



Appeal Decision

Site visit made on 18 February 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 25 March 2025

Appeal Ref: APP/J1860/C/24/3346544

Land adjoining Fartown Farm, Pensax, Abberley, Worcester WR6 6AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Holbeache Estates Limited against an enforcement notice issued by Malvern Hills District Council.
 - The notice was issued on 16 May 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the creation of a vehicular access.
 - The requirements of the notice are to:
 1. Permanently cease the use of the access in the location as annotated as 'newly created vehicular access and metal gate' on attached plan. This is also shown circled red in image A.
 2. Permanently remove the metal gate in the location annotated as 'newly created vehicular access and metal gate' and erect in its place a wooden post rail fence which does not exceed 1 metre in height and matches the existing fence on either side.
 - The period for compliance with the requirements is: 3 (three) months
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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. The appeal is dismissed, and the enforcement notice is upheld. 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. Although an appeal has not been made on ground (d), the appellant refers to the use of the access over the years during harvesting when combines were required on the land. In the absence of any formal submissions under ground (d), I shall deal with this matter here rather than as a hidden ground (d) appeal. From the evidence submitted, it seems that a gap in the hedge was blocked up by vegetation and with railings that were occasionally moved to the side to enable agricultural machinery to access the site. Photographs show that when not in use, vegetation was left to grow and cover up the gap. While the gap in the hedge had been informally uncovered and used for occasional access which would not have amounted to development, permanently removing a section of the boundary and replacing it with new fencing and a fixed metal gate so as to provide permanent accessibility would amount to development requiring planning permission.

The appeal on ground (c)

3. For an appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute

development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

4. The enforcement notice alleges a breach of planning control in respect of the creation of a vehicular access. The appellant argues that the creation of the access would be permitted by article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) by virtue of Class B, Part 2 of Schedule 2. This grants planning permission for the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road. They argue that the access to the field adjoins a section of rough track that forms part of Fartown Lane rather than Main Road which is a 'B' classified road.
5. Notwithstanding this stance, Class B of Part 2 of the GPDO specifies that permitted development rights only exist where the access is required in connection with *development* (my emphasis) permitted by any Class in this Schedule (other than by Class A of this Part). As the access is to enable large agricultural machinery to get into the field for agricultural purposes, and there is no other development that would require the creation of the access, it would be more appropriate to assess the development against Part 6 of Schedule 2 of the GPDO which sets out permitted development rights for agriculture and forestry.
6. While no case has been advanced for whether or not the creation of an access for agricultural purposes would be permitted by Part 6 of the GPDO, Class A of Part 6 does permit engineering operations which are reasonably necessary for the purposes of agriculture within that unit, but limitation at A.1.h means it is not permitted if any part of it "would be within 25 metres of a metalled part of a classified road."
7. For these reasons, the creation of an access is not permitted by Class B of Part 2, Schedule 2 or Part 6 of Schedule 2 of the GPDO. The matters alleged constitute development under s55 of the 1990 Act for which express planning permission is required.
8. As a matter of fact and degree, the appellant has not discharged the necessary burden of proof to demonstrate, on the balance of probabilities, that the development does not constitute a breach of planning control. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

Main Issue

9. The main issue is the effect of the creation of the access on highway safety.

Reasons

10. The appeal development forms part of a large field opposite The Bell public house. The field is flanked on two sides by a public highway. Along one length is Main Road (the B4202) and running perpendicular to this along its north boundary is Fartown Lane. The access to the field is on the corner where the two roads meet, and it is set back and at a slight angle. The opening provides access from the field over a grassed verge and onto a short section of rough surfaced track which is accessible from both the B4202 and Fartown Lane. On the other side of the track

is a small, grassed area upon which are road signs and a post box. On the verge to the side of the access is a community notice board.

11. An existing access to the field is some 100m along Fartown Lane which is mainly single-width country road and is said to be not suitable for larger agricultural machinery, such as combines. The existing access is also narrow and does not provide sufficient space for these vehicles to turn into the field. The appeal development involves the creation of a wider access and, being set-back from the road, it is said to allow easier access for farm vehicles, particularly combines and tractors and trailers used during harvesting.
12. I saw for myself that the newly created access has limited visibility in both directions. To the right when exiting visibility is restricted by the existing hedge and the bend in the road at which point the speed limit decreases from 60mph to 40mph and this is a similar situation from the other direction. Drivers sitting higher up in tractors or in the cabins of combines would have some improved visibility over the top of the hedge and possibly be able to see vehicles approaching, however, the typical large agricultural vehicles that would use the access would be slower, thereby increasing the potential harm to the users of the public highway.
13. While the appellant states that vehicles would approach from the north and enter onto Fartown Lane before turning into the access, there is nothing to ensure that this would happen on every occasion. It also seems to me that when leaving the field, large machinery would more likely go directly onto the B4202 rather than turn left and onto Fartown Lane where they would then proceed onto the B road. But even if they did, visibility remains compromised on the narrow lane with its high hedges. The Council has also raised concerns regarding such movements requiring a hair-pin turn into the site, generating excessive movements and tight turns out in either direction due to the grassed area abutting the B4202.
14. Concerns were expressed by the Council's Development Management Engineer who recommended that if the access was to be used, suitable visibility should be provided in both directions commensurate with actual vehicle approach speeds. By complying with such requirements, the access gate would need to be positioned 10 metres back from the highway edge with associated surfacing and drainage works. This would enable vehicles to stop clear of the highway prior to opening the gate and entering the field. Although evidence has not been supplied to show how and if these requirements could be achieved, it is also possible that such works would have further impacts which I am not able to assess without the relevant information.
15. In addition to these considerations, the village war memorial and a bench are situated on the other side of the entrance to Fartown Lane and adjacent is a sizeable parking lay-by. Directly opposite the access is the public house with a smaller lay-by to the front and its car park off the B4202. The Parish Council refers to the pub as busy and alongside the fast-moving B4202 in an area known for excessive speeding. It seems to me that these add to the highway safety issues that have been highlighted, and further reinforce the potential harm to road users.
16. Notwithstanding these matters, some of which could be the subject of conditions, the Council's Development Management Engineer also refers to the County Guidelines which recommend that access spacing should be a minimum of 20m from the nearest junction. The access to the field is sited substantially closer than

20m and it is stated that this could cause safety issues with vehicles turning in and out of the field. This is likely to be exacerbated by the type of vehicles that would use the field access, particularly those with a trailer attached.

17. Overall, I have not been persuaded that the creation of the permanent access would not be harmful to highway safety. I accept that the field access has been used by farm traffic at times over the years, by removing and replacing the fencing and with no control on the numbers or types of agricultural vehicles. But the situation before me requires planning permission and must be assessed against criteria in place today.
18. For the reasons outlined above, the appeal development is judged not to be acceptable in terms of highway safety, and as constructed it is deemed to be contrary to Policy SWDP 21 of the South Worcestershire Development Plan. This, amongst other things, requires that vehicular traffic from the development should be able to access the highway safely. Policy SWDP 4 relates to travel and is of limited relevance in these circumstances. I find there is also conflict with the National Planning Policy Framework which advises at paragraph 116 that 'development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'.

The appeal on ground (f)

19. The appeal on ground (f) is that the steps required by notice to be taken, or the activities required by the notice to cease, 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.
20. The notice was issued to remedy the breach and only removing the gate, as suggested by the appellant, would not remedy the breach. There is nothing short of complying fully with the requirements of the notice and therefore the appeal on ground (f) fails.

Conclusion

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

S A Hanson

INSPECTOR