



Appeal Decisions

Hearing and Site Visit held on 1 October 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Appeal A Ref: APP/U2370/C/23/3316124

Appeal B Ref: APP/U2370/C/23/3316125

Appeal C Ref: APP/U2370/C/23/3316126

Land on the north side of Crook Gate Lane, Out Rawcliffe, Preston, Lancashire PR3 6TR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Peter Nicholson, Mrs Kathryn Nicholson and Mr Dillan Nicholson against an enforcement notice issued by Wyre Borough Council.
- The notice was issued on 19 December 2022.
- The breach of planning control as alleged in the notice is without planning permission the carrying out of operational development within the Land consisting of the erection of gates and gate posts to form a widened field entrance in the approximate location shown shaded yellow on the attached plan and the creation of an access track and hardstanding by the excavation of topsoil and the laying of an industrial membrane and crushed brick/stone in the approximate position shown marked with an orange brick pattern on the attached plan lined with stone boulders in the approximate locations shown marked in blue on the attached plan ("the Unauthorised Development").
- The requirements of the notice are:
 - (a) Remove all the stone boulders in their entirety from the Land and dig out and remove all the crushed brick, all crushed stone all the membrane and all other materials used in the construction of the access track and hardstanding and remove all the resultant debris and excavated materials in their entirety from the Land;
 - (b) Remove the concrete gate pillars and gates that form the field entrance from the Land and restore a field entrance to the appearance, width and location that it was immediately before the breach of planning control took place and re-install hedgerow to either side of the restored entrance;
 - (c) Regrade the areas of the Land affected by compliance with paragraph 5.(a) and paragraph 5.(b) respectively above by the introduction of topsoil so as to restore the contours of those areas to the level that they were immediately prior to the unauthorised works enforced against by this notice taking place; and
 - (d) Sow the entire areas of the Land referred to in paragraph 5.(d) above with grass seed.
- The periods for compliance with the requirements of paragraphs 5.(a) and 5.(b) is two months and with paragraphs 5.(c) and 5.(d) is three months from the date the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) 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. Appeals B and C are proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decisions: The ground (a) appeal succeeds in part and permission for that part is granted, but otherwise the appeals fail, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decisions.

Applications for costs

1. An application for costs was made by Mr Peter Nicholson, Mrs Kathryn Nicholson and Mr Dillan Nicholson against Wyre Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

2. Paragraph 5.(d) of the enforcement notice (Notice) requires the appellants to "*Sow the entire areas of the Land referred to in paragraph 5.(d) above with grass seed.*" The reference to the annotation "5.(d)" in that paragraph is a typographical error and its correction to "5.(c)" would cause no injustice to the appellant or Council.
3. Since the Notice was issued, a lawful development certificate has been granted confirming the existing use of the Land is agriculture¹. The appellants have also purchased additional land located off Lancaster Road. Following that land purchase, the extent of their agricultural holding has increased to over 5 hectares.

Appeals on Ground (b)

4. An appeal on this ground is that the matters alleged have not occurred as a matter of fact. The onus of proof is on the appellants and the relevant test is the balance of probability.
5. There is no dispute that an access track and hardstanding has been created and that stone boulders line the access track. Furthermore, the appellants agreed at the Hearing that the former gate had been replaced by wider, double gates and new, repositioned, concrete gate posts had been erected.
6. The matters alleged have therefore occurred. The appeal on ground (b) fails.

Appeals on Ground (c)

7. An appeal on this ground is that, if the matters alleged have occurred, they do not constitute a breach of planning control. The onus of proof is on the appellant and the relevant test is the balance of probability.
8. It was brought to my attention that contaminated materials have historically been imported on to the Land. Legal action is ongoing which will see those contaminated materials removed from the land and disposed of in a controlled manner.
9. The appellants' initial submissions infer that the alterations to the access and construction of the access track and hardstanding were to facilitate the removal of the contaminated materials from the Land. While that argument remains, the appellants also claim the alterations to the access and construction of the access track and hardstanding are required for agricultural purposes. The appellants therefore claim the gates, gate posts, access track and hardstanding constitute permitted development as defined by Part 6 of Schedule 2 of the GPDO².

¹ Wyre Borough Council Application reference: 24/00560/LAWE granted – material date 12 July 2024

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

10. In addition, the appellants argue that the erection of the gates and gate posts are *de minimis*. *De minimis* is a legal term meaning "too small to be meaningful or taken into consideration; immaterial."³
11. Part 6 of Schedule 2 of the GPDO sets out permitted development rights for agriculture and forestry. It is not disputed that, at the time the Notice was issued, the appellants' agricultural holding comprised an area of less than 5 hectares in area. Class B deals with development on units of less than 5 hectares in area and is therefore relevant to the matters alleged.
12. Class B. provides that, of relevance to the matters alleged, "*The carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, of development consisting of –*
(d) the provision, rearrangement or replacement of a private way; and
(e) the provision of a hard surface,
Where the development is reasonably necessary for the purposes of agriculture within the unit." Class B.1 then sets out that "*Development is not permitted by Class B if – (c) any part of the development would be within 25 metres of a metalled part of a trunk road or classified road."*
13. The replacement and repositioning of the gates and gate posts along with the provision of the access track constitute development falling within Class B.(d). The hardstanding constitutes development falling within Class B.(e). It is confirmed in the agreed Statement of Common Ground that Cross Gate Lane is a classified road.
14. The gates and gate posts are within 25 metres of Cross Gate Lane. While it was argued that parts of the access track and hardstanding are more than 25 metres away from Cross Gate Lane, these were laid as a single operation and therefore "*part of the development*" is within 25 metres of a classified road. For this reason, the gates, gate posts, access track and hardstanding are not permitted by Class B of Schedule 2 of the GPDO.
15. The matters alleged are therefore development requiring planning permission. That planning permission has not been granted nor is it deemed to have been granted by the GPDO. Furthermore, it would be irrational to find that development requiring planning permission is too small to be meaningful or to be taken into consideration. I therefore find the development is not *de minimis*.
16. For these reasons the appellants have failed to show, on the balance of probability, that the development does not constitute a breach of planning control. The appeals on ground (c) fail.

Appeal A on Ground (a)

Reasons

17. An appeal on this ground is that planning permission should be granted for the matters alleged. The **main issue** is the effect of the development on the character and appearance of the Land and the surrounding countryside.

³ Glossary - Thomson Reuters

18. The appeal site is in the countryside, where the landscape is relatively flat with open fields divided by native species hedgerows and interspersed with trees and sporadic farmsteads. There are native species hedgerows surrounding the Land, which is served by two points of access; one located at the western end of the site frontage and the one the subject of the Notice, which is in a relatively central position on the site frontage.
19. There is no dispute that there was an access located in this position previously. Photographs provided in the Hearing Bundle show that the access was overgrown with vegetation when the Land was purchased by the appellants. Subsequent photographs show the gate posts to have been rotten and the access way leading into the Land to be waterlogged. I also saw during my site visit that the highway verge adjacent to the Land has been eroded by vehicles turning into a narrower field access located opposite the appeal site.
20. The gates and gate posts erected on the appeal site are of a scale and design usually found in the countryside. The gate posts may be constructed of concrete, however they are not visually intrusive and do not detract from the inherently rural appearance or character of the surrounding landscape. Furthermore, the setback position of the gates and gate posts, coupled with the nominally wider opening, provides for vehicles to access and egress the Land without eroding the highway verge opposite.
21. The access track and hardstanding utilise similar surfacing materials to others within the surrounding countryside. Again, these features are not uncommon in the countryside. It may be more common for such tracks to follow field boundaries rather than bisecting fields. However, the appellants have planted native species hedgerows to either side of the access track, which once established, would give the appearance of it following a field boundary.
22. I was told the stone boulders have been positioned along the access track to prevent vehicles encroaching onto the adjacent field and to contain livestock. The post and wire fencing and hedgerow planting carried out adjacent to the stone boulders would prevent vehicles encroaching onto the adjacent land. Similarly, the fencing and hedgerows would contain livestock. The stone boulders therefore serve no agricultural purpose.
23. It is also suggested the use of stone boulders to prevent vehicle ingress on to land is a common feature within the surrounding locality. However, the examples I saw in the wider landscape were stones, painted white in some cases, positioned along grass verges. The stones I saw were considerably smaller in scale than the stone boulders positioned on the Land. Furthermore, the stones were placed intermittently to deter vehicles running off the carriageway edges, as opposed to being placed together to form a wall, as the stone boulders within the Land have been.
24. I acknowledge planting has been incorporated into the lines of boulders and that this will make a small, positive contribution to biodiversity. However, the plants are domesticated species, more commonly found in residential gardens than a countryside setting.
25. I therefore find the stone boulders to be an alien feature within the local landscape, which serve no agricultural purpose and provide no substantial public benefit. Their retention would therefore be contrary to policies CDMP3

and SP4 of the WLP, which require development to respect and enhance the intrinsic character and beauty of the countryside, amongst other things.

Other matters

26. Agreement was not reached on whether the stone boulders constitute development. The number of stone boulders imported along with their size and scale are such that machinery would, more likely than not, have been required to transport them to and position them on the Land. As a matter of fact and degree, I find such works amount to an engineering operation requiring planning permission.
27. Policy SP1 (Development Strategy) of the Wyre Local Plan (2011-2031)(incorporating partial update 2022)(adopted January 2023)(the WLP) establishes the Council's settlement hierarchy and location of proposed growth. As the works do not encompass settlement growth, I find this policy to have negligible weight in determining the acceptability or otherwise of the development.
28. I was directed to policy EP8 (Rural Economy) of the WLP, which offers support to rural economic diversification and the expansion of existing businesses within the countryside, provided it is not detrimental to local character and it's supporting infrastructure is necessary. The use of the appeal site for agriculture does not represent diversification and I have not been shown how the development amounts to the expansion of an existing business. I therefore find that policy EP8 is not directly relevant to the development and I will also give it negligible weight in determining the acceptability or otherwise of the development.
29. Policy CDMP1 (Environmental Protection), in the case of contaminated land, requires a remediation scheme that ensures land will be remediated to a standard that provides a safe environment for users to be secured. Reports provided with the appeal demonstrate that the stockpiled contaminated materials can be removed, and the land made safe.
30. The altered access, construction of the access track and hard surfacing provide adequate visibility and for vehicles to enter and leave the Land in a forward gear. The development has no adverse effect on highway safety and therefore complies with policy CDMP6 (Accessibility and Transport) of the WLP.
31. The 1990 Act provides for planning permission to be granted retrospectively. Furthermore, enforcement action is not punitive. The fact that this development has already been carried out is no reason of itself to refuse planning permission.

Conditions

32. The access track and hardstanding are found to be acceptable due to the agricultural purpose they serve. Facilitating the removal of the contaminated material is also a justified purpose in the short term. A condition restricting the use of the track for the purposes of agriculture and facilitating the removal of the contaminated waste only is therefore necessary, relevant to planning and the development that has taken place.
33. The provision of fencing and hedgerow planting adjacent to the access track and hardstanding will prevent vehicles straying onto the adjacent fields and

prevent livestock straying onto the access track and hardstanding. The removal of the stone boulders and its associated planting has the potential to reduce biodiversity and it would therefore be appropriate to facilitate the appellants continued tree and hedgerow planting scheme. A condition to secure the retention and maintenance of existing fencing, trees and hedgerows, and additional planting if found to be necessary, is therefore necessary and relevant to planning and the development.

34. I have considered whether a condition could be used to secure the removal of the stone boulders. However, their removal would be secured by upholding the Notice. S180 provides that the Notice would cease to have effect in respect of those elements for which planning permission is granted. Should the stone boulders not be removed within the specified period, upholding the Notice ensures the Council can enforce without having to take further enforcement action. A condition to secure the removal of the stone boulders is not therefore necessary.

Conclusion on ground (a)

35. For the reasons given above and subject to the imposition of conditions, I find the gates, gate posts, access track and hardstanding have no significant adverse impact on the character and appearance of the Land or the surrounding countryside. These parts of the development therefore comply with policies SP2, SP4 and CDMP3 of the WLP, which require development to positively contribute to the physical and environmental character and beauty of the area, amongst other things.
36. The stone boulders however have a significant adverse impact on the character and appearance of the Land and the surrounding countryside. In the absence of any substantial public benefit, this part of the development is contrary to policies SP2, SP4 and CDMP3 of the WLP, as they do not positively contribute to the physical and environmental character and beauty of the area.
37. The appeal on ground (a) succeeds to this limited extent.

Appeals on Ground (f)

38. Due to the partial success on ground (a), the requirements of the Notice will cease to have effect so far as they are inconsistent with the planning permission that will be granted. The appeals on ground (f) succeed to this extent.

Appeals on Ground (g)

39. The appeals on ground (g) relate specifically to extending the compliance periods so as to facilitate the removal of the contaminated materials from the land before the access track and hardstanding have to be removed. As the gates, gate posts, access track and hardstanding will benefit from planning permission, the compliance periods for steps (b), (c) and (d) will cease to have effect.
40. The stone boulders do not facilitate the use of the access track or hardstanding. Two months is therefore a reasonable period to remove the stone boulders.
41. The appeal on ground (g) fails.

Overall Conclusion

42. For the reasons given above I conclude that the ground (a) appeal should succeed in part only, and I will grant planning permission for the gates, gate posts, access track and hardstanding as identified on the plan attached to the Notice. Otherwise, I will uphold the Notice with a variation and refuse to grant planning permission in respect of the stone boulders. The requirements of the Notice shall cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the 1990 Act.

Formal Decisions

43. It is directed that the enforcement notice be varied by:

In section 5. WHAT YOU ARE REQUIRED TO DO, in paragraph 5.(d) delete the reference "5.(d)" and substitute the reference "5.(c)".

44. Subject to the variation, Appeal A is allowed insofar as it relates to the specified part of the development being permitted and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of gates and gate posts to form a widened field entrance in the approximate location shown shaded yellow on the enforcement notice plan and the creation of an access track and hardstanding by the excavation of topsoil and the laying of an industrial membrane and crushed brick/stone in the approximate position marked with an orange brick pattern on the enforcement notice plan at Land on the north side of Crook Gate Lane, Out Rawcliffe, Preston, Lancashire PR3 6TR and subject to conditions set out in the attached Schedule of Conditions.
45. Appeals A, B and C are dismissed, and the enforcement notice is upheld as varied insofar as it relates to the specified part of the development being refused and planning permission is refused in respect of the stone boulders lining the access track in the approximate locations shown marked in blue on the enforcement notice plan at Land on the north side of Cross Gate Lane, Out Rawcliffe, Preston, Lancashire PR3 6TR on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Madge

INSPECTOR

SCHEDULE OF CONDITIONS

1. Within 3 months of the date of this permission a Landscape and Habitat Creation and Management Scheme, including a timetable for implementation, shall be submitted to and approved in writing by the local planning authority. The scheme shall identify the opportunities for biodiversity enhancements on site including but not limited to:

- Tree and hedgerow planting already carried out;
- Bolstering existing hedgerows;
- Timescales for implementation; and
- Future maintenance regime.

The Landscape and Habitat Creation and Management Scheme shall be carried out in accordance with the approved details.

2. The track and hard surfacing hereby approved shall be used only for the purposes of agriculture and for the removal of the contaminated materials from the land. Once the contaminated materials are removed, the track and hard surfacing shall be used only for agriculture.

APPEARANCES

FOR THE APPELLANT:

Samuel Jones	Counsel, Lincoln House Chambers
Jennifer Watts	Solicitor, Watts Legal
Peter Nicholson	Appellant
Kathryn Nicholson	Appellant
Dillan Nicholson	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Elana Kaymer	Counsel, Kings Chambers
Rob Clewes	Principal Planning Officer, Wyre BC