
Appeal Decision

Site visit made on 28 May 2024

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10th June 2024

Appeal ref: APP/B2355/C/23/3319494

Land at Milne Street, Irwell Vale, Haslingden BL0 0QP

- The appeal is made by Mr Nick Magee under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Rossendale Borough Council.
- The notice was issued on 1 March 2023; reference 18/00271/ENF.
- The breach of planning control was: Without planning permission, operational development and extensive engineering works have been carried out by way of excavating and widening the Bridleway 14-2-BW 414.
- The requirements of the notice are:
 - Reinstate the land to its original shape, form and surface as evidenced in the photographs attached to the notice;
 - Remove the imported materials from the Land;
 - Re-create the banking of the Land;
 - Re-seed the Land with grass seed; and
 - Plant new hedgerows and trees along the banking of the Land.
- The period for compliance with the requirements is 3 months.
- The appeal was made on grounds (a) and (g). 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 of decision: The enforcement notice is varied and upheld

Appeal site and development

1. The enforcement notice acts against what the notice describes as operational development and extensive engineering works that have been carried out by excavating and widening the bridleway track between B6325 Holcombe Road south of Helmshore and the former railway cutting some way to the east towards Irwell Vale, a length of approximately 600m.
2. The Appellant, Mr Magee, said he used this section of the track to access his land holding on Milne Street. The track had been used for generations by farmers, occupiers and walkers to access the land at Irwell Vale. The work to the track was intended to improve the muddy and washed away surface of the lane damaged during poor winter weather. It had included trimming and removing overgrown vegetation, the installation of passing places, a surface water drain and dressing the surface with clean stone. Mr Magee said that at

the time the Council issued a temporary stop notice on 30 January 2023, (ceasing to have effect on 27 February 2023, (s.171E(7)(b) of the Act), widening work had been confined to the section of the bridleway between the dwelling Hillcrest and his land to the east just beyond the deep former railway cutting. Although the enforcement notice plan shows the breach of planning control covering the length of the bridleway track from Holcombe Road in the west to, and including, the former railway cutting to the east, Mr Magee said the track improvement works were only intended to extend over the length of track just east of Hillcrest to the old railway cutting.

3. During my site visit, I saw that works enforced against had been confined to the length described above. The drainage ditch on the southern side of the track had been cleared, new surfacing of clean stone aggregate topped by black road planings, (materials arising from the scraped off surface of a bituminised road prior to resurfacing work), had been laid to form a reasonably smooth track. That work was said to have somewhat widened the track, effectively forming an upgraded roadway.
4. As noted in para. 3 above, the enforcement notice plan shows the length of the track up to its connection with Holcombe Road, rather than confined to the section where work was being carried out. In view of it not being clear as to the full extent of the uncompleted works when the Council took action, it was not unreasonable that the length to Holcombe Road was shown on the notice plan. It is not necessary to alter the plan.

The implied ground (c) appeal

5. Although there was no appeal on this ground, that those matters (if they occurred) do not constitute a breach of planning control, Mr Magee said: "*The works undertaken were maintenance of an existing track which has been in situ for generations, - The applicant has undertaken tree cutting works, levelling of the roadway, dug out an existing drainage channel and imported a layer of hardcore to level the track for users. - The works are permitted development and therefore should be duly approved.*", (4.5.1 – 4.5.4 Appellant's appeal statement).
6. However, no details were supplied purporting to demonstrate the bridleway track works was development permitted by any part, including Parts 6 and 9, of the General Permitted Development Order or that they could comply with limitations and conditions to the Order. Nor can I assess that possibility, not knowing the full extent of the works or the parties' representations that could follow an appeal on ground (c). I consider it would have been more appropriate for the proponents of the track project to have applied for a certificate of lawfulness of proposed development under s.192(1)(b) of the Act if they felt sure their works did not require permission.

The appeal on ground (a)

7. The extent of the works as set out in the enforcement notice's allegation and what the appeal on ground (a) appeal covers raises some difficulty. The alleged breach of planning control set out in the enforcement notice says: *Without planning permission, operational development and extensive engineering works have been carried out by way of excavating and widening the Bridleway 14-2-BW 414.* Mr Magee's project, as he saw it, to improve the access track had been incomplete when the stop notice was issued. Although this was a temporary stop notice, (for one month), no further work was said to have been carried out since its issue. In a ground (a) appeal where the enforcement notice alleges the carrying out of a development that has not been completed, noting that s.177(1)(a) of the Act only allows for a grant of planning permission for the

whole or part of the matters set out in the allegation, the inference is that planning permission cannot be granted for more than the partially completed works. Another grant of planning permission would be required to complete the works. It may therefore be inappropriate to allow the appeal on ground (a) where the ultimate extent of the project is not known. I must, however, still determine the ground (a) appeal on its merits.

8. As set out in the notice's allegation, operational development and engineering works have been carried out by excavating and widening a section of Bridleway 14-2-BW 414. I need to consider whether those works should be granted planning permission or the situation remedied by means of applying the requirements as set out in the notice or in a varied form.
9. The enforcement notice works of widening, ditching, hedgerow and tree removal and surfacing the bridleway track with stone gave rise to extensive local objection and complaint. It may be that much of the concern of users of the bridleway arose from the disturbance while the works were under way. However, the result so far of those works is that the track, especially in respect of the black road planings top cover blends in poorly with the otherwise pleasant rural countryside boundaries and surroundings of this bridleway. It now looks more like a temporary roadway on a construction site. In my view, all new development in the countryside should be well designed, in keeping with its location, and be sensitive to the character of the countryside and local distinctiveness. The works to the bridleway track have included removal of much of the boundary vegetation, causing an at least temporary damage to the pleasant rural nature of the track and its edge boundaries. I agree with the Council's conclusion that the works enforced against have significantly changed the character of the land from a narrow rural track with hedging and trees to an almost suburban road.
10. Although the Council were of the view that the works to the bridleway track had encroached into the countryside and had an impact on the openness of the Green Belt, as engineering operations they may not have amounted to inappropriate development in this part of the Green Belt, (para. 155, NPPF).
11. Nevertheless, the bridleway track works have not adhered to the guidance in policies within the Rossendale Local Plan 2019 to 2036. In particular, Policy ENV3: Landscape Character and Quality, that seeks to protect and enhance the distinctive landscape character of Rossendale; policy ENV4 – Biodiversity, Geodiversity and Ecological Networks Policy ENV4 that requires that a sequential approach be followed to avoid harm and where possible enhance biodiversity and policy ENV10- Trees and Hedgerows Policy ENV10 that says development proposals must seek to avoid the loss of, and minimise the risk of harm to, existing trees, woodland, and/or hedgerows of visual or nature conservation value.
12. I consider that, in its present state, the works to the section of Bridleway 14-2-BW 414 failed the requirements of those local policies drawn up to safeguard the countryside. The appeal on ground (a) fails.

The implied ground (f) appeal

13. In my view, there is an implied ground (f) appeal contained within Mr Magee's statement at para. 4.4.1 - *The Notice does not adhere to the Mansi rule (Mansi v Elstree Rural DC (1964 16 P & CR 153)). This sets out that a notice should not affect any existing rights including ancillary uses and permitted development*

rights. The requirements of the Notice however, appear to go way beyond what is necessary to remedy the alleged breach of planning control.

14. With regard to the “Mansi rule”, (*Mansi v Elstree RDC [1964] P&CR 154*), an enforcement notice should include a saving for any element of a lawful use. It was not shown how compliance with the requirements of this notice would deny any use rights. The “Mansi rule” applies to the retention of use rights and not the retention of buildings erected or altered in breach of planning control, (*Mohamed v SSCLG [2014] EWHC 4045 (Admin)*; *[2015] JPL 583*).
15. Section 174(2)(f) of the Act says, (ground of appeal (f)) – is an assertion *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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.* Although the Council’s case makes reference to conflict with development plan policy, it is clear that the purpose of the enforcement notice is to seek to remedy what they saw as injury to amenity caused by the work carried out on the bridleway. It may be a reasonable appeal submission in that case that the requirements exceed what is necessary to remedy the breach.
16. I have wide powers to decide whether there is any solution, short of a complete application of the requirements of the notice, which is acceptable in amenity terms, (*Tapecrow Ltd v FSS [2006] EWCA Civ 1744, [2007] 2 P&CR 7*). But it is not for me to seek out solutions; it is up to the Appellant to deal with it in their submissions in support of the appeal. In the absence of alternative scheme suggestions, I saw no obvious alternative to the requirements of the notice which would overcome the harm to amenity caused.

The appeal on ground (g)

17. The appeal ground (g) asks that more time is given to comply with the requirements of the enforcement notice. Mr Magee was concerned that the 3 months period for compliance with all the requirements of the notice was too short and did not allow for such work as the planting of hedges to be carried out in the Autumn.
18. I consider it reasonable to allow more time to carry out remedial work to the bridleway. I increase the period for compliance to six months. To that extent, the appeal on ground (g) succeeds.

FORMAL DECISION

19. The enforcement notice is varied by the deletion of the words “3 months” in line 2 of para. 6 on page 2 of the enforcement notice and the substitution therefor of the words “six months”. Subject to that, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused 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 operational development and extensive engineering works carried out of excavating and widening the Bridleway 14-2-BW 414 between the dwelling Hillcrest and the former railway cutting to the east at Milne Street, Irwell Vale, Haslingden BL0 0QP.

John Whalley

INSPECTOR