The Planning Inspectorate

Appeal Decisions

Site visit made on 8 February 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

Appeal A: APP/Z3825/C/20/3257483
Appeal B: APP/Z3825/C/20/3257484
Land to the north of the Lawson-Hunt Industrial Park, Old Guildford Road West, Broadbridge Heath, West Sussex RH12 3JR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Kenneth Prichard Jones (Appeal A) and Mrs Dagmar Prichard Jones (Appeal B) of Collegiate Legal Limited against an enforcement notice issued by Horsham District Council.
- The enforcement notice was issued on 7 July 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction on the land of a vehicular means of access by removal of the boundary planting and the deposit of material to form a hard surface access track and concrete apron as a crossover onto the highway.
- The requirements of the notice are: 1. Obliterate the access by removing the hard surface track and concrete apron that form a crossover onto the highway from the land; and 2. Re-instate the kerb stones along the edge of the carriageway and re-profile the ground to match the exiting contour of the land either side of the removed crossover; and 3. Remove the metal framed gates shown in the approximate position on the plan attached to the notice; and 4. Following steps 1-3 above, remove the resulting debris from the land, sow the ground with grass seed and replant a hedge in the gap comprising a mix of field maple, hazel, beech, hawthorn and holly in two staggered rows running in an east/west direction with 300mm spacing between each plant along the row and separation distance between 300mm and 400mm between the two rows (i.e. planting approx. 5 plants per square metre) along the reinstated highway verge.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.

Summary of Decisions – Appeals A and B

1. The appeals are dismissed and the enforcement notice upheld.

The ground (c) appeal

2. For an appeal to succeed on ground (c) the onus is on the appellants 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.

3. The enforcement notice alleges a breach of planning control in respect of the construction of a vehicular means of access by the removal of boundary planting and the deposit of material to form a hard surface access track and concrete apron as a crossover onto the highway (the engineering operations).

4. The appellants contend that there was an existing gateway in this location, which may have been historic, but that it has been in place since before 1983, when the appellants acquired the property/became the farming tenants. However, even if I were to accept the totality of the evidence concerning that very overgrown gateway, the Council have not enforced against that gateway, but rather, the more recent engineering operations described above.

5. I am satisfied on the balance of probabilities from my own site visit that the works undertaken, which I could see related to the removal of vegetation to facilitate a large concrete hard surface from the edge of the highway, leading to a set of two metal gates, as well as further hardstanding, is of such an extent that it amounts to an operation normally undertaken by a person carrying on business as a builder. It therefore follows that the engineering operations are development for the purposes of Section 55 of the Town and Country Planning Act 1990, as amended, and based on the evidence before me are materially different from the said historic gateway, given the extent of works undertaken. It is therefore not a matter of repair and maintenance.

6. The appellants provide very little evidence to demonstrate on the balance of probabilities that the engineering operations are permitted development. The Council, including the highways department, have provided evidence which demonstrates on the balance of probabilities that the highway is a 'C' classified road. It therefore follows that the engineering operations cannot be permitted development as it would contravene Schedule 2, Part 2, Class B of the Town and Country (General Permitted Development) (England) Order 2015, because the engineering operations irrespective of any agricultural contentions amount to the formation, laying out and construction of a means of access to a highway which is a classified road.

7. There is very little evidence before me to demonstrate on the balance of probabilities why the engineering operations now enforced against would not require planning permission. There has also been no planning permission brought to my attention for the engineering operations and a prior approval for a new agricultural access track starting in this location has been previously refused by the Council[1].

8. As a matter of fact and degree the appellants have therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that there has not been a breach of planning control.

9. The appeal on ground (c) accordingly must fail.

The ground (d) appeal

10. For the ground (d) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The latest date for the substantial completion of the engineering operations would therefore be 7 July 2016 (the latest date).

[1] Ref DC/19/1169

11. The evidence from the Council is that the engineering operations commenced in November 2019. Even if that is incorrect, I have very little evidence from the appellants to demonstrate on the balance of probabilities that the engineering operations were substantially complete by the latest date.

12. Consequently, as a matter of fact and degree, based upon the evidence before me, the appellants have not discharged the necessary burden of proof to demonstrate that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.

13. The appeal on ground (d) therefore must fail.

Overall Conclusion

14. For the reasons given above I conclude that the appeals should not succeed. I shall therefore uphold the enforcement notice.

Formal Decisions – Appeals A and B

15. The appeals are dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR