



Appeal Decision

Site visit made on 4 December 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal Ref: APP/N1730/C/23/3329483

Granary Court, Alton Road, South Warnborough RG29 1RZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Poplars Place Ltd against an enforcement notice issued by Hart District Council.
 - The notice was issued on 7 September 2023.
 - The breach of planning control as alleged in the notice is 'without planning permission, the carrying out of engineering operations to form a means of vehicular access onto a classified road (B3349) comprising the regrading of the bank and a new hard surfaced area. The approximate position of the vehicular access is shown as a black 'X' on the attached plan.
 - The requirements of the notice are
 - (i) Remove the hard surfaced area created to form the vehicular access.
 - (ii) Regrade the bank to its profile prior to the engineering operations being carried out and restock the hedgerow comprising of mixed native species. The hedgerow planting shall comprise feathered whips with a minimum height of 40 - 60cm planted in a staggered double row pattern with a 300 mm offset between plants and 400mm gap between rows with a minimum of 5 whips per linear metre.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b),(c) of the Town and Country Planning Act 1990 (the Act)(as amended).
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Decision

1. It is directed that the enforcement notice is varied by:
 - (i) Deleting requirement ii) in full and replacing it with "Regrade the bank and restore the land to its condition before the breach took place"
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appeal was made on grounds (b) and (c) by the unrepresented appellant. However, the evidence provided by the appellant also related to an appeal under ground (f). As the Council was given an opportunity to comment upon that 'hidden ground,' I will address the ground (f) appeal as part of my decision.
4. The appellant has chosen not to pursue ground (a) which would have included an application for planning permission. As I am not considering whether planning permission should be granted in respect of the matters alleged, planning considerations including highway safety and comparisons between the development and any other accesses are not matters that I can consider as part of this appeal.

An appeal under ground (b)

5. An appeal under ground (b) is that the matters alleged in the notice have not occurred as a matter of fact. The onus of proof is on the appellant on a balance of probabilities to make out their case.
6. Granary Court consists of buildings which are occupied by a number of businesses such as car repairs and offices. Between the front of the appeal site and the classified road, there is a buffer strip largely made up of grass verge and hedgerow and the development is located within a gap in that buffer zone. The allegation refers to 'the carrying out of engineering operations to form a means of vehicular access onto a classified road (B3349) comprising the regrading of the bank and a new hard surfaced area'.
7. The appellant refers to improvements taking place rather than the formation of a vehicular access and refers to an original historic gateway. However, the photographs provided do not support that view. The image dated October 2023, just after the notice was issued, shows the extent of the hardstanding and the lack of any vegetation and a clearly identifiable vehicular access. Earlier photographs provided by the appellant show the buffer strip to the front of the appeal site with no vehicular access. Third party comments include comments from local long term residents who refer to the development as a new entrance.
8. The highway consultant's report submitted by the appellant was prepared in 2020 and pre-dates the enforcement notice. The report refers to improving the access and applying for a licence to carry out works. However, the report does not dispute that a vehicular access exists and does not provide any information as to how that access was created.
9. Works have been carried out at the appeal site including regrading the bank and creating a hard surface for vehicular access. The appellant has not shown on the balance of probabilities that the matters alleged have not occurred as a matter of fact. The appeal under ground (b) fails.

An appeal under ground (c)

10. An appeal under ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant on a balance of probabilities to show that there has not been a breach. For example, the appellant needs to demonstrate that development has not occurred for the purposes of the Act, that the matters alleged in the notice have been granted planning permission or that they constitute 'permitted development' which means that express planning permission is not required.

Development

11. Under Section 55 of the Act, "development" is defined as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 57 of the Act states that planning permission is required for development. Vehicular access has been provided by regrading the bank and providing a hardstanding surface to create a vehicular access where one did not previously exist. The nature of that work does involve engineering operations and is development.

Whether there is express planning permission

12. Planning permissions for the appeal site were granted in 2011 and 2012¹. The Council has provided approved layout plans for those planning permissions which does not include the development. Both plans show a solid buffer strip to the front of the appeal site. The approved access on those plans is the access along the southern boundary that still exists and is in use. There is no later planning permission for the appeal site.
13. The appellant is not relying upon permitted development rights. There is no express planning permission for the development. Development has taken place without planning permission and a breach of planning control has therefore occurred. The appeal under ground (c) fails.

The appeal under ground (f)

14. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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.
15. As the requirements include the removal of the hard surfaced area and the regrading of the bank, the purpose of the notice is to remedy the breach. Requirement (i) refers to removing the hard surfaced area created to form the vehicular access. The appellant has stated that all of the appeal site is hardstanding but the requirement clearly refers to the area which creates the vehicular access. The appellant refers to having complied with the notice but whether or not the notice has been complied with is a matter for the Council.
16. The second requirement states '*Regrade the bank to its profile prior to the engineering operations being carried out and restock the hedgerow comprising of mixed native species. The hedgerow planting shall comprise weathered whips with a minimum height of 40 to 60 centimetres planted in a staggered double row pattern with a 300 mm offset between plants and 400mm gap between rows with a minimum of five whips per linear metre.*' The appellant states that the requirement to restock the hedgerow is excessive as there was no identifiable hedgerow at this location.
17. Section 173(4)(a) of the Act refers to remedying the breach 'by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.' The notice states that the breach occurred in the 4 years prior to the notice being issued.
18. The Council refers to having considered but discounted fencing as a replacement but it is not within the purposes of the notice to simply choose an alternative boundary treatment or require improvement. The Council has not stated that the detailed hedgerow specification including planting patterns would restore rather than improve the land to its condition before the breach took place .

¹ 11/00813/COU and 12/00527/FUL

19. I will therefore delete requirement ii) in full and replace it with "Regrade the bank and restore the land to its condition before the breach took place" which accords with Section 173(4)(a) of the Act. The appeal under ground (f) succeeds to that extent. I will amend the notice accordingly.

Other matters

20. The appellant seeks to rely upon easements and rights of way as part of this appeal. However, an easement is a legal right that gives someone the right to use another person's land or property and the allegation relates to operational development not use. The presence of a gatepost at the appeal site does not mean that the operational development, the subject of the notice, is authorised.
21. Whilst the wrong address was used on the headings in the covering letter issuing the enforcement notice, that does not affect the validity of the notice itself which has the correct address.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

E Griffin

INSPECTOR