



Appeal Decision

Site visit made on 18 March 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 MARCH 2025

Appeal Ref: APP/N1350/C/24/3349389

Land on the north-west side of Brickyard Farm Cottage, Neasham Road, Hurworth Moor, Darlington, DL2 1DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr William Porrett against an enforcement notice issued by Darlington Borough Council.
 - The notice was issued on 12 July 2024.
 - The breach of planning control as alleged in the notice is the unauthorised removal of approximately 25m of protected hedgerow, the installation of an authorised site access onto the land from Neasham Road, Hurworth, with the laying of hardcore materials to form an access road up to Brickyard Farm Cottage.
 - The requirements of the notice are to (1) cease the use of the unauthorised access, (2) remove the unauthorised access road, gateway, fence posts and hardcore materials from the land, and (3) reinstate the land and hedgerow to its original condition immediately before the breach of planning control took place including, without prejudice to the generality of this requirement the removal of any rubbish and debris in connection with this unauthorised development and the closure of the access by replanting of the hedgerow adjacent to the highway.
 - The periods for compliance with the respective requirements are (1) with immediate effect, (2) four weeks, and (3) six weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) 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. It is directed that the enforcement notice is varied by the deletion of the words "*As to the step at paragraph 5(1) above: with immediate effect on the day this Notice takes effect 10 August 2024*" and their substitution with the words "*As to the step at paragraph 5(1) above: with immediate effect on the day this Notice takes effect*". Subject to the variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework) and was subsequently amended on 7 February 2025 to correct cross-references from footnotes 7 and 8 and amend the end of the first sentence of paragraph 155 to make its intent clear. The 2024 Framework replaces the previous version of the National Planning Policy Framework published in December 2023. In relative terms, the 2024 Framework does not have a material bearing on how the deemed planning application main issues should be considered.

The Notice

3. Section six of the notice, which relates to timescale for compliance with its requirements, states that the time to comply with requirement 5(1) (i.e., to cease the use of the unauthorised access) is '*with immediate effect on the day this notice takes effect 10 August 2024*'. As an appeal has been lodged, and given my appeal decision, the notice takes effect now rather than on 10 August 2024. Therefore, I shall delete the wording of the first sentence of section six of the notice and replace it with '*As to the step at paragraph 5(1) above: with immediate effect on the day this notice takes effect*'. I am satisfied that this variation would not cause injustice to the main parties.

Ground (b) appeal and ground (c) of section 174(2) of the Act.

4. The appeal made on ground (b) is on the basis that the matters comprising the alleged breach of planning control have not occurred. While the appellant has not appealed on ground (c), which is that the matters alleged do not constitute a breach of planning control, the appellant makes the claim that the access has existed historically. I find that he is therefore saying that it does not amount to development requiring planning permission. In this regard, I have also considered a hidden ground (c) appeal.
5. The claim made by the appellant is that a new access onto Neasham Road has not occurred in so far that evidence supports the existence of a long-standing field access at this location which was '*simply reinstated rather than newly created*'. The appellant refers to the presence of a '*large gate pillar and remnants of an old metal gate within the overgrown hedge*'. The appellant also comments that while it is acknowledged that there have been engineering works associated with the '*formation of the drive*', and that hedgerow was removed, this was in connection with '*improvements and expansions of an already existing access point rather than the creation of a new one*'.
6. I do not find that the appellant's evidence is sufficiently precise and unambiguous to demonstrate that a historic access has always been in the position as it relates to the access which is the subject of this notice. I noticed on my site visit, that there is an access further up Neasham Road and while the appellant's aerial images, dated 2006 and 2008, are not to scale, given the location of the buildings within these images, I find that the desire lines shown within the fields are likely to be in association with what is a different access.
7. Moreover, the appellant has shown what he says is '*the original gate within the overgrown hedge*' and '*the original gate post*'. This is not conclusive evidence to demonstrate that an access was historically in the position as that which is the subject of this appeal. While it is possible that such a field gate may have been positioned amongst the now removed hedge for many years, it may of course have originated from elsewhere. In addition, I do not know precisely where the gatepost was located relative to the access which is the subject of this appeal. The evidence before me is not precise or unambiguous in terms of these matters.
8. In any event, the Google Street view images show that a mature hedge was in place along this part of Neasham Road prior to the current engineered access being formed. Indeed, such a hedge was in place from at least June 2009 to May 2023 based on available Google Street view imagery. Even if the appellant had been able to demonstrate that a historic access existed in the same location as the

appeal access, as a matter of fact and degree there is no evidence of any access being in place prior to the appeal development taking place. Even if there was a historic access, the evidence is that it was long gone by the time that the appeal access was formed.

9. The appellant acknowledges that hardcore has been laid in respect of both the access opening to Neasham Road and the access road leading to Brickyard Farm Cottage. There is no suggestion that the hedgerow was not removed to facilitate the unauthorised operational development.
10. The onus is on the appellant to make a case on any legal grounds of appeal. For the above reasons, I find that the appellant's evidence does not precisely and unambiguously demonstrate, on the balance of probability, that an access previously existed in the same location as that which is the subject of the notice. Moreover, and, in any event, the evidence is that prior to the new access being formed onto Neasham Road, there was a hedge in place for many years. In this regard, there is no evidence of any sort of vehicular or other access at this point of Neasham Road into the subject field.
11. The evidence is that a new access has been formed as well as an associated new road and using hardcore materials up to Brickyard Farm Cottage. These works amount to engineering operations and hence development under section 55 of the Act. The evidence is that a new and engineered road has been formed through the field, facilitated by the new access from Neasham Road and in connection with the residential use of Brickyard Farm Cottage. Neither the engineered vehicular access onto Neasham Road which is classified, nor the associated engineered road leading to Brickyard Farm Cottage, are permitted development in respect of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).
12. For the above reasons, I conclude that the matters alleged in the breach of planning control have occurred. Moreover, the breach of planning control comprising the site access and associated access road comprise acts of development requiring planning permission. Hence, the matters alleged constitute a breach of planning control. Therefore, the ground (b) appeal fails, and the appeal does not succeed on ground (c) of section 174(2) of the Act.

Ground (a) appeal and the deemed planning application

Main Issue

13. I have considered the reasons for issuing the notice as well as comments made in the respective statements of case. The main issues are (i) the effect of the development on (i) highway safety, and (ii) the character, appearance and biodiversity of the area.

Reasons

14. The evidence is that this part of Neasham Road, which is in a rural location, has a 60-mph speed limit. While my site visit was only a snapshot in time, I did notice that passing vehicles appeared to be travelling at high speeds. Indeed, the essentially straight geometry is conducive to high vehicular speeds. Moreover, there are very few accesses off Neasham Road. The appellant has not submitted a speed survey as part of the appeal and there is no objective evidence before me

to show that the 85th percentile speed of vehicles approaching the unauthorised access is significantly lower than the 60-mph speed limit.

15. The wider highway context provides a direct link to a National Highways trunk road (A66) and as such Neasham Road is used as both a distributor road and a link to the strategic road network. The undisputed evidence is that average annual daily traffic flows are approximately 8000 vehicles per day based on the automated traffic count data completed by the Highway Authority in 2022.
16. Given the 60-mph speed limit, the local context, and the absence of any speed survey data from the appellant, I agree with the local planning authority (LPA) that guidance in Manual for Streets (MfS), which relates to roads where traffic speeds are generally lower and where the local context is different, is not applicable in this case. I note the various extracts from MfS which have been referenced by the LPA and which support the use of Design Manual for Roads and Bridges (DMRB) in this case.
17. DMRB specifies visibility splays of 2.4 metres by 215 metres in each direction for a 60-mph speed limit road. It is not disputed that the visibility splay to the north is limited to 2.4 metres (the 'X' distance) by 30 metres (the 'Y' distance). This constitutes a significant departure from the guidance in DMRB. The appellant has not provided speed survey data but based on an 85th percentile speed of 50 mph the LPA states that a minimum 160 metre 'Y' distance would be needed in both directions. There is no evidence before me to demonstrate that this can be achieved in respect of the northern sightline.
18. Given the above, I find that there is a real risk of an accident occurring on Neasham Road arising from the unauthorised development. I cannot therefore conclude that the development would not have an unacceptable impact on highway safety. In this regard, the development does not accord with the highway safety requirements of policy DC1 of the adopted 2022 Darlington Local Plan 2016-2036 (LP), and paragraph 116 of the 2024 Framework.

Character, appearance and biodiversity

19. In its statement of case, the LPA has also raised concern about the loss of hedgerow and the resultant impact on biodiversity arising from the breach of planning control. It also comments that the access and associated access road have caused harm to the character and appearance of the area.
20. The evidence is that a significant amount of hedgerow has been lost to facilitate the unauthorised engineering works. Statutory biodiversity net gain is not required in respect of unauthorised development, but nonetheless there is a general requirement to conserve and enhance biodiversity in respect of policy ENV 7 of the LP, as well as paragraph 187 of the 2024 Framework.
21. I have little information before me to demonstrate that new hedge planting around the access would be capable of conserving and enhancing biodiversity in relative terms. However, I consider that this aim would be possible based on the appellant's landholding and hence this is a matter that could be addressed by planning condition. Therefore, I find that the development would be capable of according with the biodiversity requirements of policy ENV 7 of the LP, and paragraph 187 of the Framework.

22. Notwithstanding the above, any hedge planting would take some time to reach maturity. Moreover, this would not alter the fact that the otherwise distinctive and unbroken character of the hedge along Neasham Road has been materially harmed. It has been replaced with an out of keeping and engineered open access (with fencing) and which is connected to a relatively long, engineered and intrusive road (with fencing) leading to Brickyard Cottage.
23. When experienced from Neasham Road, I find that the development as a whole has caused significant harm to the otherwise rural, green and undeveloped character of the area. The access opening and its associated road has unacceptably urbanised this countryside location. Hence, the development does not accord with the design, character and appearance requirements of policies DC1 and ENV 3 of the LP, and chapters 12 and 15 of the 2024 Framework.

Other Considerations

24. The appellant states that the lawful access to Brickyard Farm Cottage is via a narrow driveway which is shared by multiple dwellings and with limited visibility at the point where it meets Neasham Road. He also comments that works in connection with the unauthorised development has allowed him to address a long-standing drainage issue in terms of a blocked swale within the highway verge.
25. I acknowledge that the appeal access and its associated road offers a more convenient route to Brickyard Farm Cottage than existed previously. It is a private access and so does not have to be shared with the occupiers of other dwellinghouses in the area. Furthermore, I note the appellant's use of vehicles with trailers.
26. The appellant states that sightlines from the lawful access onto Neasham Road are somewhat deficient. I do not have any technical evidence to support this claim although I do note that the access road is narrow in part and that it serves other properties. Even accounting for any deficiency, I do not find that this justifies the provision of a further deficient access. Moreover, I do not know from the evidence whether it would have been possible for the appellant to have explored the potential to improve the existing lawful access onto Neasham Road, although I accept that this would not overcome the fact that the existing access is narrow in parts.
27. The appellant's work to address the drainage issue is commendable. However, it is likely that this could have been completed without having to form a new access and its associated access road.

Planning Balance and Conclusion

28. While biodiversity matters would be capable of being addressed by condition, I am unable to conclude that the development does not have an unacceptable impact on highway safety. Furthermore, significant harm has been caused to the character and appearance of the area. The identified other considerations are not of sufficient weight to alter or outweigh the harms that I have identified above. I therefore conclude that the ground (a) appeal fails.

Ground (g) appeal

29. The appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.

30. The notice requires that use of the access ceases immediately. The appellant does not raise a concern about this. The appellant nonetheless requests a longer compliance period (i.e., nine months) to *'ensure that the reinstatement is carried out correctly, benefiting both the environment and the long-term usability of the property'*. He also states that *'the additional time will allow for the proper planning and execution, ensuring that the hedgerow establishes well, and the access reinstatement is effective and sustainable'*.
31. The above comments are not supported with any objective evidence to indicate why the respective four and six week compliance periods cannot reasonably be achieved. At this time of year, I can see no good reason why a newly planted hedge would not be capable of establishing well. Indeed, it is not the case that the notice period includes the summer when drought type conditions may make it difficult for a new hedge to establish. Moreover, I do not find that there is any compelling evidence before me to demonstrate that the requirements of the notice would lead to hardship for the appellant or his family. Indeed, the evidence indicates that there is an alternative and lawful access available to reach Brickwork Farm Cottage.
32. For the above reasons, I conclude that the ground (g) appeal fails.

Conclusion

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

D Hartley

INSPECTOR