



Appeal Decision

Site visit made on 20 February 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2024

Appeal Ref: APP/M2270/C/23/3322303

Isaacs Farm Livery, Franks Hollow Road, Bidborough, Tunbridge Wells, Kent TN3 0UB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms M Nahum against an enforcement notice issued by Tunbridge Wells Borough Council.
- The enforcement notice was issued on 13 April 2023.
- The breach of planning control as alleged in the notice is: Without planning permission the construction of an equestrian trackway and associated works including fencing and earth mounds.
- The requirements of the notice are:
 - (i) Remove the track surface and all associated materials (including the membrane) from the Land as shown in its approximate position edged red on the attached plan¹.
 - (ii) Remove the trackway perimeter fencing from the Land shown within the approximate position edged red on the attached plan.
 - (iii) Remove the earth mounds shown in their approximate position hatched green on the attached plan.
 - (iv) Backfill the excavated trackway with a layer of topsoil to a depth of 15cm and re-seed with grass seed.
- The period for compliance with the requirements is: Six (6) months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) 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 succeeds in part and planning permission is granted for the trackway. Otherwise, the enforcement notice is upheld, subject to corrections as set out below in the Formal Decision.

Procedural Matters

1. The appellant's appeal statement refers to unreasonable behaviour and an award of costs. Clarification has been sought as to whether this was a formal application but in the absence of any response, I have considered the matter no further.
2. Areas of Outstanding Natural Beauty (AONB) have been renamed as National Landscapes. The site is within the High Weald National Landscape (formerly High Weald AONB). Planning policy, and the National Planning Policy Framework (the Framework) still refer to AONBs. While I have applied the policies for AONBs to my decision making, I have used the new term throughout this decision.

¹ Reference to the Plan is reference to a plan attached to the enforcement notice.

The Notice

3. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
4. This enforcement notice (the Notice) specifies, at Section 2, that it affects land at Isaacs Farm Livery, edged red on an attached plan (the Plan) and refers to this, thereafter, as 'the Land'. That red edge identifies the trackway that has been constructed on the Land, but does not include any of the earth mounds, which are hatched green on the Plan and are situated alongside the trackway.
5. Nevertheless, the allegation clearly includes the earth mounds. Their removal, along with clarification that it relates to the areas hatched green on the Plan, is a clear requirement of the Notice at Section 5. The inclusion of the earth mounds in the allegation means that the Notice affects land that is beyond that identified as being the Land and edged red. However, the Notice, including the Plan, is entirely clear in setting out what the allegedly unauthorised development is and what must be done to remedy it. Moreover, it is evident from their overall submissions, that the appellant has understood this.
6. The Council has provided an alternative plan where the earth mounds are included within the red edge. Given that the Notice already alleges the unauthorised construction of the mounds and their removal, and that the appellant has addressed the implications of this in their evidence, no injustice would arise to either party if I were to correct the Notice by substituting the Plan with the one provided by the Council at appeal stage.
7. The Plan does not specifically identify any fencing. The allegation describes the breach as 'the construction of an equestrian trackway and associated works including fencing and earth mounds'. The requirements of the Notice include to 'remove the trackway perimeter fencing shown within the approximate location edged red' on the Plan. It is clear, therefore, that the fencing that is the target of the Notice is that which forms the 'trackway perimeter'.
8. At the site visit, I saw that the majority of the trackway is fenced on both sides along the edge of the trackway. Not only, then, is the concept of 'trackway perimeter fencing' an understandable term when read within the four corners of the Notice, it also clearly relates to fencing that can be identified easily on the ground. It is also within, or at least on, the red edging. Where there are parts of the trackway without perimeter fencing, the Notice would not require its removal.
9. With regard to the above, I find that the Notice informs the recipient, with reasonable certainty, what they have done and what they are required to do. The notice is, however, defective as there is inconsistency with the location of development targeted by the Notice (the earth mounds) and the identification of the land to which the Notice relates. The appellant has nevertheless understood that the earth mounds are intended to be a target of the Notice and

has made her case on this basis. For this reason, I can correct the Notice without causing injustice to the Council or appellant by substituting the Plan.

10. One further minor correction would add certainty. The allegation alleges associated works 'including' the fencing and earth mounds. This suggests an open list of other works, but nothing else is alleged nor targeted by the requirements. Therefore, it would add certainty and precision to remove the word 'including' from the allegation. No injustice would arise from this correction, which would simply add clarity. Having corrected the Notice as above, I will go on to consider the grounds of appeal.

Ground (c)

11. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. The appellant claims that the construction of fences would have the benefit of planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (Permitted Development Rights).
12. However, the Council has explained, and it is not disputed, that a planning permission that granted the change of use of the appellant's land to include livery uses included a condition that removed Permitted Development Rights relating to the erection of fences. Therefore, it is more likely than not that the fences require express planning permission and so constitute a breach of planning control. The appeal on ground (c) should, therefore, fail.

Ground (d)

13. Ground (d) is that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters alleged. There is no dispute that the trackway, earth mounds and majority of the trackway perimeter fencing which is formed of post and wire, has been recently erected. However, some of the trackway perimeter fencing, identified within the red edge, is formed of post and rail fencing.
14. The Council does not dispute that the post and rail fencing formed part of the older field boundaries and has, on the balance of probabilities, been in situ for long enough to now be immune from enforcement action. While the Council claims this to be distinct from the post and wire trackway perimeter fencing, there is ambiguity because some of the trackway is bordered by the post and rail fencing. It would, therefore, reasonably be included in the 'trackway perimeter fencing' targeted by the Notice.
15. I, therefore, conclude that, at the time the Notice was issued, no enforcement action could be taken in respect of some of the fencing referred to in the Notice. Accordingly, the appeal on ground (d) must succeed in part and correction to the Notice is required as a consequence. Given that the distinction between the types of fences is easily identifiable on site, it would be sufficiently precise to correct the allegation and requirements to refer to 'post and wire trackway perimeter fencing', thus making it clear that no post and rail fencing is included.

Ground (a)

16. Ground (a) is that planning permission ought be granted for the matters constituting the alleged breach of planning control. The main issues in this case are whether the development would be inappropriate development in the Green Belt, with regard to its effects on openness, and the effect of the development on the National Landscape.
17. A previous refusal of planning permission for the development has been dismissed at appeal. The Inspector found that the earth mounds and fencing introduced uncharacteristic man-made structures into the landscape that harmed the openness of the Green Belt, character and appearance of the area, and the scenic beauty of the High Weald National Landscape. The appellant accepts this and so do I.
18. However, the Inspector also found that the trackway, including its transient use by horses, would have no spatial effect on the openness of the Green Belt and over time would mellow so as to have no adverse visual effects on the openness of the Green Belt, and negligible effects on the character and appearance of the area, or scenic beauty of the National Landscape.
19. At the site visit, including in prominent views of the site from the publicly accessible Brookhurst Field, I saw that the track was, indeed, assimilating into the landscape. It, generally, runs along the field boundaries and, without the fencing and mounds to draw attention, would not appear as a conspicuous, incongruous or alien feature within the landscape.
20. The trackway itself is an engineering operation and the Framework indicates that such is not inappropriate development in the Green Belt provided that it preserves its openness and does not conflict with the purposes of including land within it. With regard to the above and without any reason to find conflict with the purposes of including land within the Green Belt I, therefore, find that the track would not be inappropriate development. Nor would it harm the scenic beauty of the National Landscape.
21. With regard to the foregoing, I find that the trackway, considered in isolation, would comply with those aims of Core Policies 2, 4, and 14 of the Tunbridge Wells Borough Core Strategy 2010, and Policies LBD1, MGB1, EN1 and EN25 of the Tunbridge Wells Borough Local Plan 2006 and the Framework that seek to protect the Green Belt from inappropriate development, control development in the countryside, conserve distinctive local character and the scenic beauty of the National Landscape. There are no other material considerations that indicate otherwise that the trackway might be unacceptable.
22. The trackway is clearly part of the matters alleged in the Notice. It is physically severable from the earth mounds and fencing. The Council has suggested that the fencing is an integral part of the track and it cannot function without it. However, the reason for this stance is not clear and the appellant has indicated that, prior to service of the Notice, she intended to make a planning application for the trackway alone, suggesting that it can function without the fencing.
23. Therefore, I find that planning permission should be granted for part of the matters alleged in the Notice, being the trackway. The appeal on ground (a), succeeds in part to that extent. I note that the previous Inspector did not issue a split decision whereby the trackway was permitted and the fences and earth

mounds refused. However, I have been invited to specifically consider that possibility and, even if the previous Inspector was too, their decision not to do so does not prevent me from taking such a course of action on the basis of the evidence now before me.

24. Permission should, however, be refused for the other matters, being the associated fencing and earth mounds. Upholding the Notice insofar as it relates to those unacceptable matters would further the purpose of conserving and enhancing the natural beauty of the National Landscape.
25. I note a suggestion in the Council's officer report that, if the trackway were to remain, fencing could be re-erected under Permitted Development Rights. However, such a stance conflicts with the later evidence in the Council's appeal statement that Permitted Development Rights were withdrawn for such development by virtue of a condition on a previous planning permission. In the event that this proves to be incorrect, or the permission that I am granting is held to instigate a new chapter in the planning history, insofar as it relates to the land edged red on the Plan, I shall impose a further condition removing permitted development rights for the erection of fences on the Land.
26. The Council has suggested a further condition relating to landscape mitigation and enhancement measures. However, as I am only permitting the trackway on the basis that I have found that no harm would arise from it, further mitigation is not necessary.

Ground (f)

27. Ground (f) is that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters alleged, or as the case may be, to remedy any injury to amenity which has been caused by the breach. The appellant submits that, in the event of partial success on ground (a), as is the case here, those requirements relating to the trackway should be deleted.
28. However, removing some requirements could inadvertently result in the grant of an unconditional planning permission for some of the matters under Section 173(11) of the 1990 Act. Therefore, the requirements should remain and, instead, reliance can be placed upon the Notice ceasing to have effect insofar as it is inconsistent with the planning permission under Section 180(1) of the 1990 Act.
29. There is no substantive evidence to suggest that the steps required to be taken in respect of the trackway perimeter fencing and the earth mounds go beyond that necessary to remedy the breach. Accordingly, the appeal on ground (f) will fail.

Conclusion

30. The Plan is imprecise when read alongside the description of the land said to be affected by the Notice. Therefore, I will substitute the Plan for another one that removes any uncertainty. The matters alleged in the Notice do constitute a breach of planning control, so the ground (c) appeal fails. However, in respect of some of the fencing constituted in the matters, it was too late to take enforcement action, resulting in limited success on ground (d) and further correction of the Notice.

31. Following partial success on ground (a), I will grant planning permission for the trackway only, but otherwise I will uphold the corrected Notice and refuse planning permission for the trackway perimeter fencing and earth mounds. The requirements of the notice will cease to have effect insofar as they are inconsistent with the planning permission which I will grant, by virtue of section 180 of the 1990 Act. The combined effect of this Decision is that the post and wire trackway perimeter fencing and earth mounds must be removed.

Formal Decision

32. It is directed that the enforcement notice is corrected by:

- The deletion of the plan attached to the enforcement notice and its substitution with the plan annexed to this decision.
- In Section 3 'The breach of planning control alleged', delete the words "works including" insert the words "post and wire trackway perimeter".
- In Section 5 'What you are required to do', Step (ii), after the words "Remove the" insert the words "post and wire".

33. Subject to the above corrections, the appeal is allowed insofar as it relates to the equestrian trackway and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, for the construction of an equestrian trackway on the land edged red on the plan annexed to this decision at Land at Isaacs Farm Livery, Franks Hollow Road, Bidborough, Tunbridge Wells, Kent TN3 0UB, subject to the following condition:

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected on or within the land edged red on the plan annexed to this Decision.

34. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the trackway perimeter fencing and earth mounds, and planning permission is refused in respect of the post and wire trackway perimeter fencing on the land edged red on the plan annexed to this decision and the earth mounds on the land hatched green on the plan annexed to this decision on the application deemed to have been made under section 177(5) of the 1990 Act.

M Bale

INSPECTOR



Annex – Plan

This is the plan to be attached to the enforcement notice, pursuant to my Formal Decision

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