



Appeal Decision

Site visit made on 4 February 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2025

Appeal Ref: APP/Y9507/C/23/3334601

**Dickhurst Lodge, Petworth Road, Lurgashall, Haslemere, West Sussex
GU27 3BG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Steven Gray against an enforcement notice issued by Chichester District Council on behalf of the South Downs National Park Authority.
 - The notice was issued on 26 October 2023.
 - The breach of planning control as alleged in the notice is the formation of an access track.
 - The requirements of the notice are: (i) Remove the hardcore and stone used to form the hard surface of the said track from the land; (ii) Following compliance with (i) above, level and reseed the land affected with grass; and (iii) Following compliance with (i) and (ii) above, replant three Oak saplings of 1.8 metres in height and a girth of 6-8 [centimetres] in the area indicated on the plan attached to the notice.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(d) 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.
-

Decision

1. It is directed that the enforcement notice be corrected by:

- The substitution of the plan annexed to this Decision for the plan attached to the enforcement notice; and
- In paragraph 2 the substitution of 'edged black' for 'edged red'; and

is varied by:

- In paragraph 5 deleting step (iii); and
- In paragraph 6 substituting '6 months' with '9 months' as the period for compliance.

Subject to the above corrections and 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 Matters

2. There is no dispute that the plan attached to the enforcement notice does not precisely specify the boundaries of the land to which the notice relates. I shall exercise the power in s176(1)(a) of the Act to correct the notice by substituting the current plan with the more accurate plan supplied by the Council.

3. It is also not in dispute that no trees were felled in association with the matter alleged in the notice. The requirement in step (iii) to plant trees following removal of the works would be an improvement over the previous condition of the land. The scope of the notice is limited by s173(4)(a) and (b). There is no statutory power to require the appellant to undertake works which would do more than restore the land to its condition before the breach took place. Accordingly, although no appeal was made on ground (f), I shall exercise the power in s176(1)(b) of the Act to vary the notice by deleting step (iii). Step (ii), which includes a requirement for re-seeding with grass, would be sufficient to restore the land to its condition before the breach took place. There would be no injustice to either the appellant or the Council in my making the corrections and variations set out above.
4. This Decision takes into account the revised National Planning Policy Framework (the Framework), which came into force during the course of the appeal.

Ground (c) appeal

5. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a detached dwelling standing in spacious grounds, located in open countryside. The established vehicular access to the property is via a private drive which leads from the A283 to the east and continues on to other residential properties. There is also vehicle access from the B2131 to the north, following a circuitous route around the edge of a field.
7. The notice alleges the formation of an access track. The track joins the drive at a point set back from the A283, extending up sloping ground before making a sharp turn in a south-west direction towards the dwelling. The track is surfaced with a mix of loose gravel and recycled hard materials.
8. The definition of development set out in s55(1) of the Act includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act.
9. The track is several metres in length and around three metres wide. The works involved in formation of the track are unlikely to have been limited to simply clearing scrub vegetation and laying loose materials over the surface of the ground. Photographs in the Council's evidence show that a base of stone aggregates was laid to a considerable depth during the works. It is highly likely that the stone and surface materials would have been rolled in to create an even base and to reduce movement, having regard to the sloping landform. It is also highly probable that items of mechanical plant and equipment would have been used during the works, for example to transport and deposit the base and surfacing materials, to spread those materials out, to create a more even surface and to roll them in.
10. Therefore, the works would in all probability have been of significant scale and duration. An element of pre-planning, for example evaluating a suitable route and the materials to be used, is likely to have been involved. Given their

probable scale, the works would normally be, but do not have to have been, supervised by a person with engineering knowledge.

11. The works have not led to substantial changes in land levels. Also, no bonded materials such as tarmac or concrete were used. The manufactured base and surface treatment nevertheless give the track a considerable degree of permanence and there has been a significant change to the previous, largely well-vegetated character of the land. The facts and circumstances in this appeal are clearly distinguishable from those in the appeal decision supplied, which concerned repairs to an existing vehicular way¹. Whether the drive is a highway for planning purposes has little bearing on my findings. The definition in s336(1) of the Act does not limit engineering operations to where the formation or laying out of a means of access to a highway is involved.
12. Accordingly, as a matter of fact and degree, the works amounted to an engineering operation falling within the definition of development. No grant of planning permission for the works was drawn to my attention. The definition of a breach of planning control in s171A(1) of the Act includes carrying out development without the required planning permission.
13. For the reasons set out above, the appellant has not shown that the works do not constitute a breach of planning control. The ground (c) appeal fails.

Ground (d) appeal

14. The ground of appeal is that at the date the notice was issued, it was too late to take enforcement action against the alleged breach. The appeal on this ground is limited to about half the length of the track closer to the dwelling. The appellant's case in summary is that this section of the track forms part of the B2131 access and was substantially completed more than four years before the date of the notice. If so, the section would be immune from enforcement action, having regard to the effect of s171B(1) of the Act at the time the notice was issued². The onus of proof and the relevant test of the evidence are as set out in relation to the previous ground of appeal.
15. The appellant supplied a copy of an aerial photograph including the property, purportedly taken on 1 January 2005, in support of their claim. Amongst other things, this shows an area of hard surface at the property to the north-east of the dwelling, adjacent to a rectilinear feature which could equally be an outbuilding or a large vehicle such as a motorhome. The hard surface extends over land which might include some of the track. However, extensive tree cover and shadows obscure most of the route of the track between the hard surface and the dwelling. In any event, it is highly doubtful that the date of the photograph is accurate; the trees would not be in leaf at that time of year. The appellant also supplied a site plan, which I understand accompanied a planning application made in 2010 in respect of adjoining land. However, this does not show any part of the track. Nor does it show an outbuilding in a similar position to the rectangular feature on the photograph. Accordingly, the above evidence provides limited support for the appellant's claim.
16. The Council's evidence included a copy of an aerial photograph of the property, purportedly taken during May 2007. This shows amongst other things a hard surface similar in terms of its location and extent to that in the appellant's

¹ Appeal Ref: T/APP/C93/K1100/627144

² The time limit in s171B(1) has since been extended to ten years

aerial photograph. It also shows two objects, probably motor vehicles, on the hard surface adjacent to a rectilinear feature, most likely a motorhome. Again, tree cover and shadows largely obscure the route of the track between the hard surface and the dwelling. A copy of a photograph purportedly taken during September 2007 shows part of the property encompassing the hard surface, with motor vehicles including a motorhome stationed there. However, there is no obvious sign in this photograph that the track extended beyond the hard surface towards the dwelling, the part of the route shown being largely covered by grass and vegetation at that time.

17. Copies of later dated aerial photographs of the property supplied by the Council present similar problems for the appellant's claim, as the route of the track extending towards the dwelling remains largely obscured by tree cover and shadows. It is only in an aerial photograph purportedly taken during April 2021 that the section of track extending towards the dwelling is clearly visible. Even so, there is no dispute that all of the track was in situ by that date.
18. Drawing these matters together, the appellants' claim is not accompanied by sufficiently clear, precise and unambiguous supporting evidence. Based on the available evidence, I am not persuaded that the works involved in forming the track were other than a single continuous operation which was substantially completed less than four years before the notice was issued. Therefore, the appellant has been unable to show that it was too late to take enforcement action in relation to a section of the track. The ground (d) appeal also fails.

Ground (a) appeal

Main Issue

19. The main issue in this ground of appeal is whether the track conserves the landscape and scenic beauty of the South Downs National Park (NP).

Reasons

Landscape and scenic beauty of the NP

20. The property occupies a secluded rural setting, being surrounded by rolling countryside which generally consists of a patchwork of open fields interspersed with tracts of woodland, along with belts of maturing trees and vegetation fringing public roads, also with occasional scattered development. These attributes make a significant contribution to the scenic qualities of this part of the NP, as well as to its appreciable sense of tranquillity notwithstanding volumes of vehicular traffic on nearby roads.
21. The track joins the drive a considerable distance north-east of the dwelling, extending through a belt of maturing trees and between ground covering vegetation before reaching a grassier area. The angular lines and the granular hard surface treatment, along with the contrasting colours of the finished surface materials, all contribute to the track having an obviously manufactured and somewhat harsh, 'engineered' appearance. This does not sit comfortably with the largely undeveloped and well-vegetated aspect of the surroundings, including the softer shapes and more muted, naturalistic shades of maturing trees and planting. Also, together with the reduction in vegetation it has significantly and appreciably eroded the sense of seclusion and created a more suburban feel in the vicinity.

22. Therefore, the track fails to assimilate satisfactorily within its part wooded rural setting, appearing as an alien feature and harmfully eroding the visual qualities of the local landscape. The position of part of the track on sloping land, open to views from the A283 and an adjacent public footpath, accentuates the sense of visual intrusion in the surroundings. Undertaking further landscape planting would not assist greatly in terms of better integrating the track with its surroundings. Along with the increase in human activity, including vehicular comings and goings, which would be associated with the use of the track, there has been an erosion in the relative sense of tranquillity in visual terms experienced from nearby public viewpoints. Any reduced activity on other accesses to the property would not sufficiently offset the adverse consequences identified above.
23. By not conserving the landscape and scenic beauty of the NP, the track is in conflict with Policy SD1 of the South Downs Local Plan. This requires development to conserve and enhance the landscape, natural beauty, wildlife and cultural heritage of the NP. For a similar reason, the track conflicts with LP Policies SD4 and SD6. Additionally, the track is inconsistent with the Framework, which requires great weight to be given to conserving and enhancing the landscape and scenic beauty of the NP.

Other Matters

24. There is no firm evidence of the works involved in formation of the track having adversely affected protected species. There is no conflict with LP Policy SD2, which seeks to manage the impact of development on ecosystems, nor conflict with LP Policy SD11, which requires development to conserve and enhance trees, hedgerows and woodlands. Additionally, since there is no firm evidence of any harm to highway safety, there is no conflict with LP Policy SD19.
25. The established access is not especially constrained in terms of its size and geometry, nor are levels of visibility particularly restrictive given the likely low speed and limited number of traffic movements along the drive. There is little before me to suggest that the appellant would improve access to the property by removing extensive natural features in the event permission is not forthcoming for the track.

Conclusion-Ground (a) appeal

26. The track fails to conserve the landscape and scenic beauty of the NP, in conflict with the Development Plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (g) appeal

27. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
28. Six months would afford the appellant sufficient time in which to secure the services of suitably skilled and experienced groundworks contractors and have the remedial works carried out. There is no firm evidence of the existence of a significant shortage in the type of contractor needed to carry out the works, or of long waiting times for such contractors to become available. In this context,

extending the compliance period to twelve months would do little other than perpetuate the breach.

29. A three-month extension to the compliance period is nevertheless warranted, as it would allow for grass seed to be sown at a more suitable time of year and so afford a better opportunity for the new planting to become established. This would strike a more appropriate balance between restoring the land to its condition prior to the breach as soon as is practicable, whilst not placing a disproportionate burden on the appellant. There would be no injustice to the Council in varying the notice accordingly. Therefore, the ground (g) appeal succeeds to this limited extent.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and 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).

Stephen Hawkins

INSPECTOR