



Appeal Decision

Site visit made on 9 October 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 13th November 2023

Appeal Ref: APP/J0405/C/22/3299701

Land adjacent to Vicarage Cottage, Mentmore, Buckinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Ms Elizabeth Hough against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 5 April 2022.
- The breach of planning control as alleged in the notice is the unauthorised construction of an access track and area of hard standing.
- The requirements of the notice are to: 1. Permanently remove the hardstanding including, but not limited to planings, hardcore and tiles used in the construction of the track from the Land; 2. Permanently remove all the debris resulting from compliance with step 1; and 3. Prepare the Land and sow with appropriate seed.
- The period for compliance with the requirements is within 3 months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Application for Costs

1. An application for costs has been made by Ms Elizabeth Hough against Buckinghamshire Council. This application is the subject of a separate decision.

Preliminary Matters

2. The track which is the subject of this appeal provides access to fields to the north of the site, in which stables have been constructed. Irrespective of the lawfulness of these stables, this appeal relates to the field access alone. It has therefore been determined in isolation, and where applicable, on its own planning merits.
3. The matters alleged in the enforcement notice (EN) refer to the construction of an access track and area of hardstanding. The area of hardstanding is essentially where the track widens out at its end, and is therefore still part of the field access itself. References to "field access" or "track" in this decision are therefore intended to include this hardstanding.
4. Since the appeal start date, the 2021 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in September 2023.

Appeal on Ground (c)

5. Pursuant to ground (c), the appellant contends that the matters alleged in the EN do not constitute a breach of planning control. This argument is brought on the basis that the matters alleged would be permitted by the development rights conferred by Article 3 and Schedule 2, Part 9, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Subject to certain parameters, Class E permits *"the carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way"*.
6. Whether or not its use has been abandoned, it appears that some kind of track has been in situ within the appeal site, and has previously facilitated access to the fields to the north. This is evidenced in the statutory declaration of William Mark Rawding, as well as in a letter from the previous owners of the site.
7. Nonetheless, dated photos submitted by the Council show that any track within the appeal site has, at least in recent years, been very informal. Indeed, aerial photos from 2009, 2017, 2018 and 2020 appear to show the appeal site predominantly laid to grass or other vegetation. Numerous photos of the access from the main road, taken over a number of years, also confirm the informal nature of the track.
8. The track now in situ is much more extensive. The entire length of the track, which runs to approximately 73 metres, is laid with hardcore. The hardcore also extends across its full width, which is approximately 6.9 metres at its narrowest. This has fundamentally altered the nature and character of any track previously in situ. Indeed, rather than an informal field access primarily comprised of grass or other vegetation, the appeal site now appears as a formal access, which is capable of accommodating large vehicles.
9. In turn, I consider that the scale, nature and extent of the works to form the revised access go beyond what could reasonably be considered maintenance or improvement of an existing private way. Class E is also explicit that any such works must take place within the boundaries of the existing unadopted street or private way. Given the width of the track now in situ, it seems likely that it extends beyond the width of the informal track previously there.
10. On this basis, the matters alleged would not fall within the scope of works permitted under Part 9, Class E of Schedule 2 of the GPDO. Given there is no suggestion that the works would not constitute development, the matters alleged would, in my opinion, therefore constitute a breach of planning control. In turn, the appeal on ground (c) fails.

Appeal on Ground (a) - Deemed Planning Application

Main Issues

11. The main issues are:

- the effect of the development on the landscape character of the area, including whether it preserves or enhances the character or appearance of the Mentmore Conservation Area;

- the effect of the development on historic landscape features of the surrounding land; and
- the effect of the development on protected species.

Reasons

Landscape Character

12. The appeal site sits to the north of the main road which runs through the village of Mentmore, and provides access to an area of land known as 22 Acre Paddock. The track slopes gently downwards alongside the eastern boundary of The Old Vicarage, which is demarcated by dense trees and hedgerow. The site also borders allotments to the east. The allotments are separated by a post and rail fence, as well as extensive shrubbery which runs along this same boundary. The field access is within the Mentmore Conservation Area (CA) and the Quainton – Wing Hills Area of Attractive Landscape (AAL).
13. The surrounding landscape is defined by a wide shallow valley falling to the River Ouzel, and comprises vast expanses of rolling green fields, meandering streams and patches of woodland. On account of these features, the prevailing landscape is distinctly rural in character, which contributes to the significance of the CA. Some of the fields to the north of the track, including 22 Acre Paddock, are also typified by ridge and furrow land, which is a defining feature of the AAL.
14. On account of its position between The Old Vicarage and the allotments, the field access is barely perceptible from most public vantage points within the village. This is because the track is viewed against a backdrop of dense and verdant boundary treatments, which means it is essentially lost from view. Unless someone is viewing the track directly at its access point, its visual impact is therefore extremely limited.
15. In terms of materials, the surfacing of the field access has been made up of stone hardcore with road planing. Crushed clay tiles have also been used as a base material to infill potholes, although such materials are not readily visible on the track's surface. The use of materials achieves a dull finish, which helps the track to integrate with the tonality of the surrounding landscape. There are also several nearby field accesses with a similar surface finish, which means the track appears typical of the locality, even where it can be seen.
16. Although the track provides access to land which is noted for its ridge and furrow characteristics, the track itself does not incorporate any such features. Therefore, in visual terms, the field access does not interfere with the principal attributes of the AAL.
17. For these reasons, I am satisfied that the field access assimilates effectively with the prevailing rural landscape of the area, without causing harm to its character. Similarly, the access preserves the character and appearance of the CA, as well as the defining features of the AAL. The development is therefore consistent with Policies S1 and NE4 of the Vale of Aylesbury Local Plan 2021 (Local Plan), which highlight the need for development to protect landscape character and minimise any impact on heritage assets and locally important landscapes. The development is also consistent with Policy BE2 of the Local Plan, which says new development shall ensure materials respect and complement the local distinctiveness of the locality. Finally, the development

reflects the provisions of the Framework insofar as they seek to protect landscape character.

18. In reaching this conclusion, I have had special regard to the desirability of preserving or enhancing the character or appearance of the CA, in accordance with my statutory duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Historic Landscape Features

19. As mentioned, the track provides access to 22 Acre Paddock, which retains some evidence of its former cultivation by ridge and furrow. This is a historic feature of the land, which is one of the defining characteristics of the AAL.
20. The Council accepts that the development does not, in itself, harm the physical characteristics of the ridge and furrow land. However, it contends that the field access would facilitate more intensive use of this land, which in time could erode these medieval features.
21. However, irrespective of its form, there appears to be a long history of the appeal site being used as a field access to 22 Acre Paddock, and there is nothing to suggest that previous use of the access has led to the degradation of the ridge and furrow features. Moreover, there is little indication that the access is, or will be, used more intensively than any access previously in situ, irrespective of the changes to it. There are also two other vehicle accesses into 22 Acre Paddock, which means usage of 22 Acre Paddock will likely remain, irrespective of whether the appeal site is also used to access this land.
22. For these reasons, I am satisfied that the development does not cause undue harm to the historic ridge and furrow landscape features of the surrounding area. The development is therefore consistent with Policy BE1 of the Local Plan, which seeks to conserve historic features of importance within the district.

Protected Species

23. The Council is concerned that the development could have adversely affected a number of protected species, including great crested newts (GCN), badgers and protected birds.
24. In terms of GCN, guidance from Natural England¹ says that a survey area of 250 metres from an application site should usually be sufficient to establish the likely presence of the GCN. As part of the Appellant's Ecological Survey (ES), mapped ponds within 250 metres of the appeal site were surveyed. The results of these surveys found that GCN were not present in any of the ponds. Even if GCN had been present, the results of a risk assessment tool developed by Natural England concluded that it is highly unlikely that GCN would have been affected by the development, given the small scale of the works.
25. When these factors were considered within the context of the poor-quality terrestrial habitat within the appeal site (prior to the development taking place), the ES concluded that "it can be assumed beyond reasonable doubt that the works undertaken won't have had any adverse impacts upon GCNs". The Council's Ecology Officer also reported no further concerns following receipt of the ES, which suggests no dissent from these conclusions.

¹ Great crested newts: advice for making planning decisions (Natural England), January 2022

26. No evidence of any other protected species was observed within the development site as part of the ES. Moreover, the works did not require ground displacement, no substantive vegetation was removed and no lights were installed. The ES therefore found that it unlikely that the works would have led to impact pathways through which they could have adversely affected upon breeding birds or bats.
27. There was also no evidence of badger activity or badger setts within or near to the appeal site. Given the limited scope of the works, as well as the fact that the works were undertaken in the daytime, the ES again found it unlikely that the works would have adversely impacted on badgers or their habitat. As highlighted, the Council's Ecology Officer raised no further issue in terms of these protected species following receipt of the ES, which again suggests no dissent from these conclusions.
28. On the available evidence, I am therefore satisfied that the development does not adversely affect protected species or their habitats, including GCN, badgers or birds. In turn, the development is consistent with Policy NE1 of the Local Plan, which seeks to ensure development properly safeguards protected species and their habitats.

Other Matters

29. The Council's statement suggests that the development has not achieved a biodiversity net gain, and it therefore contravenes the requirements of Policy NE1 of the Local Plan. However, this is not included as a reason for issuing the EN. In any event, given the minor nature of the works and the conclusions of the appellant's ES, I consider that the development's impact is likely to be broadly neutral in terms of biodiversity. This factor alone would therefore not warrant refusal in this instance.

Conclusion on Ground (a)

30. For the reasons outlined, the development is consistent with the development plan. The appeal on ground (a) therefore succeeds, and planning permission should be granted.
31. In turn, the appeal on ground (f) (being that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control) does not fall to be considered.

Conditions

32. The Council has suggested two conditions in the event of approval, which I have reviewed in line with the Framework and Planning Practice Guidance.
33. On account of the extensive trees, hedgerow and other shrubbery along the boundaries to the appeal site, the track already integrates effectively with the surrounding rural landscape, without any need for additional landscaping. In turn, I do not consider a landscaping condition to be necessary in this instance.
34. Moreover, little justification has been given for a condition to limit storage or the parking of vehicles within the access track. There is also nothing to suggest that the proposed use of the track would pose any particular risks in this regard. In turn, I do not consider that such restrictions would meet the test of necessity.

Conclusion

35. Whilst the appeal on ground (c) fails, for the reasons given, I conclude that the appeal on ground (a) should succeed. I shall therefore grant planning permission for the development as described in the notice.
36. The appeal on ground (f) does not fall to be considered.

Formal Decision

37. The appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the construction of an access track and area of hardstanding on land adjacent to Vicarage Cottage, Mentmore, Buckinghamshire as shown on the plan attached to the notice.

James Blackwell

INSPECTOR