



Appeal Decision

Site visit made on 14 May 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/C1570/X/23/3332950

Land North of Cornells Lane, Widdington, Essex CB11 3SG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Dr and Mrs Michael Tee against the decision of Uttlesford District Council.
 - The application ref UTT/23/1918/CLP, dated 26 July 2023, was refused by notice dated 22 September 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the formation, laying out and construction of a means of access to Cornells Lane, Widdington, in connection with the use of land for charitable and private hire events for not more than 28 days in total in any calendar year.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Dr and Mrs Michael Tee against Uttlesford District Council. This application is the subject of a separate decision.

Main Issue

3. The planning merits of the proposed development are not relevant in this appeal. Therefore, points concerning the proposed access in a s78 appeal¹ ("the s78 appeal") that I am also determining are not relevant to my assessment of this appeal. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded, having regard to the terms of Class B, Schedule 2 of Part 2 of the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO") as amended.

Background

4. In the context of a wider planning history, an LDC² was issued by the Council ("previous LDC") in July 2022. The previous LDC comprises of an identical access from the lane to that proposed in the LDC before me. The previous LDC was in connection with the temporary use of the land for holding a market for up to 14 days per calendar year.
5. A license from Saffron Walden Town Council ("SWTC") is required to hold a market at the site. This has not been forthcoming from SWTC. Hence, neither the temporary use nor the access have materialised on the ground.

¹ APP/C1570/W/23/3330213

² Council Ref: UTT/22/1523/CLP

Reasons

6. Class B, Part 2 of Schedule 2 of the GPDO permits *"the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)."*
7. The GPDO does not define the term "means of access", but section 336 of the Act states that "means of access" includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street. That definition is, in my view, much wider than just the provision of a point of access onto a highway. It also includes the potential for an access track. Hence, the "means" by which one would move from A to B.

Proposed use and the previous LDC

8. The temporary use of land is permitted by Class B, Part 4 of Schedule 2 of the GPDO for any purpose for not more than 28 days in total in any calendar year, unless it is for one of the specified purposes, which are restricted to 14 days per calendar year. There is no restriction on the nature or type of temporary use, and the land could be used on a temporary basis for a variety of uses.
9. The appellant proposes to use the land on a temporary basis for charitable and private hire events. That description is wide-ranging, and potential uses could include wedding functions, private functions, and corporate events. Submitted evidence indicates that two birthday events would potentially be attended by around 150 guests, with an unknown number camping over. It is estimated that around 170 people would attend a wedding in 2025 and that people would park on the site. For a 60th birthday, there would potentially be 50 to 85 people. Tents, toilets, and a shower block are likely in connection with that event. Various other events, including birthday parties, filming a music video, a staff party, weddings, and a children's festival, for example, point to interest in holding an event of some kind on the land but do not specify the number of people potentially attending.
10. The appellant cites an example of there being interest in holding a festival with around 900 people attending across four days, with no more than 500 people per day. Furthermore, a one-off charitable family fun day is planned, with several hundred people coming and going during the day. It is said that access would be needed for larger vehicles/trailers to deliver toilet blocks, marquees, stage equipment, etc. and to enable access for emergency and refuse vehicles.
11. The Council says that the use of the land for a market would have a different character from the charitable and private hire event use that the proposed access would be used in connection with. This is due to different vehicular movements relating to a random pattern of customers coming and going from a market. The Council says that a charitable and private hire use would result in more concentrated movements at peaks at the start and end of events, which would mean that there would not be constant two-way movements.
12. The precise nature of the temporary use of the land would likely vary from event to event, but private events such as birthdays, corporate days, and wedding celebrations typically result in guests arriving at the start of that event and leaving within a range of time towards either the end of the event or the following day if they are staying over. It is also unclear how people would come and go from the festival, whether they would stay over, or what other provisions would be needed to support the event.

13. Without precise details of the events cited in terms of the number of people, how they would travel to and from the site, and what facilities they potentially need, it is difficult to identify the nature of traffic movements. The onus is on the appellant to demonstrate that. In my experience, the scale and nature of the events would differ with the use of the land for a market, which would see people coming and going throughout the event, and more likely result in two-way traffic movements. The range of events described would typically have different access requirements, unlike a market.
14. That is not to say that two-way movements will not occur, and the one-day charitable event may result in two-way traffic movements of a similar nature to a market. However, there are no details of how or when people would travel to and from the site or even how many people 'several hundred' relates to; the scope of that is not precise. Nevertheless, leaving the imprecision to one side, I have approached the proposal based on the use potentially resulting in a random pattern of people coming and going that could cause two-way traffic movements, and there is a need for larger vehicles/trailers to deliver toilet blocks, marquees, stage equipment, etc., and to enable access for emergency and refuse vehicles in the context of a one-off event.
15. That said, I disagree with the appellant's view that there are no material changes in the circumstances or any clear reasoning to explain the Council's current position. The market use on the scale described in the previous LDC comprised of 80 to 90 pitches and 200 car parking spaces. That use is also restricted to 14 days per year.
16. The proposed use could take place for up to 28 days; double the amount. Furthermore, as explained, many of the uses described do not precisely define the event, such as how many people will potentially attend or how and when they will travel to and from the site. It is also evident that some days within the totality of the 28 permitted by the GPDO would be needed to set up and remove items to enable the events to be held.
17. The appellant says that the terms of the licence mean that a 'boot sale' (to be held by a charity) would fall within the definition of a market for the purposes of a licence from SWTC. The appellant is a patron of a charity, and the appellant consequently considers that they meet the licensing rules of SWTC. That view is not, however, shared by SWTC. Be as that may, obtaining a license is not within the terms or limitations of that class of the GPDO.
18. There is a need for consistent decision-making in the planning process. Yet, there are reasons why the previous LDC differs from the scheme now before me on their facts. Even if they were the same, the Judicial Review³ ("JR") in respect of a scheme which the Council had granted planning permission for four dwellings on the land, casts significant doubt on whether the Council, in considering the previous LDC, grappled with the question of whether the access would be 'required' in respect of the use it was stated to relate to. For either or both reasons, I give the previous LDC no weight, though the appeal before me is to be determined on its own merits regardless.

The existing access

19. The site benefits from an existing access from Cornells Lane. The access track extends into the site at an angle starting next to The White Cottage. The track is unmade, grassed, and Essex clay lies beneath. An adjoining access, serving

³ [2023] EWHC 1709 (Admin)

The White Cottage and its garage, has a gate. Vegetation lines the appeal site's southern boundary with the lane. An electricity substation and an overhead power line are next to the access within the site. The appellant says that two vehicles cannot pass on the existing access, that the ground can be soft and wet, and sightlines are affected. They say that these factors mean that the existing access cannot support the proposed temporary use of the land.

The proposed access

20. The proposed access would be to the east of the existing access and facilitate movements to and from Cornells Lane. To create it, an engineering operation would be needed to provide a secure/appropriate foundation. To form, lay out, and construct the new permanent means of access to the lane, existing vegetation would need to be removed along the site's boundary with the lane, the existing banking would need to be regraded to provide suitable levels, visibility splays in either direction, and to form an over-run area, and the access would need to be surfaced. For the initial 10 metres, an access width of 5.5 metres would be created. Including the over-run area, the access then widens to 7 metres, with the width then narrowing to 4.2 metres wide within the site and extending to around 60 metres in length parallel to the lane.

Is the proposed access required?

21. The key question in this case is whether the proposed access is 'required' in connection with the proposed temporary use. Determining whether the proposed access is required or not, needs to be considered objectively. To my mind, 'required' has the normally understood meaning of 'essential' or 'necessary' as set out in the Rose Cottage⁴ appeal decision. Submissions made refer to the words 'reasonably required', but those are not words used by the GPDO, though the Guildford⁵ and Solihull⁶ appeal decisions explain that in considering whether the access is *required*, there must be a reasonable degree of need for it; it cannot just be desired. Nevertheless, it is a matter of fact and degree based on the specifics of the case.
22. It strikes me that the existence of the existing access is not determinative, but it is relevant to consider whether it is deficient to reach a finding on whether a new access is 'required'. Furthermore, the Council considers that the scale and proportionality of the proposed access go well beyond what would be 'required' for the temporary use on an objectively reasonable basis.
23. The condition and restrictions (width and visibility splays) of the existing access mean that it cannot currently accommodate two-way traffic. Its juncture with Cornells Lane at an angle adds further complications to that, together with the visibility affected by vegetation, particularly looking towards the east.
24. I also understand that a gate across the driveway to the adjoining residential property at White Cottage does, when open, swing over the public highway. If open, this is likely to affect visibility to the west. However, given the width of the gate, I do not share the appellant's view that it would restrict the use of the existing access. Nevertheless, when the gate is open and for how long, depends on the actions of the occupants of The White Cottage.
25. UK Power Networks (UKPN), as a Statutory Undertaker may require access to

⁴ Appeal Decision Ref: APP/T3915/X/08/2084707

⁵ Appeal Decision Ref: APP/Y3615/X/12/2185058

⁶ Appeal Decision Ref: APP/T3725/X/16/3156418

- the electrical equipment at any time. Operatives may need to park their vehicles on or near the existing access track. That would likely affect the usability of the existing access for the duration that they are parked there.
26. Some of the potential events have expressed a view that two-way access is preferable. Given this, the appellant considers the proposed access to be the most suitable option and, as such, is also required. Yet, 'most suitable' does not necessarily mean 'required'.
27. The existing access could be surfaced with a suitable material that would enable vehicular use throughout the year. The gradient of the access does not appear to be problematic, but could, if required, be altered to assist with vehicular movements. Vegetation could be removed to improve visibility. The existing access is approximately 5.51 metres wide at its junction with the lane, although that width reduces to 3.8 metres or around 4.85 metres (if land up to the adjoining residential boundary is used). Regardless, either width is greater than the width of a typical lorry and other vehicles, including refuse vehicle or a fire engine, for a short distance. The existing access could potentially be widened to at least reflect the proposed access's width if the electricity equipment is repositioned or grounded. An agreement would need to be reached with UKPN to do so, but if they agreed, it would likely allow larger vehicles to enter and leave the site and facilitate two-way traffic movements.
28. The appellant says it is unrealistic to reposition the electricity equipment. There is, however, no substantive evidence either way on whether UKPN will agree to removing it. There could be an effect on others in the locality, but there is no evidence indicating what that effect may be, how long any effect would be experienced, or whether the effects could be mitigated. There is also no information about the cost of moving the equipment or how long relocating it may take. Hence, the appellant has not shown that this option is unrealistic.
29. Minor changes could also potentially be undertaken to improve visibility to the east of the access at its junction with the lane. This may involve removing any trees that are subject to planning control, given that the site boundary adjoins the Widdington Conservation Area ("WCA"). That would be a decision for the Council, and there is no analysis of how many trees may potentially need to be removed but given the size and maturity of trees near the existing access and the presence of more mature species on either side of the land, I am not of the view that, despite the uncertain outcome, permission would certainly not be forthcoming based on planning merits. The same would apply in respect of the removal of the existing gate, given that it is not a defining characteristic of the WCA for properties to have a gate.
30. Movements in and out of the site, even with a theoretically amended existing access, would probably need to be managed due to the width of the lane, the angled junction of the access with the lane, and the visibility that drivers and other road users would have. That said, there is no evidence indicating that this has been potentially explored. The same need for traffic management would likely apply to the proposed access, given the width of the lane and its use by other road users.
31. While it may be frustrating for the appellants to postpone events, and not use the land as they would like, equally, the appellants have known the Council's view about upgrading the existing access, and no substantive evidence has been provided setting out that the matter has been explored with the UKPN or

that moving the electrical equipment is not possible. Furthermore, a wider access and relocated equipment would enable any UKPN operatives to park on the land without blocking the access.

32. For the reasons explained, although a test event is not necessary to determine whether the proposed access is required, it appears to me that the existing access could potentially be altered and improved to achieve a similar width to the proposed access, to enable two-way traffic movements, and so that large vehicles can access the land. It follows that those works could potentially fall within the remit of being 'required' for the temporary use of the land.
33. The Council correctly accepts that the provisions of Class B, Part 2 of Schedule 2 of the GPDO would be met even if the proposed access is a permanent addition. That is because the GPDO does not require the access to be removed and the land made good when the temporary use is not taking place. However, the Council says that the scale and proportionality of the proposed access goes beyond what would be 'required' for the temporary use.
34. The permitted development right to create a means of access goes hand in hand with that access being required for the temporary use. To determine that, as a matter of fact and degree, it may be relevant, in my view, to consider factors such as scale when determining whether the access is required or not. The circumstances of the case would depend, though it is logical that the need for the access is on all fours with the use it would serve.
35. In this case, there are ground-level differences between the lane and the site, and the lane is relatively narrow and lined by vegetation. If I were satisfied that the proposed access was required on the basis that the existing access could not be suitably altered, any access to the land would need to overcome ground level changes, vegetation and ensure safe/suitable access to and from the site. To do so, it is reasonable to understand the highway implications of the temporary use. Objectively, the size and alignment of the proposed access seem reasonable for the charitable event cited, though I am not satisfied that it is for the other private hire events referred to due to the lack of details about them and their associated highway movements. In any event, my findings here do not alter my view about the existing access.
36. Consequently, even though the proposed new access may be desired by the appellants, I cannot conclude that it would be *required* to serve the temporary use of the land. I am therefore not satisfied that the proposal would fall within the scope of Class B, Part 2 of Schedule 2 of the GPDO.

Other Matters

37. I am mindful of the appellants point about the Council being subject of a Special Measures Designation, but I have considered the appeal on its merits alone. As set out earlier, I have also determined an appeal under s78 of the Act, but those considerations are separate to my assessment of this appeal.
38. Representations have been made by interested parties, and the appellants have commented upon them. I have noted the points around trespass, alternative sites, and alternative arrangements, but I have nevertheless focused on the key question of whether the proposed access is 'required'. The appellant's return on investment in relation to the construction of the proposed access is also not relevant to determining whether it is required.

Conclusion

39. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of the formation, laying out, and construction of a means of access to Cornells Lane, Widdington, in connection with the use of land for charitable and private hire events for not more than 28 days in total in any calendar year was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Andrew McGlone

INSPECTOR