section 173(4) of the 1990 Act sets out the two purposes of an enforcement notice – (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury caused by the breach. The notice requires the removal of the hardstanding, which would achieve compliance with condition 1 and obviate the need to submit a scheme for site restoration. Its purpose is to remedy the breach of planning control. What must be considered is whether the step required exceeds what is necessary to achieve that purpose.
20. The tarmac surface to the pre-existing track has been retained in breach of a condition that was imposed to give temporary planning permission. The breach of planning control can only be remedied by the removal of the temporary hard surfacing, which the notice requires.
21. The Council has sought to add clarity by the attachment of a photograph dated February 2017. The appellant argues that this was taken prior to the completion of works by United Utilities and so cannot be relied upon. I agree that the reference to the photograph may require works that go beyond remedying the breach. This can be addressed through a variation to the requirement to remove the reference to the photograph and substitute the standard wording, which would be to return the track to its condition before the breach took place. This would rectify the breach of planning control and achieve the statutory purpose behind the notice. The variation would not result in any injustice, therefore.
22. The ground (f) appeal succeeds to this limited extent. I have considered the appellant's alternative scheme as part of the ground (a) appeal above.

The ground (g) appeal

23. The ground (g) appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellant is seeking six months to ensure the work can be carried out in dry weather. It is also suggested that it will take longer than three months to secure the necessary materials and labour.
24. Due to the timing of this appeal, the works could be carried out during the drier months. Also, the work is not complex or extensive and I am satisfied that a suitable contractor could be secured within the timeframe sought by the Council. It is not necessary for the County Council to carry out the works, as suggested.
25. I consider the 3-month compliance period to be reasonable and proportionate in this instance. The ground (g) appeal fails, therefore.

Conclusion

26. For the reasons given above, I conclude that the appeal should succeed on ground (f) only. I shall uphold the enforcement notice with a 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.

Formal Decision

27. It is directed that the enforcement notice is varied by the deletion of requirement (i) and its replacement with a new requirement (i) as follows – remove the temporary hard surfacing, that subject to planning permission ref 2017/1067/FUL dated 1st February 2018, and return the track to its previous condition.
28. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D Moore

INSPECTOR