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## Appeal Decisions

Site visit made on 16 January 2024

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 January 2024**

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### **Appeal A Ref: APP/P1615/C/23/3320007**

**Bluebell Cottage, Lower Wye Valley Road, Bigsweir, St. Briavels, LYDNEY, GL15 6QQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ermir Ademi against an enforcement notice issued by Forest of Dean District Council.
  - The notice, numbered EN/0228/22, was issued on 3 April 2023.
  - The breach of planning control as alleged in the notice is without planning permission, an engineering operation, by creating an access onto a class 1 road (A466) with a driveway leading to a new formed parking area, in the approximate position hatched out in green on the attached plan.
  - The requirements of the notice are: 1) Permanently cease the use of the access and parking area within the green hatched area, within the redline of the Enforcement Notice Plan in Appendix 1 as shown in photographs 1 -12 Appendix 3. 2) Permanently block up the access from the A466, as shown in photographs 1-7 & 12 in Appendix 3, and restore the land within the green hatched area, within the redline of the Enforcement Notice Plan, attached in Appendix 1, to its condition before the breach took place by levelling the ground areas of the access road and parking area with that of the adjacent unspoilt land adjacent to it and plant a mixture of native trees/shrubs (detailed in Appendix 2 with specified distances and locations) in the area cleared where the access had been created.
  - The periods for compliance with the requirements are: Step 1; from the date the notice takes effect. Step 2; 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (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.
  - Similar appeals (without a ground (a) have been made by Mrs Emma Ademi (3320008); Miss Susan Johnson (3320010) and Mr Lewis Ademi (3320010).
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### **Decisions**

1. The appeals are all 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.

### **Preliminary Matters**

2. Although the appeal was originally made on grounds (e) and (f) ground (a) was added later and it was agreed the comments on (e) were actually for ground (a). There is no dispute about the service of the notice and I shall treat ground (e) as being withdrawn.

### **The Appeal on Ground (a)**

3. The background to the appeal is that Bluebell Cottage stands on the edge of the A466 as it winds through the Wye Valley. The land slopes steeply down to the river and is thickly wooded. The road runs near to but above the river and the Cottage is set up above the road with a steep wooded hill behind. Next to the Cottage is another building, 'The Florence' which was once a hotel, but is now a private house.
4. The appellant owned both buildings and ran 'The Florence' as a hotel, but having obtained permission to turn the hotel into a private dwelling he sold it off and now resides solely in Bluebell Cottage. Unfortunately, the only off-road parking available was on the far side of 'The Florence' and went with the sale to the new owner. This left Bluebell Cottage with no off-road parking. The road is busy and windy with virtually no verge and parking on the road is effectively impossible due to the lack of space and the danger it would cause. On my site visit the Council officer was able to pull off onto a half layby worn out of the edge of the road on the river side, but part of the vehicle was in the road and this was only possible with hazard lights on and because we were not there for too long, the road was not very busy (in the middle of the morning) and it was broad daylight. I think it is agreed there is no sensible parking on the road.
5. The appellant therefore has created his own off-road parking by constructing a track up the hillside a few yards beyond the cottage which bends back on itself to a levelled plateau roughly at roof height with the cottage. There is room here for several cars to park and manoeuvre. A path has been created through the wood from the parking area to the cottage. The Council oppose this development on two main grounds, impact on the character and appearance of the area and highway safety. The appellant does not seek to refute the Council's arguments, but his case is essentially that he has no other choice.

#### *Character and appearance*

6. The site lies in the Wye Valley AONB (now a National Landscape) and is a key gateway to the Forest of Dean. The hillside above the car park contains ancient woodland and the appeal site and the neighbouring buildings are wrapped around by the Wye Valley Woodlands Special Area of Conservation. Although the land belongs to the appellant, he has clearly carried out significant earth moving to create the access and level parking area. The loss of trees is disputed but from aerial and terrestrial photographs it would seem it was well wooded before the works. The appellant claims he has just opened up an old access, but the photographs provided do not suggest anything more than at best a narrow track. It is now clearly a large and intrusive, man-made scar in the landscape. While planting would soften the outlines over time and help screen the cars from views from the road below, the site would always remain an alien intrusion into the wooded hillside and harms the character and appearance of this part of the AONB. This is contrary to policies AP4 of the 2018 Allocations Plan and CSP1 of the 2012 Core Strategy.
7. Although the site does not sit within the SAC the Council argue it provides a bridge between the two sides and that there has been a loss of habitat for the Lesser Horseshoe Bat a qualifying feature of the SAC. No ecological report has been provided by the appellant so the impact on biodiversity remains possible but unknown. This is contrary to policies AP7, AP29 and CSP2.

### *Highway safety*

8. The access runs steeply down to the A road where traffic speeds are in excess of 50mph. The Council calculate a Y distance of 215m is required. To the right the distance is about 185, which would be acceptable in my opinion, but to the left a large brick revetment sticks into the road and visibility is only 30m. This clearly significantly sub-standard for this type of road. The appellant does not dispute these figures and has provided photographs of an accident just along the road from the access and there is no dispute this is potentially a dangerous stretch of road. There is therefore a serious issue of highway safety.

### *Other issues*

9. The clearance of the parking area is immediately adjacent to an ancient woodland and there is no buffer zone as recommended in government guidance. Also no evidence has been provided about the stability of the parking area on the steep slope above the road. These are also matters that weigh against the proposal.
10. The appellant argues that he urgently needs safe parking off the road for his family, which includes his elderly mother who uses a wheelchair and a relation who comes regularly to help care for the mother and who has a baby of her own. I agree these personal issues engage the appellant and his family's human rights and the Public Sector Equality Duty to provide safe access to the cottage. However, I am also mindful that as currently configured there is no wheelchair access from the parking area to the cottage, but that steps have been created to deal with the change in levels. These do not appear to be of a temporary nature so it is unclear how the car park has helped with the wheelchair issue. Secondly there is already a drive that leads up to the cottage which I noted on my site visit. The appellant confirmed this was within his ownership but was used for deliveries. I have no evidence that this drive has been considered for parking or whether it could be enlarged, in fact there has been no mention of it all in the representations. Finally, this whole issue is entirely of the appellant's own making. He did have adequate parking for a hotel and a house but sold it all off. According to him this was to ensure a quick sale as shared parking with The Florence would have made it less attractive to buyers. This may be so, but it is hardly an unusual situation, especially in a location such as this and anyway doesn't absolve the appellant from the responsibility to ensure Bluebell Cottage had a safe and lawful parking area before selling off the only available land.

### *Conclusion*

11. Taking all these matters into account I do not agree the appellant's personal circumstances outweigh the clear and serious harms I have identified and that the interference with his and his families human rights and the PSED is justified. Indeed, even if the issues outlined in the paragraph above did not exist the harm to highway safety on its own would have been sufficient to refuse permission. No conditions are available to resolve the insurmountable problems with the parking area and the appeal on ground (a) fails.

### **The Appeal on Ground (f)**

12. The lesser requirements suggested by the appellant are that the Council should reduce the speed limit to 30mph. This is not the purpose of ground (f) and I

cannot add that to the requirements, even if I were minded to do so. It is symptomatic of the appellant's approach to the appeal, that this is the Council's problem not his. The appeal on ground (f) fails.

13. I shall dismiss all the other appeals as they raise identical issues.

*Simon Hand*

INSPECTOR