



Appeal Decision

Site visit made on 7 February 2012

by Clive Kirkbride BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 February 2012

Appeal Ref: APP/X1118/C/11/2158291

Land at Field PT OS SS5928, Green Lane, Swimbridge, Barnstaple, EX32 0QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr R Roberts against an enforcement notice issued by North Devon District Council.
 - The Council's reference is ENF 7346.
 - The notice was issued on 18 July 2011.
 - The breach of planning control as alleged in the notice is the creation of a stone oval track not reasonably necessary for agriculture.
 - The requirements of the notice are to remove all the stone material which has been used to form the oval track from the land; and to reinstate that area of land formerly covered by the oval track so that it matches the surrounding contours of the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The enforcement notice is corrected by the deletion of the words "not reasonably necessary for agriculture" in the allegation. The appeal is allowed on ground (g) and the enforcement notice is varied by the deletion of three months and the substitution of six months as the period for compliance.
2. Subject to this correction and variation the enforcement notice is upheld.

Application for costs

3. An application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

Background

4. The notice land is accessed from the adjoining minor rural road by a track which runs from the gateway and inside the southern boundary to an area in the south eastern corner of the notice land where an agricultural building and mobile home are situated. It is this linear access track, not the oval appeal track, which is shown on the photographs dated 20/04/2005 attached to the Council's response to the appellant's final comments.

Reasons

The appeal on ground (e)

5. The notice is dated 18 July 2011. The Council submits that on 19 July 2011 a copy was delivered to the appellant's home address by its enforcement officer and a copy attached to the appeal site gate post. The appellant confirmed in the Planning Contravention Notice (PCN) that nobody else had an interest in the land.
6. The appeal form is dated 7 August 2011, before the notice came into effect on 20 August, and the appellant has not demonstrated how he has been substantially prejudiced by his unsubstantiated claim that the notice was incorrectly served.
7. From the evidence before me I am satisfied that the notice was correctly served. Therefore, the appeal on ground (e) fails.

The appeals on ground (b)

8. Appeals on ground (b) can only succeed if the matters alleged in an enforcement notice have never happened. During my site visit I was accompanied around a stone oval track in the approximate position shown on the notice plan. The appellant's claim that the appeal track does not exist is both without substance and contradictory to the reason originally given for appealing the notice under the lapsed ground (a) appeal. This was made on the basis that the appeal track did not need consent or was permitted development but, if the inspector were to find otherwise, then planning permission ought to be granted for it.
9. It is a matter of fact that the alleged breach of planning control has occurred. Therefore, the appeal on ground (b) fails.

The appeal on ground (c)

10. An appeal on ground (c) can only succeed where those matters which are the subject of the allegation do not constitute a breach of planning control, for example because they are permitted development.
11. The appellant would appear to be claiming that the appeal track is permitted development by virtue of Schedule 2, Part 2 (Minor operations), Class B of The Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO). Class B relates to the formation, laying out and construction of a means of access to a minor highway where that access is required in connection with development permitted by any Class other than Class A.
12. I noted that the appeal track does not form a means of access to a highway. That function is provided by the linear access track referred to in paragraph 4 above. I noted that gateways from this linear track open onto the appeal track, the purpose of which has been described as providing access to land for feeding livestock. I find that the appeal track is not permitted development by virtue of Schedule 2, Part 2, Class B of the GPDO and an appeal on ground (c) would fail on this basis.
13. The Council also maintains that the formation of the appeal track is not permitted development under Schedule 2, Part 6 (Agricultural buildings and

operations), Class A of the GPDO. However, as the appellant has not claimed that it is and I have not given this matter detailed consideration. Suffice it to say, I find no reason to disagree with the Council's submissions about the appeal track being a private way, the formation or alteration of which is subject to the prior notification arrangements set out under Conditions A.2(2)(b)(i)-(vi) to Part 6, Class A, and that the Council was not notified prior to the appeal track's construction.

14. As a consequence, the appeal track does not amount to permitted development under Schedule 2, Part 6, Class A of the GPDO and an appeal on ground (c) on this basis would also have failed. There is no other evidence before me which demonstrates that, on the balance of probabilities, the appeal track is permitted development.
15. However, I saw nothing during my site visit or in the other evidence before me to support the Council's allegation that the appeal track is not reasonably necessary for agriculture. I shall correct the allegation to this effect under the powers delegated to me as that this would not result in any material injustice.

Potentially hidden ground (d) appeal

16. The appellant also claims that the appeal track is not a new track but an existing one which has been maintained by the addition of stone dressing to keep it passable and usable on an area of ground prone to waterlogging.
17. If it had been claimed that the appeal track was constructed over 4 years ago this would clearly be a material consideration. However, there is no ground (d) appeal before me. Nor has the appellant referred to this matter under any of the original grounds of appeal, in his response to the PCN or otherwise substantiated such a claim with supporting evidence.
18. Consequently, I am satisfied that the appeal track is not immune from enforcement action by reason of it being out of time for taking such action.

The appeal on ground (f)

19. Had the necessary prior notification arrangements (referred to in paragraph 13 above) been followed the Council would have been able to exercise a degree of control over the siting and means of construction of the appeal track, but not about the principle of development.
20. The primary purpose of the notice is to remedy the breach of planning control that has occurred by requiring the removal of the track in its entirety. The reasons for issuing the notice, however, also refer, if somewhat obliquely, to the injury to amenity which has been caused by the breach; for example, that the development fails to respect the character and appearance of its rural setting and causes detriment to the visual amenity of the area by virtue of its prominent siting.
21. In the absence of a ground (a) appeal or a deemed planning application for me to consider I cannot take into account the planning merits of the appeal development, including the claim that that the track has almost completely grown in and is reinstating itself naturally and visually. To do so would be tantamount to using the ground (f) appeal as an alternative means of attempting to gain planning permission for the appeal development.

22. The appellant has not suggested any lesser steps as an alternative to those required by the notice and, in the circumstances, I find that the notice requirements are appropriate and necessary to remedy the breach of planning control that has occurred. Therefore, the ground (f) appeal fails.

The appeal on ground (g)

23. The appellant submits that, as the appeal track is necessary to enable machinery to access the land in wet conditions without destroying the soil, the land could only be reinstated during a prolonged spell of dry weather. Therefore, a longer compliance period is sought.
24. I noted that parts of the track are rutted and waterlogged and the compliance period would require reinstatement of the land, including re-profiling, to be carried out when it is still likely to be wet. I consider that this would result in further damage and make it more difficult for the appellant to comply with the notice requirements.
25. I consider that a longer, six month compliance period would be appropriate. This would give the appellant until the end of the summer to implement the notice requirements when the land would be drier. Therefore, the appeal succeeds to this limited extent. I shall vary the compliance period accordingly and uphold the corrected and varied notice.

[REDACTED]

[REDACTED]