



Appeal Decision

Site visit made on 14 November 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Appeal Ref: APP/G2245/C/22/3291099

Land north of Oakenden Farm, Oakenden Lane, Chiddingstone Hoath, Kent TN8 7DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Joe Potter against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice was issued on 21 December 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the laying of a chalk surface on an existing track (as shown in the approximate position blue edged on Plan B).
 - The requirements of the notice are to:
 - a) Remove the chalk surface and all resultant material from the land as shown blue edged in the attached Plan B.
 - b) Return the land and track as shown blue edged in the attached Plan B back to a grass surface as per previous land condition prior to unlawful works.
 - The period for compliance with the requirements is 3 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. It is directed that requirement b) of the enforcement notice be deleted and reworded as follows:

“Return the land and track, as shown edged blue in the attached Plan B to its former condition prior to the unauthorised works carried out.”
2. Subject to this correction 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.

Background and Planning History

3. The site lies within both the Metropolitan Green Belt and the High Weald National Landscape (HWNL). Previously, the High Weald Area of Outstanding Natural Beauty (AONB), all AONBs were renamed as National Landscapes in November 2023.
4. The track, the subject of the enforcement notice, was an original woodland path, known as The High Weald Landscape Trail and forms a public right of way (PROW). To access and facilitate the proposed barn the path was widened and

- then chalk surfaced. A significant length of the track has since been covered in plainings.
5. In December 2018 an application (ref 18/03506/AGRNOT) involving the Prior Notification procedure was made under Part 6 of the Town and Country Planning (General Permitted Development) (England) (Order) 2015, as amended (GPDO). This was in respect of a proposed agricultural barn, and it was determined that the Council's Prior Approval was not required.
 6. The legislation the decision notice contained an informative which indicated that the development must be carried out within five years of the decision, otherwise the Council would need to be re-notified. This is consistent with the legislation which requires that the development be completed within the said period.
 7. A planning application was submitted to the Council in 2019 proposing the upgrade of the track by means of a chalk surface. Retrospective in form it was refused by the Council and was later unsuccessfully appealed. In his decision letter of April 2021 (*APP/G2245/W/20/3271596*) the Inspector concluded that the 'upgrade', involving the PROW's encroachment to a width of some 4m, had brought about a loss of tranquility and remoteness that it had previously enjoyed.
 8. A subsequent application (ref 21/02807) proposing the resurfacing of the track with a mixture of stone, woodchips, to soil and road scalpings was also refused by the Council in December 2021. In its refusal reason the Council used the wording "over urbanisation of the rural character" and, in common with the previous appeal Inspector, cited the development as being in conflict with local planning policies, the objectives of the High Weald AONB Management Plan (MP) and the National Planning Policy Framework (the Framework).
 9. This decision was not appealed.
 10. In the event the five year period expired on 14 December 2023, with the approved barn unimplemented. However, a new such notification (ref 23/03316/AGRNOT), with identical siting and drawings, was made to the Council on the 15 November last. This, though, was subsequently refused on 13 December on the basis that the Council considered that insufficient evidence is available to confirm there is a reasonable need for the proposed barn and its use for agricultural purposes.
 11. So, although the Council acknowledges the site is used for agricultural means the issue here is that it was not satisfied that the appellant had sufficiently made a case for the proposed building, as per the related criteria in Part 6 of the GPDO.

Preliminary Matters

12. Following my site visit in November PINS wrote to both main parties in order to confirm the planning position as I understood it. In the responses, both parties agreed with my summary of the relevant planning history. Further, neither indicated that an appeal against the recent decision had been lodged. In fact, the appellant said that another such application has been made (ref 24/00082/AGRNOT) and was validated on 15 January 2024. In accordance with the legislation a decision is required within 28 days ie by 13 February 2024.

13. At the current time, therefore, in the absence of a favourable decision from the Council as to a recognised agricultural need, any such barn erected would be unlawful. Accordingly, as it stands, the widened track enforced against, apart from its PROW status, serves no other functional purpose.
14. Upon previous consultation Kent County Council's PROW officer, in her letter of 10 October 2021, made the following observations:
'The chalk previously put down as the track surface is completely unsuitable for use on a public footpath, There have been numerous complaints from the public about the slippery nature of the surface and a number of falls recorded.'
15. In her e-mail of 25 February 2022 she also says:
"We would not accept it being returned to grass as this would result in a muddy, rutted dirt/grass track during the winter..."
16. This comment was made subsequent to the enforcement notice's issue and, taking into account the implications of requirement b), I shall correct the notice, accordingly.
17. For clarity, my involvement goes no further than assessing the planning merits and/or impacts of the development enforced against; namely *'the laying of a chalk surface on an existing track'*, and whether the enforcement notice's requirements are excessive.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issues

18. The Council makes the point that agricultural units are consistent with, and not inappropriate development, within the Green Belt. On the general basis that access is required I agree with the Council's point and, therefore, the main issue in this appeal is the effect of the development on the character and appearance of the area, particularly with regard to the location within the HWNL and its special landscape character.

Reasons

19. Clearly, the 'upgrade' works were undertaken without the benefit of planning permission, also prematurely, and the appellant is now left in limbo. I sympathise with his claim that it was not realised that planning permission was required and that COVID prevented the barn's erection, but this does not alter the legislative requirements.
20. In effect, this appeal is a re-run of the unsuccessful 2021 appeal as the development targeted in the enforcement notice is identical to that which has already been assessed by the previous Inspector. Also, having taken into account the site's planning history, the only material changes in circumstances since the date of that decision are that there is now no extant consent for the barn and a layer of plainings has been spread over the track.
21. Given that there is no agricultural barn built, and no consent is in place to allow for the barn's erection, the alterations made to the PROW for access purposes serve no current planning purpose.

22. The PROW officer has objected to the use of wood chippings as they biodegrade quickly and do not provide a suitable grip for walkers. Instead, on a practical basis, she recommended that stone or road plainings be laid to provide a suitable hard-wearing surface and enough friction to prevent walkers slipping.
23. Although the appellant has, to an extent, complied with this recommendation, there is conflict here between the safety aspect and the visual impact on the HWNL to which the Council has raised concerns. Further, paragraph 182 of the Framework (December 2023) says that great weight should be given to conserving and enhancing landscape and scenic beauty. National Landscapes, like their AONB forerunners, have the highest status of protection in relation to these issues.
24. The appellant is of the view that the Council has not accepted that the chalk is a sub-base for a surface dressing, and although I can understand the notice's requirement to remove the chalk, given the previous appeal decision, it seems to me from the Council's representations that, should the need for the agricultural barn be satisfactorily demonstrated, then it would be open to negotiation regarding the track's treatment.
25. However, although the appellant is asking for the chalk sub-base to be retained and its dressing with either road plainings or a particular stone, due to the conflicting interests any negotiations would have to be properly coordinated between both the two main parties and also Kent County Council's PROW officer in order that an acceptable solution might be found. Besides, no actual samples of any re-surfacing materials and the form this might take have been put forward for my consideration. Therefore, even if I was to allow the appeal and grant planning permission, leaving the matter of an appropriate re-surface to the standard wording of a planning condition would not take the matter forward.
26. Given the current stance of the three said parties, there is no guarantee that any possible solution that might be proffered by me would gain support across the board.
27. In the above regard the previous Inspector acknowledged the necessity for a practical and usable access to be provided, and I must agree with him should a need for the barn be demonstrated. Nonetheless, irrespective of the Prior Notification decision, a planning permission will still need to be secured for alterations made to the track.
28. The Council's decision on the current application is expected by 13 February and, despite the recently refused application (23/03316/AGRNOT), I am mindful that a need for the barn had been previously demonstrated in 2018. If successful again, then negotiation would likely follow in the interests of facilitating an appropriate access.
29. In the circumstances the appellant has requested that I delay making a decision on this appeal until the application has been determined. An assessment as to the claimed need for the barn is a matter beyond my remit but, again, due to the above points, the process would be no further forward if I was to put my decision on hold.
30. Moreover, if the appellant had lodged an appeal under ground (g) ie that the stipulated 3 month compliance period was unreasonably short I could have, in

upholding the enforcement notice, potentially varied it and extended the time period to allow for negotiations to take place. In the absence of a ground (g) appeal I am unable to adopt this approach.

31. I have no reason to disagree with the previous Inspectors findings and conclusions. The development, as enforced against, fails to accord with the objectives and requirements of policies SP1 and LO8 of the Sevenoaks District Council Core Strategy and policies EN1 and EN5 of the Sevenoaks Allocations and Development Plan which together seek to ensure that the countryside is conserved, and the distinctive features that contribute to the special character of its landscape and biodiversity will, at the very least, be protected.
32. The development is also in conflict with the objectives of OQ3 and OQ4 from the MP which seek to preserve the enjoyment of rights of way and the qualities of tranquility, remoteness and naturalness.

Other Considerations

33. In reaching my decision I have had regard to the Framework's aim of encouraging the rural economy. However, as mentioned, there are a number of other factors to take into account and, in dismissing this particular appeal, due to its nature, I am not actually hindering the rural economy's wellbeing.
34. I also note the appellant's estimation that some 200 lorries would be required to remove the chalk, and a further 200 lorry movements to bring in a new sub-base. I acknowledge that such disruption could be considerable, but this does bring to the fore the need for negotiation between the public authorities and the importance of working together to secure a planning permission to re-treat and re-surface the track, regardless of the pending decision regarding the proposed barn.
35. I cannot direct for such but, if this were to be secured, it would override the enforcement notice's requirements.
36. If progress is made in the above regard then the Council does hold powers to allow for the the compliance time period to be extended. However, that is a matter for the authority as, without any ground (g) appeal before me, I cannot get involved in this matter.

The appeal on ground (f)

37. An appeal on ground (f) is that the stipulated requirements for compliance go beyond what is necessary to remedy the harm caused by the alleged breach.
38. In this regard I have taken into account the representations of the appellant and also Kent County Council's PROW officer and I am satisfied that it would be appropriate in the circumstances to require for the land to be returned only to its previous condition. Besides, it could be argued that a grassed surface would place a positive requirement on the appellant and would go beyond the legislative limitations regarding compliance steps.
39. I consider, though, that Requirement a) is appropriate in its purpose to remedy the breach.
40. Again, the finished product will likely be dependent on negotiation, but the appeal succeeds to this extent.

Overall conclusion

41. For the above reasons given above, and having had regard to all matters raised by the parties, I must conclude that the development is in material conflict with the policies highlighted and, moreover, the development plan as a whole. No other material considerations exist to override the policy objection.
42. Accordingly, the appeal does not succeed. I shall uphold the enforcement notice with a correction on its requirement b), and refuse to grant planning permission on the DPA.

Timothy C King

INSPECTOR