The Planning Inspectorate

Appeal Decisions

Site visit made on 7 July 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17 September 2020

Appeal A: ref. APP/W3520/C/19/3238783
Land off Beyton Road, Thurston IP31 3RA

- 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 Act).
- The appeal is by Mark Antony Byford against an enforcement notice issued by Mid Suffolk District Council.
- The enforcement notice, ref. EN/14/00200, was issued on 23 August 2019.
- The breach of planning control alleged in the notice is the creation of a new vehicular access and driveway from Beyton Road; stationing of a portacabin for sales and storage of farm produce; creation of a yard area.
- The requirements of the notice are to:
  1. The new vehicular access as shown hatched in black on the attached plan, to have an access width (abutting Beyton Road) of 9m. The access is to be surfaced with an appropriate bound material for a distance of 10 metres into the site when measured from the edge of Beyton Road.
  2. The exlstinq original means of frontage access, to the land edged red from Beyton Road, as shown with a black cross on the attached plan, shall be permanently and effectively stopped up by the erection of a 1.5m high post and rail timber fence.
  2.1 Plant a double staggered row of native hedging comprising a mixture of hawthorn hazel, blackthorn and field maple (at a minimum distance of 600mm between the rows; a maximum of 450mm between the plants; protected with a spiral guard; supported with a bamboo cane; and, planted through a mulch mat) in line in the area of the existing original means of frontage access along Beyton Road, and in line with the existing roadside hedging as shown marked by a black cross on the plan attached to the notice.
  3. The new driveway and yard areas (as shown black cross-hatched on the plan attached to the notice) to be removed in their entirety and the land restored to its former condition as agricultural land.
  4. Remove the portacabin and any associated fittings from the land edged red on the plan attached to the notice.
- The period for compliance with requirements 1. and 2. is 3 months
- The period for compliance with requirement 2.1 is 6 weeks to 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since this case is exempt from the prescribed fees, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Appeal B: ref. APP/W3520/C/19/3238782
Land off Beyton Road, Thurston IP31 3RA

- 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 by Mark Antony Byford against an enforcement notice issued by Mid Suffolk District Council.

- The enforcement notice, ref. SF/EN/14/00200, was issued on 23 august 2019.
- The breach of planning control alleged in the notice is the siting of a mobile home, erection of containers and polytunnels.
- The requirements of the notice are to:
  1. Cease using the mobile home located within the land edged red on the attached plan for residential accommodation including overnight sleeping.
  2. Remove the containers in their entirety from the land edged red on the attached plan.
  3. Remove the poly tunnels indicated in the area hatched black on the attached plan (not including the two polytunnels located in front of the existing mobile home) in their entirety from the land edged red on the plan attached to the notice.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Decisions

APPEAL A

1. The appeal is allowed insofar as it relates to the creation of a new vehicular access on the land shown hatched black on the plan attached to the notice, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for creation of a new vehicular access on Land off Beyton Road, Thurston IP31 3RA, subject to the following conditions:

   i. The development hereby permitted shall be completed within 6 months of the date of this decision.

   ii. Within three months of the date of this permission the new vehicular access hereby permitted shall be laid out and completed in all respects in accordance with the details of Suffolk County Council drawing DM04 Revision A – 'Industrial and Farm Access Layout' - dated September 2012, with an entrance width of 5m and radius of 10m and be made functionally available. The access shall be retained thereafter in its specified form.

   iii. The surface of the vehicular access hereby permitted shall be finished in hot-rolled asphalt.

2. I direct that the enforcement notice be varied by:

   DELETION of the words *'6 weeks to 4 months'* as period for compliance with requirement 2.1, and;

   SUBSTITUTION of the words *'during the first planting season following the date of this decision'*

   Subject to that variation the appeal is dismissed and the enforcement notice is upheld insofar as it relates to the creation of a driveway from Beyton Road; stationing of a portacabin for sales and storage of farm produce, and creation of a yard area on the land shown cross-hatched black on the plan attached to the notice, and planning permission is refused in respect of creation of a driveway from Beyton Road; stationing of a portacabin for sales and storage of farm produce, and creation of a yard area on Land off Beyton Road, Thurston IP31 3RA, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

APPEAL B

3. 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.

Enforcement notice A

4. The period for compliance with Requirement 2.1 set out in Notice A – '6 weeks to 4 months' – means that hedge planting might be required at an unsuitable time of year. I consider it would be clearer for the period to be defined as 'during the first planting season following the date of this decision'. I intend to vary the notice accordingly, and do not consider any party will be significantly prejudiced by this change.

Background matters

5. The appeal site is a mainly open field that lies on the north-eastern side of the Beyton Road, bounded by Pepper Lane to the north-west and The Planche to the south-east. It has a frontage of some 225 metres onto Beyton Road and extends back from the road by a similar dimension.

Appeal A on ground (c)

6. This ground is that there has not been a breach of planning control. In an appeal on a 'legal' ground such as this the burden of proof is on the appellant to show that on the balance of probabilities this is the case.

7. The appellant argues that the surfacing of the track from Beyton Road and the surfacing of the yard are permitted agricultural development under the GPDO. Furthermore, the portacabin is fitted out as a chiller unit for temporary storage of farm produce and constitutes agricultural plant.

8. I understand the size of the holding is slightly over 5 hectares. Class A of Part 6 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants permission on agricultural holdings of greater than 5 hectares for '*any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit'.* Paragraph A.1(h) of Class A then precludes this allowance if '***any*** part of the development would be within 25 metres of a metalled part of a trunk road or classified road' (my emphasis in bold italics). I take this to mean that if any part of the engineering operations as a whole is within 25 metres of a trunk road then the permitted development allowance does not apply, and express planning permission is required.

9. The appellant argues that only a part of this development is precluded since much of the driveway and the yard area is more than 25 metres from Beyton Road. It appears to me that the form of construction of the vehicular access, the driveway and the yard area - entailing excavation, placing and compaction of hardcore and blinding with aggregate – is an engineering operation that is part and parcel of a single operational development. Even though I have found below that the access itself should be granted planning permission, the southern end of the driveway is well within 25 metres of the classified Beyton Road. I consider the development does not benefit from the permitted allowance, and therefore requires express planning permission.

10. Regarding the portacabin, I saw that this has been adapted for chilled storage use. The appellant argues that it is used for the temporary storage of farm produce and should be seen as necessary agricultural plant. However, while the chiller apparatus is clearly plant, the portacabin is of a size and permanence that is should be considered as a building, even though possibly temporary.

11. I saw that the portacabin is fitted out with storage racks which appeared mainly for storage of a variety of goods, such as sacks of beans, sugar, and bottles of apple juice rather than farm produce. It appears to me as a matter of fact and degree the portacabin is stationed there for a purpose that has little connection with agricultural produce from the land. Furthermore, there is little to justify its claimed use as a farm shop, when such a high proportion of the stored goods is clearly not produced on the unit. On the balance of probabilities I am not satisfied that the portacabin is reasonably necessary for the purposes of agriculture within the holding. I do not consider it benefits from GPDO provisions.

12. I have found on the balance of probabilities that the vehicular access, driveway and yard do not benefit from permitted development rights under the GPDO, and that the portacabin should be considered as a building requiring planning permission. The ground (c) appeal therefore fails.

Appeal B on ground (c)

13. Again this ground is a 'legal' ground where the burden of proof is on the appellant to show that on the balance of probabilities there has been no breach of planning control.

14. The appellant argues that the two containers are for the purpose of storing agricultural tools and carrying out minor repairs was permitted by an e-mail letter for the Council's enforcement officer dated 6 April 2018. Looking at that e-mail, the Council said that provided the two containers are used for the storage of agricultural vehicles/tools then no breach of planning control would occur. However, at that time the Council had been unable to see inside the containers since they were locked and had been unable to satisfy themselves this was the case. Furthermore, their position has now changed, and the Council see them as operational development requiring planning permission.

15. I saw that the two containers were being used for storage of a variety of tools and equipment such as a chain saw, strimmer, garden implements, small hand tools, a workbench and small forge. While some form of secure equipment storage is clearly needed on an agricultural/horticultural site such as this, I concur with the Council that as a result of the permanence of the containers and their considerable size they should be considered as operational development for which planning permission is required.

16. The Council acknowledge that the two polytunnels to the north-west of the new access track are not subject of the enforcement notice. They distinguish between those and the polytunnels enforced against – to the south-east of the track – which they say are attached by tubes set into the ground with the frames slotted into those. I saw that the hoops are indeed fixed into sockets attached to a kickboard fixed to the ground. While I appreciate that these structures need adequate stability and wind resistance, I concur with the Council's view that the sockets and method of fixing make the polytunnels

effectively permanent structures. As such they are structures that require planning permission, which has not been obtained.

17. The appellant says that the caravan - or mobile home - is not for residential use but as a refreshment area for agricultural workers and a farm office in connection with the agricultural uses. I could see that it was being used as a refreshment area, and this is acknowledged by the Council. However, it has the facilities for residential use, and I understand it has been used as such on occasions and could be used in this way again. It is the potential for continuing residential use rather than the stationing that causes the Council's concern. There is no permission for residential use, and the enforcement action will have the effect that none can be established.

18. Overall, Appeal B fails on ground (c).

Appeal A on ground (a)

19. This ground is that planning permission should be granted for the development enforced against. From all that I have seen and read I consider the main issue to be the effect of the development on the character and appearance of the appeal site and surroundings.

20. In March 2019 planning permission was refused for the creation of a new vehicular access from Beyton Road and closure of the original farm access, and for stationing of a portacabin for the sales and storage of farm produce[1]. I note that the application also included a yard for occasional parking of customers' vehicles. The refusal was principally on the basis that the portacabin, driveway and yard were visually intrusive and harmful to the character of the area.

21. The Council accept that the new vehicular access itself did not feature in the reasons for refusal, and that the Highway Authority did not raise any specific concerns about creation of the access subject to the imposition of conditions. I note that the Council have under-enforced in regard to the vehicular access, and there is no requirement for it to be removed. The outstanding concern is about the finish of the hardcore and aggregate base, which has loose material that can migrate onto the roadway.

22. It appears to me that provided the new access complies with the Highway Authority layout requirements and is surfaced with a properly bonded material – such as hot-rolled asphalt – it would be an improvement on the original access by reason of being further from the junction of Beyton Road with Pepper Lane. Furthermore, the access itself appears as an unexceptional countryside feature that can be expected in the rural scene and causes no harm to the character and appearance of the area.

23. If I were to grant planning permission for this part of the development I consider it would be necessary and reasonable to impose conditions requiring the access to conform to the Highway Authorities standard layout for industrial and farm access – which to a great extent it already does – and to be surfaced in hot-rolled asphalt to avoid loose material being transferred to the highway.

24. However, the long straight driveway from Beyton Road and the yard area some 140 metres back are intrusive and alien features that are by no means sympathetic to the rural scene. Furthermore the portacabin stands in a

[1] Decision notice ref. DC/18/01503, dated 29 March 2019.

prominent position near the driveway and emphasises the incongruous development on this site.

25. I conclude on this issue that the driveway, yard area and portacabin cause significant harm to the rural character and appearance of the appeal site and surroundings. These elements of the development do not accord with development plan aims, notably with respect to:

    Policy GP1 of the Mid Suffolk Local Plan 1998 (MSLP), which seeks to prevent development of poor design and layout, and to ensure that developments maintain or enhance the character and appearance of their surroundings.

    Policy CS5 of the Mid Suffolk District Core Strategy Development Plan Document of 2008 which seeks to maintain and enhance the environment and maintain local distinctiveness

    Policy FC 1.1 of the Core Strategy Focused Review of 2012, which with respect to sustainable development includes aims to ensure that development conserves and enhances local character.

    The appeal on ground (a) fails with respect to these elements of the development, and I shall refuse planning permission on the deemed planning application.

26. I also conclude that the new vehicular access causes no significant harm to the character and appearance of the rural character and appearance of the appeal site and surroundings and that this part of the development accords with the development plan with respect to MSLP Policy T10, which seeks to ensure that developments provide safe access to and egress from sites. The appeal on ground (a) succeeds in this respect, and I will grant planning permission for this part of the development subject to the conditions mentioned above. I note also that Requirement 2 of the enforcement notice - the stopping up of the original means of frontage access - will remain in force.

Appeal A on ground (f)

27. The appellant says that there is already a boundary hedge planted across the original site access and that it is not necessary to erect a fence as well. I saw that there is hedge planting, but it is still at a rudimentary stage. In order to ensure the old access is not used again, and to allow for proper establishment of the hedge and for possible failure of plants I consider it reasonable to require a post and rail fence as well. Furthermore, this would be consistent with the boundary treatment at the splayed new vehicular access. I do not consider this requirement should be relaxed, and the appeal on ground (f) therefore fails.

Appeal B on ground (f)

28. The appellant maintains that the containers and polytunnels do not require planning permission as argued under ground (c), and therefore the requirement is excessive. However, I have found that they are development requiring planning permission, and this ground of appeal is not the procedure for reviewing the planning merits of the development. The appeal on ground (f) therefore fails.

Conclusions

29. For the reasons given above I conclude that Appeal A should succeed in part only, and I will grant planning permission for one part of the matter the subject of enforcement notice A, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act. I conclude that Appeal B should not succeed. I shall uphold enforcement notice B and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR