

Appeal Decision

Site visit made on 10 December 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 DECEMBER 2024

Appeal Ref: APP/B3030/C/23/3333696

Elston Lodge Farm, Elston, Newark, NG23 5PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Tom Reacher against an enforcement notice issued by Newark & Sherwood District Council.
 - The notice was issued on 23 October 2023.
 - The breach of planning control as alleged in the notice is without planning permission, 'development' consisting of the material change of use of land from agricultural use to residential use (as shown within photograph 1), including associated works consisting of the erection of a hard-surfaced access track (as shown within photograph 1) and gates (as shown within photograph 2).
 - The requirements of the notice are to A) remove the hard-surfaced access track and turning-head (edged in red on the aerial image A) so as to restore the land to its condition before the development took place; B) remove the boundary treatment (gates – between red line points marked 'A' and 'B' on photograph 2); C) cease the residential use of the land, and D) remove all planting including but not limited to trees and shrubs from the land in the areas shown edged in blue and yellow on aerial image B.
 - The period for compliance with the requirements A to D, is 120 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of sections 5(A), 5(B) and 5(D). Subject to the variations, the appeal is 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 Matter

2. The Government consulted on reforms to the National Planning Policy Framework 2023 (the Framework) on 30 July 2024 (Consultation Draft Framework). The consultation closed on 24 September 2024. I afford the Consultation Draft Framework limited weight in decision making terms as a material planning consideration. Considering the deemed planning

application main issue below, there are no proposed reforms in the Consultation Draft Framework which have a material bearing on how this appeal should be considered. In this regard, it has not been necessary for me to seek comments from the main parties in respect of the Consultation Draft Framework.

Ground (d) appeal

3. The appeal made on 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 those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
4. The digital evidence before me demonstrates that the hard surfaced access track and gates were substantially completed in March 2019 and December 2018 respectively. The notice was issued on 23 October 2023. On the balance of probability, I find that they are immune from enforcement action, and hence are lawful, having been substantially completed for more than four years prior to the notice being issued.
5. The breach of planning control relates to a material change of use of the land from agricultural use to a residential use. I do not find that the access track and gates have in themselves facilitated the material change of use of the appeal land to a residential use. While the evidence is that the access track and gates serve a residential property beyond the appeal land, this neighbouring land falls within its own separate planning unit. The existence of the operational development referred to in the notice does not mean, in my judgement, that the appeal land has been materially changed to a residential use. The access track and associated gates are used as part of a private highway which leads to a property elsewhere and not specifically as residential use of the appeal land.
6. The land to which the material change of use notice relates is shown as being hatched on 'Plan A' attached to the notice. This breach of planning control relates to a significant land area. An appeal under ground (b) is not pleaded and hence there is no claim that the breach of planning control has not occurred on the land. Moreover, there is no evidence to support any claim that a material change of use of the land to a residential use occurred more than ten years ago. On the balance of probability, the claimed unauthorised residential use of the land is not therefore immune from enforcement action.
7. For the above reasons, I conclude that the ground (d) appeal succeeds to the extent that when the notice was issued, it was too late to take enforcement action in respect of the specified gates and access track. They are immune from enforcement action and, given my reasoning above, did not facilitate the material change of use of the land for residential use purposes. In this regard, it is necessary that I vary the requirements of the notice, although I deal with this in further detail as part of the ground (f) appeal below.

8. I conclude that the ground (d) appeal fails in so far that it was not too late to take enforcement action in respect of the material change of use of the appeal land for residential use purposes.

Ground (a) appeal and the deemed planning application

Main Issue

9. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issue is the effect of the development on the character and appearance of the area.

Reasoning

10. The appeal site falls within an area of countryside adjacent to Elston Lodge Farm. Other than some sporadic development, the prevailing and distinctive character of the area is defined by mainly open and undeveloped agricultural fields with some hedges depicting field or land ownership boundaries. The area is essentially open and rural in character although Eden Hall Day Spa opposite the site is an anomaly in this regard. The breach of planning control conflicts with the types of development permitted in the countryside as specified in policy DM8 of the Council's Allocation and Development Management DPD 2013 (DM DPD).
11. As outlined in my ground (d) appeal reasoning, the access track and gates are lawful. As they are lawful, there has been a lawful change to the character and appearance of the agricultural field which previously included gates which were more rural in character and a field which was devoid of any operational development, including an access track.
12. The deemed planning application relates to use of a large part of a former agricultural field (also encompassing the access track and gates) for residential use purposes. While the access track may be capable of being lawfully used as a private highway to serve a residential property elsewhere, given my earlier findings, the use of the appeal land for general residential use purposes (e.g., as a garden) has the potential to cause very significant harm to the essentially open and rural character of the area.
13. Indeed, if planning permission was approved for residential use of the appeal land, this would in effect allow various residential activities to occur (e.g., siting of tables, chairs, football nets, trampolines, erection of associated fencing, mowing of land and other domestic paraphernalia) which, either individually or in combination, would have the effect of making a large amount of land appear more domestic and suburban in character thereby causing material harm to this countryside location. This harm would be compounded because I have already concluded that the access track and gates are lawful (and hence can be retained), but this has nonetheless led to some harm being caused to the otherwise rural and undeveloped character of this former field. It is in this regard, that planning permission for the unauthorised material change of use of the land is not justified.
14. In reaching the above conclusion, I do not find that the stated planting on the appeal land has caused harm to the character and appearance of the

countryside. It is worth emphasising that the planting of trees or other vegetation does not in itself constitute development. In other words, it would be possible to plant trees in association with an agricultural use of the land and this would not require planning permission. In this regard, there is a fallback position to consider when it comes to assessing the planting.

15. The notice requires that the planting on the appeal land is removed. I find that if residential use of the land is not permitted, it would be acceptable to retain the planting. The planting may have been in association with an unlawful residential use of the land, but I find that it nonetheless softens the effects of the lawful access track and does not in itself have a harmful impact in character and appearance terms. This is essentially a matter that I deal with under the ground (f) appeal, but the retention of the planting would ensure that the biodiversity and climate change benefits associated with such planting continue to be realised.
16. For the reasons outlined above, I find that the unauthorised material change of use of the land would not be capable of according with the design, character, appearance and locational requirements of Spatial Policy 3 and Core Policy 9 of the Newark and Sherwood Amended Core Strategy 2019, Policies DM5 and DM8 of the DM DPD, and the Landscape and Character Assessment SPD 2013.

Ground (f) appeal

17. The appeal made under 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 or to remedy any injury to amenity which has been caused by any such a breach.
18. Given my ground (d) appeal conclusion, requirements 5(A) and 5(B) are excessive. I shall accordingly vary the requirements of the notice by deleting these requirements. In other words, the hard-surfaced access track (including turning head) and gates are not required to be removed. Given my ground (a) appeal reasoning, I find that it is excessive to remove the planting from the land. I shall accordingly vary the notice by deleting requirement 5(D).
19. To the extent that the above requirements are varied, I conclude that the ground (f) appeal succeeds.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR