



Appeal Decisions

Site visit made on 4 October 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2023

Appeal A Ref: APP/M3645/C/3307327

Appeal B Ref: APP/M3645/C/3307328

Appeal C Ref: APP/M3645/C/3307329

Pollards Farm, Newchapel Road, Lingfield, Surrey RH7 6BJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Miss Rio Barker, Appeal B by Mr Richard Barker and Appeal C by Mrs Annette Barker against an enforcement notice issued by Tandridge District Council.
 - The enforcement notice, numbered ENF/2022/223, was issued on 18 August 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the formation of a hard surfaced vehicular access in the approximate position shown hatched in blue on the attached plan 'B' and including widening the vehicular access to Newchapel Road.
 - The requirements of the notice are:
 - i) Excavate all hardstanding material from the area hatched blue on the attached plan 'B' to a depth where all the pre-existing earth prior to the formation of the hardstanding is exposed;
 - ii) On completion of step (i) above regrade the land to match the profile of the land to the west and reseed the land with a native species grass mix; and
 - iii) Remove the material arising from compliance with 5(i) above to an authorised place of disposal
 - The period for compliance with the requirements is within 6 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeals A, B and C are dismissed and the enforcement notice is upheld.

Procedural Matters

2. Three appellants were named on the appeal form. In such circumstances three appeals have technically been made and it is established practice to allocate a reference number to each. I have referred to them as Appeals A, B and C, as set out in the banner heading above. The grounds of appeal are identical in relation to all three appeals.
3. Within their statement the appellants have set out their view that the works have improved visibility at the site access, improved road safety and that the works blend in with the character of the area. Those matters would be issues for consideration if I was considering whether to grant planning permission in relation to an appeal under ground (a). However, no such appeal has been made, the requisite fee for a ground (a) appeal has not been paid and the

appeal form indicated that the appellants only wished to appeal on grounds (b), (c) and (d). As such, those matters have no bearing on my decision.

The Appeals on Ground (b)

4. An appeal on ground (b) is made on the basis that the matters alleged have not occurred as a matter of fact. In this case, the appellants do not dispute that there is a driveway in place or that the access is as depicted within the notice. Rather, their case is that the access and driveway is not new development but was essentially a repair to a pre-existing driveway and access that had been in place for more than four years, since before 1985.
5. In one sense, those arguments are more appropriately considered under ground (d) in respect of whether any development is immune from enforcement action due to the passage of time. However, the enforcement notice refers to the 'formation of a hard surfaced vehicular access'. In that respect, it is appropriate to consider whether in fact a new access has been formed, as opposed to a repair of an existing driveway, under the ground (b) appeals.
6. As with all appeals on 'legal' grounds the onus rests with an appellant to make their case on the balance of probability.
7. At my accompanied site visit I was able to witness three access drives within short succession. One is the private access to The Pollards, followed by a tarmacked access to Pollards Farm. Immediately to the west of that access is a gate with what appeared to be a fairly recently laid chalk surface running parallel to the adjacent driveway. Although somewhat overgrown by the time of my visit that surface continued adjacent to the tarmacked drive before branching off to the west terminating at a wider area of hardstanding identified as the hammer head on the hatched area on the plan attached to the enforcement notice. A wide crossing point onto the highway serves both the tarmacked drive and the chalk surface.
8. In my view there is significant ambiguity within the evidence put forward by the appellants with regard to the claims that the track was pre-existing. The extract from the Ordnance Survey map from 1985 is over-written in pen with "The Driveway in Question" with two arrows drawn to point to the driveway. However, the position of that driveway is not the same as that identified in the enforcement notice. The driveway shown on the map runs from the access all the way up to the dwellinghouse formerly known as Koombarra, before turning left, passing immediately to the south of the dwelling, then turning northwards in a curve to access the farm buildings to the rear.
9. The driveway identified on the plan attached to the enforcement notice is situated immediately to the south-west of the driveway shown on the 1985 OS extract, branching off from it and running adjacent to it, before turning left some way south of the farmhouse, culminating in a wider area of hardstanding to the west of the dwelling. No comparable area of hardstanding is shown on the 1985 map.
10. The fact that the 1985 map is annotated "driveway in question" without accurately identifying the access that is actually in question does raise doubts as to the accuracy of the submissions and whether the statements are in fact referring to the precise works that are identified in the notice.

11. The overhead photograph from 2001¹ depicts a driveway running up to the farmhouse from the entrance before passing to the east of the dwelling to the area behind. There is no comparable spur from that driveway to the west or wide area of hardstanding as shown in the enforcement notice. Whilst the appellants and the three statutory declarations suggest that the 2001 photograph clearly shows the track to the side of the existing driveway the image is far from clear and I can discern no obvious hard surface other than the access into The Pollards and the main drive leading to Pollards Farm. The UK Power Networks Map² shows a similar arrangement with a driveway running to the east of the farmhouse, although the area of hardstanding to the west cannot be made out.
12. When one moves to the overhead Google images from 2012 and 2013 the area of hardstanding to the west of the farmhouse is depicted but that area is shown to be accessed from the north, such that one would have to pass along the access to the east of the dwelling, through the buildings and general yard area before turning south to reach the hardstanding. There is no obvious spur from that hardstanding to connect to the driveway leading to the entrance.
13. Thus, the photographs and maps provided by the appellant do not demonstrate with sufficient clarity that the driveway was pre-existing. The ambiguities in the plans and overhead photographs do cast doubt on precisely what arrangement is being described by the three witnesses who provided statutory declarations. No supplementary photographs showing the alleged track have been provided.
14. Whilst I have no reason to doubt the integrity of those declarations they do not describe with sufficient detail the precise alignment of any pre-existing track, its width, curvature, or the detail of its construction. In addition, all describe the track as being parallel with the main driveway but none refer to it branching off at right angles to the west in the manner shown in the enforcement notice. What appears to be described is an arrangement where larger vehicles may pass off the main driveway from time to time due to the narrow width and 'kink' in that track. It is far from clear that what is being described is the access in the position as currently constructed and shown in the enforcement notice.
15. Even if some element of a former access track did exist, in the absence of clear details as to precisely where it was or how it was constructed I cannot conclude with any certainty that the works that have taken place were merely a repair. On the contrary, the balance of the evidence indicates that substantial works were required to create the access, including clearing vegetation and ground works involved in the formation and compaction of the hard surface.
16. Moreover, the plans, declarations and other evidence provided by the appellants do little to shed any light on the alleged widening of the vehicular access point at the entrance to the site. The photographic evidence provided by the Council depicts the entrance gradually increasing in width over time and, as a matter of fact, it is clear that a widened access point onto the highway has been created.

¹ Appendix H of the appellants' statement

² Appendix E

17. Overall, when the photographic evidence from both parties is looked at in sequence what appears to have occurred is that the area of hardstanding to the west of the farmhouse and the new access linking that area to the entrance to the site were created as single operation. Given the ambiguities and absence of clear evidence of a former access drive in the same position I am of the view, on the balance of probability, that a new access and widened entrance to the site have been formed as a matter of fact. In other words, the matters stated in the notice have occurred and the appeals on ground (b) must fail.

The Appeals on Ground (c)

18. The appeals on ground (c) largely replicate the points raised in relation to grounds (b) and (d) in respect of arguments that the works were a repair to a previous access that had been in place for more than 4 years. I have covered the ground (b) points above and will address ground (d) below.
19. The statement also makes a claim that the works amount to 'permitted development' but no reference is provided as to which part of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) is relied upon in making that claim. Under Class B, Part 2 of Schedule 2 the following is permitted:

B. The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).

20. However, Newchapel Road, the B2028, would appear to be a classified road and, in any event, the appellants have not made clear what other development the access was required in connection with or explained how that development was itself permitted by the terms of the GPDO. Reference has been made to agricultural operations but little detail is provided as to the extent of any agricultural activity or why the access/ hardstanding was reasonably necessary for those purposes. Moreover, even if that was the case, the development is within 25 metres of a classified road and would not be permitted by virtue of paragraph A.1(h) of Part 6 of Schedule 2 of the GPDO.
21. Consequently, the claims regarding permitted development are not supported by any evidence. Works for the formation of an access and provision of a hard surface of such an extent undoubtedly represent an engineering operation that amounts to operational development for which planning permission would be required. No such permission has been granted, either by the GPDO, or by the Council. As such, the works clearly represent a breach of planning control and the appeals on ground (c) must fail.

The Appeals on Ground (d)

22. For the reasons set out above it has not been satisfactorily demonstrated that the works were simply a repair to a pre-existing driveway. The photographic imagery provided by the Council is telling in terms of the likely timing of the works. In the image from April 2020 there is little evidence of the access track or the hardstanding area at the hammerhead. However, by June 2021 the works appear to have been largely completed judging by the bright chalk coloured surface and evidence of bare earth works immediately to the side of

- the access which likely resulted from the excavation and movement of earth to make a solid and level base for the track.
23. Thus, the images would indicate that the work was undertaken at some point between those two dates and significantly under four years before the notice was served in August 2022.
24. The appellant has provided a photograph from 2016 which shows a hardstanding area towards the front of the site, immediately to the west of the main drive, roughly in the same position as the front section of the driveway that has been created. At that time the area appeared to be surfaced with tarmac plainings. However, the Council has provided an extract of the notes of the enforcement investigation that took place at the time where Mr Barker explained that the surface was for the storage of chalk/ agricultural lime for spreading on the land rather than for the formation of a new access. It is also apparent that the hard surface came to a dead end shortly beyond the current access and did not extend further back into the site.
25. In other words, the evidence given by one of the appellants at the time and accepted by the Council indicated that the area in question was not part of the formation of an access but served a different purpose related to storage, with a different finished surface. It appears likely that the new access was laid as a single operation with a consistent surface across its length between 2020 and 2021 as shown.
26. The overhead photographs from 2012 and 2013 do appear to depict an area of hardstanding to the west of the farmhouse in broadly the location of the hammerhead depicted in the hatched area on the plan attached to the notice. However, by 2018 that area appears to have greened over and more so by April 2020 where it appears almost indistinguishable from land within the field to the west. It is not clear if any previous hardstanding had been removed or if it had simply become overgrown.
27. In any event, the photograph from June 2021 depicts a substantial change with what clearly appears to be a new surface with mounds of aggregate still situated within the area. In the absence of any detail as to the nature of the former surface, how long it had been in situ, or whether it had subsequently been removed, there is insufficient evidence to demonstrate that the works that took place between 2020 and 2021 were anything less than the provision of a new surface which was part and parcel of the wider work for the formation of the new access.
28. Similarly, photographic evidence provided by the Council appears to show a gradual widening of the entrance point at the front of the site within a four year prior to the notice being served.
29. Overall, bearing in mind that the onus rests with the appellants to make their case, the evidence that the works amounted to the improvement of a pre-existing track is thin and unconvincing, particularly when contrasted against the clear evidence of photographic images of substantial work in between 2020 and 2021. Therefore, on the balance of probabilities, the works described in the notice did take place within 4 years of its service and the appeals on ground (d) do not succeed.

Decisions

30. For the reasons given above I consider that the appeals should not succeed and I shall uphold the enforcement notice.

Chris Preston

INSPECTOR