



Appeal Decision

Site visit made on 29 October 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/B3410/C/19/3226843

Land on the south-east side of Newton Road, Burton upon Trent, Staffordshire DE15 0TX

- 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 Bruce John Pipes against an enforcement notice issued by East Staffordshire Borough Council.
 - The enforcement notice was issued on 15 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission:
 1. The creation of a vehicular access from the Land onto a classified road (B5008) and
 2. The associated earth works conducted in order to create the vehicular access.
 - The requirements of the notice are: -
 - (i) Cease the use of the Land for the purposes of vehicular access and egress from, or to, the classified road (Newton Road);
 - (ii) At the site of the vehicular access, return the embankment to the height, gradient and profile that it was immediately prior to the unauthorised earth works that were undertaken to create the access.
 - The period for compliance with the requirements is: -
 - (i) 7 days
 - (ii) 30 days
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. The evidence before me refers to the planning merits of the development and whether planning permission should be granted. However, as there is no appeal on ground (a) and no deemed planning application for me to consider they are not relevant to my decision. Furthermore, I am not empowered to consider whether or not planning permission should be granted for the development.

The ground (c) appeal

3. Ground (c) is that there has been no breach of planning control. The onus is upon the appellant to show that the alleged matter does not constitute a breach of planning control. The relevant standard is the balance of probabilities.
4. The appellant claims that the access is a reinstatement of one that is shown on the Ordnance Survey map as an unmetalled/unfenced road or track. The

Council has stated that there was a track that linked Newton Road to Abbot Beyne High School site. However, they also state that this track was approximately 1.5 metres wide and formed a pedestrian access to the school.

5. Section 55(1) of the 1990 Act states that... "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land Section 336(1) of the 1990 Act states that 'engineering operations' include the formation or laying out of means of access to a highway.
6. Article 3 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants planning permission for certain classes of development described as permitted development (PD) in Schedule 2 of that Order. Under 3(6) of the GPDO, the permission granted by Schedule 2 does not authorise any development that requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road. Newton Road, the B5008, is a classified road.
7. I observed that there is no pavement on the eastern of Newton Road close to the means of access and due to the topography, the appeal site slopes relatively steeply up from the highway and it is predominantly covered with mature landscaping and trees. I have been provided with little evidence other than the copy of the Ordnance Survey Map as to the form of the track and its access onto Newton Road prior to the alleged breach occurring. I note that the appellant considers that the works that have been carried relate to the maintenance of an existing track.
8. Nevertheless, I observed that there are large double gates set back from the edge of the highway and the land appears to have been excavated, regraded and vegetation cleared from around it. It also appeared that the track and access are appreciably wider than that shown on the Ordnance Survey Map. From what I saw and the evidence before me I can come to no other conclusion that what has been constructed is a material widening of a means of access to an existing highway which is a classified road.
9. I consider that the development that has been carried out comprises an engineering operation firmly falling within the scope of Section 55(1) of the 1990 Act. This engineering operation does not benefit from PD rights. Express planning permission is required for the matters alleged and it has not been obtained. On the balance of probabilities, the development constitutes a breach of planning control. Therefore ground (c) must fail.

Conclusion

10. For the reasons given above I consider that the appeal should not succeed.

D. Boffin

INSPECTOR