

REPORT FOR DECISION

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	13 November 2018
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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**Planning Appeals Lodged
between 01/10/2018 and 04/11/2018**



Application No.: 62677/AG

Appeal lodged: 01/11/2018

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Prior Approval Required

Applicant: Mr J Brown

Location: Twine Valley Farm, Church Road, Shuttleworth, Ramsbottom, Bury, BL0 0EH

Proposal: Prior notification of proposed agricultural building for the storage of silage

Total Number of Appeals Lodged: 1

**Planning Appeals Decided
between 01/10/2018 and 04/11/2018**



Application No.: 62549/LDCP
Decision level: DEL
Recommended Decision: Refuse
Applicant: Andrew Winstanley

Appeal Decision: Dismissed
Date: 22/10/2018
Appeal type: Informal Hearing

Location: Lower Dickfield Farm, Lower Dickfield, Helmshore Road, Ramsbottom, Bury, BL8

Proposal: Certificate of lawfulness for proposed access road to be 3 metres wide and with a tarmacadam surface

Application No.: 62605/FUL
Decision level:
Recommended Decision:
Applicant: Yarn Estates Ltd

Appeal Decision: Withdrawn
Date: 03/10/2018
Appeal type:

Location: Land to north of Carr Bank Lodge, 7 Carr Bank, Ramsbottom, Bury, BL0 9DJ

Proposal: Erection of 1 no. dwelling



Appeal Decision

Hearing held on 9 October 2018

Site Visit made on 9 October 2018

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2018

Appeal Ref: APP/T4210/X/18/3202852

**Lower Dickfield Farm, Lower Dickfield, Helmshore Road, Ramsbottom
BL8 4PD**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Andrew Winstanley against the decision of Bury Metropolitan Borough Council (the Council).
 - The application Ref 62549, dated 1 March 2018, was refused by notice dated 14 May 2018.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a proposed access road to be 3m wide and with a tarmac surface.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name is given on the application form as Mrs Andrew Winstanley. That was confirmed to be a typographical error at the hearing and that the appellant is Mr Andrew Winstanley as given on the appeal form. I have proceeded on that basis.
3. The appellant confirmed at the hearing that the LDC application sought to establish that a proposed access road to be 3m wide and with a tarmac surface would be lawful. The development is shown on two plans – a 1:2500 location plan and a 1:1250 'proposed access plan'. The Council confirmed that was the development and the plans on which it determined the application.
4. Both main parties have made reference in written submissions to an 'amended access plan'. It was confirmed at the hearing that the plan relates to a separate application¹ for planning permission at the appeal site for the conversion of an agricultural building to a dwelling plus extension and new access which was, at the time of the hearing, before the Council for consideration. When compared to the access proposed in the LDC application, the access shown on the 'amended access plan' is materially different due to its route, method of construction and incorporation of passing places.

¹ Council Ref: 63006

5. As I set out at the hearing, my powers to modify the terms of an application for an LDC are limited to section 191 applications. There is no such power under section 192 applications. Although there is some flexibility where the parties have agreed a modification, there has been no such agreement here. The appellant's agent confirmed at the hearing that the 'amended access plan' did not fall to be considered under this appeal.
6. Within the appellant's written submissions, it was put to me that any access would be permitted development. However, as I indicated at the hearing, an LDC application must relate to a specific, proposed operation. It is not open to an applicant to pose a general enquiry as to what is or might be lawful.
7. As a consequence, I have proceeded with this appeal on the basis that it is confined to the consideration of the development subject of the application made, namely a 3m wide access road with a tarmac surface as shown on the accompanying plans and as determined by the Council. Neither of the main parties raised any concerns to that approach at the hearing and I am satisfied that none would be prejudiced by that course of action.
8. I have had regard to the written and verbal evidence of a number of local residents in respect of several matters including highway safety and flood risk. However, the planning merits of the proposed development are not at issue in this appeal. It is solely concerned with whether the proposed development would have been lawful at the date the application was made.

Main Issue

9. The main issue is whether the Council's decision to refuse the application for a certificate of lawfulness was well-founded.

Reasons

10. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development would be lawful at the time of the application.
11. Class B of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits "the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than Class A of this Part."
12. It is proposed to provide a means of access to serve a barn which has been granted planning permission for its conversion to a dwelling under Class Q of Part 3, Schedule 2 of the GPDO as a result of two separate appeal decisions in February 2018² and May 2017³.
13. The Council's reasons for its refusal of this LDC application were two fold. Firstly that the access would not be 'required' and secondly, that the Council was unable to establish whether engineering operations would be required to facilitate the means of access that would go beyond what would be permitted under Part 2.

² APP/T4210/W/17/3182611

³ APP/T4210/W/17/3168025

14. Nevertheless, as I set out at the hearing, my role is to consider whether the Council's decision was well-founded. It does not mean my role is confined to considering whether its reasons were well-founded. I therefore have a duty, in the public interest, to establish whether, notwithstanding the Council's reasons for its decision, the development would have been lawful at the date the application was made.
15. To that end, the main parties agreed at the hearing that the development would constitute a means of access to a highway. The access would be around 300m long and would broadly follow the boundary of the paddock which is presently in use for grazing. The GPDO does not define the term "means of access". Nevertheless, section 336(1) of the 1990 Act states the term includes "any means of access, whether private or public, for vehicles or for foot passengers, and includes a street." In my view, the reference to a street indicates that the definition goes beyond simply the actual point of access onto a highway. Rather it could include an access track. Consequently, I am satisfied that the development is capable of constituting a means of access to a highway.
16. I have had regard to the comments of the neighbouring landowners that the part of public right of way No 42 from where the appellant suggests access is to be taken does not constitute a highway.
17. Whilst the GPDO does not define 'highway' for the purposes of Class B of Part 2, the 'Permitted Development Rights for Householders – Technical Guidance' published by the then Department for Communities and Local Government in April 2017 defines a highway, for the purposes of the GPDO, as "a public right of way such as a public road, public footpath and bridleway. For the purposes of the Order (the GPDO) it also includes unadopted streets or private ways." The main parties agreed at the hearing that was a reasonable interpretation for me to base my decision on. I see no reason to disagree. As a result, I am satisfied that the proposed means of access constitutes a highway.
18. Nevertheless, it is evident from the discussions at the hearing and my observations on my site visit that the means of access as depicted on the proposed plan would terminate within an area which is presently covered by vegetation and does not form part of the highway. The appellant's agent indicated it was an error and that the access should have followed an existing track on the site which terminates at a gate adjoining public right of way No 42.
19. However, whilst I accept it is a mistake, and that it would in practice take little to correct, the fact of the matter is that the proposed plan shows a means of access which would not connect to a highway. Were I to grant a lawful development certificate then I would need to do so by reference to the plan. It follows therefore that, in the absence of a corrected plan, the proposed development cannot constitute a means of access to a highway if it would not physically connect to it.
20. Consequently, as the proposed development would not constitute a means of access to a highway, there is no need for me to go on to consider whether the means of access would be required in connection with development permitted by any Class in Schedule 2 of the GPDO or whether it would require engineering operations outside the scope of Class B of Part 2 of the GPDO.

21. I find, taking into account all evidence before me, that, on the balance of probabilities, the proposed development is not permitted development by virtue of Class B of Part 2 of Schedule 2 and would not therefore be granted planning permission by Article 3 of the GPDO. Accordingly, the proposed means of access would not have been lawful on the date of the application, 1 March 2018.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed access road to be 3m wide and with a tarmacadam surface was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Jason Whitfield

INSPECTOR

