



The Planning
Inspectorate

Quality Assurance Unit
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000

Mr Mark Shipman BA (Hons) DURP
MRTPI
South Lakeland District Council
South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DL

Your Ref: LS/MN/DC/E/A4
Our Ref: APP/M0933/C/12/2181345
**Further appeal references at
foot of letter**
Date: 17 May 2013

Dear Mr Shipman

**Town and Country Planning Act 1990
Appeals by Mr Richard Whitton, Mr David Khan and Mrs Helen Khan
Site at Blenket Farm, Jack Hill, Allithwaite, Grange-over-sands, LA11 7RL and
Jack Hill, Allithwaite, Grange-o-sands, LA11 7RL**

I enclose a copy of our Inspector's decision on the above appeals.

If you have queries or feedback about the decision or the way we handled the appeals, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planninginspectoratefeedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Yours sincerely

pp Roger Thomas

EDL1



Further appeal references:- APP/M0933/C/12/2181343 and APP/M0933/C/12/2181344

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



Appeal Decisions

Site visit made on 13 May 2013

by **John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

Decision date: 17 May 2013

Appeal Refs: APP/M0933/C/12/2181343, 2181344 and 2181345

Blenket Farm, Jack Hill, Allithwaite, Grange-over-Sands LA11 7RL

- 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 David Khan (2181343), Mrs Helen Khan (2181344) and Mr Richard Whitton (2181345) against an enforcement notice issued by South Lakeland District Council.
 - The Council's reference is SL/2012/0730.
 - The notice was issued on 3 July 2012.
 - The breach of planning control as alleged in the notice is operational development consisting of the excavation, infilling, grading and laying of hard core on the land to form an access road between Jack Hill and Blenkett Wood Lodge Park and the associated use of the access road for the purpose of vehicular access to and egress from Blenkett Wood Lodge Park.
 - The requirements of the notice are (1) Cease using the access road on the land for vehicular traffic in connection with the Blenkett Wood Caravan Park; and (2) Remove from the land all the stone, hard core and other materials used to construct the access road; and (3) Re-grade the area of land affected by compliance with requirements (1) and (2) by the introduction of top soil so as to restore the contours of the land to the levels that were in existence prior to the works taking place; and (4) Sow the area of land referred to in requirement (3) with grass seed.
 - The period for compliance with the requirements is 28 days for requirement (1), 2 calendar months for requirement (2), 3 calendar months for requirement (3), and 28 days after the commencement of the next growing season subsequent to compliance with requirement (3) for requirement (4).
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended and appeal ref. 2181345 is also proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is corrected by:
 1. the deletion of all references to 'Blenkett' in the enforcement notice and in all cases the substitution instead of 'Blenket';
 2. the deletion of 'Caravan' in the first requirement in section 5 of the enforcement notice and the substitution instead of 'Lodge'.
 2. The enforcement notice is varied by:
 1. the deletion of the plan attached to the enforcement notice and the substitution instead of the plan attached to this decision;
 2. the deletion of 'edged blue' in section 2 of the enforcement notice and the substitution instead of 'edged black';
-

3. the deletion of all references to 'road' in sections 3, 4 and 5 of the enforcement notice and in all cases the substitution instead of 'track'.

3. Subject to the corrections and variations 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.

Matters requiring correction

4. 'Blenket' is so spelled on OS maps and by Mr Whitton, one of the Appellants and the owner of Blenket Farm. The Council has misspelled it 'Blenkett' in their statement and in the enforcement notice. To avoid confusion all references to 'Blenkett' in the notice have been corrected to be 'Blenket'.

5. Blenket Wood Lodge Park is referred to in the first requirement of the enforcement notice as 'Blenkett Wood Caravan Park'. To avoid confusion this incorrect title in the enforcement notice has been corrected.

Background information

6. Blenket Farm is on the south side of Jack Hill. From Jack Hill an access track leads south-eastwards to a small group of farm buildings. This track continues eastwards beyond the farm buildings to Blenket Wood Lodge Park (the Lodge Park), which is owned by Mr and Mrs Khan. Access along the track to the Lodge Park, beyond the farm buildings, is controlled by an electric gate. The thirteen lodges at the Lodge Park are occupied as holiday accommodation. Planning permission SL/2012/0766 was granted on 6 December 2012 for 'stationing of six holiday lodges on hardstanding with access drive and car parking'. The six lodges will be in addition to, and will be to the north of, the thirteen existing lodges.

7. About 40 metres from Jack Hill an access track, off the aforementioned track to the farm buildings and to the Lodge Park, leads to a stable building. The track continues south-eastwards beyond the stable building for a distance of about 300 metres before turning southwards through the land that is the subject of planning permission SL/2012/0766. The track from the stable building to the existing Lodge Park is the subject of the enforcement notice.

Reasons

The ground (b) appeal

8. A ground (b) appeal is made where the Appellants claim that the alleged breach of planning control has not occurred, as a matter of fact. The enforcement notice refers to a 'road' on the enforcement land but the Appellants claim that it is a 'track'. The thoroughfare that is on the land is not hard surfaced and has no kerbs and is better described as a track rather than a road. The enforcement notice has therefore been varied to substitute 'track' for all references to 'road'.

9. Excavation, infilling, grading and laying of hard core has occurred on the enforcement land and the track that has been created is used, albeit, as claimed by the Appellants, only by utility and emergency vehicles, for the purpose of vehicular access to and egress from Blenket Wood Lodge Park. The alleged breach of planning control has therefore occurred, as a matter of fact. Subject to the aforementioned variation the ground (b) appeal thus fails.

The ground (c) appeal

10. A ground (c) appeal is made where a claim is made that there has not been a breach of planning control. The Appellants claim that the track that is the subject of the enforcement notice has been in place since 1990 and that the works carried out in 2010, which resulted in the issue of a Planning Contravention Notice (PCN) and subsequently in the issue of the enforcement notice, were works of improvement of the track and do not constitute a breach of planning control.

11. Statutory declarations dated 4 March 2011, one by Mr Whitton and one by Ms Ann Stark also of Blenket Farm, were submitted with the appeal. Both declarations mention that the track within the permitted extension to the Lodge Park has existed as a vehicular way since 1990, has been of stone construction because of the considerable slope, and has had to be repaired with stone and slate waste. This evidence, given under oath, is sufficient to conclude, on the balance of probability, that the stoned track existing within the area of the permitted extension to the Lodge Park has been in place for over three decades and that the works carried out to this section of the track in 2010 were works of improvement. The ground (c) appeal succeeds in so far as it relates to the aforementioned section of the track and the notice has been varied by the deletion of the plan attached to the notice and the substitution instead of a plan which shows the enforcement land to exclude the aforementioned section of the track.

12. The statutory declarations make no mention of the track between the stable building and the site of the permitted extension to the Lodge Park and the only matter mentioned in the grounds of appeal in support of the ground (c) appeal is the statutory declarations. A declaration, not statutorily made, by Mr George Wilson, a Chartered Surveyor, mentions a 'top road' at Blenket Farm but photographic evidence indicates that this would only have been a 'road' in name and it is likely that the 'road' was simply a route taken by farm vehicles. It is suggested that this would have been a preferred route in times of wet weather when the main farm track at a lower level might have been impassable. This does not indicate that the 'road' was surfaced in any way. Photographic evidence, in fact, indicates that there was, prior to 2010, no surfaced road or track.

13. Photographic evidence indicates that heavy vehicles were used in 2010 to create the track that is now in place and a significant quantity of broken stone has been brought in to surface the track. The works to create the track were an engineering operation and the track has been used, albeit, as claimed by the Appellants, only by utility and emergency vehicles, for the purpose of vehicular access to and egress from Blenket Wood Lodge Park. The creation and use of the track constitute development for which planning permission has not been granted. Subject to the aforementioned variation the ground (c) appeal thus fails.

The ground (a) appeal

14. The main issue is the effect of the track on the character and appearance of the landscape.

15. The fields to the north-east of the access track leading to the Lodge Park slope gently up to woodland. Towards the south-east end of the track, and in other places, it passes through the edge of the woodland but in other places it is at the edge of the fields. The works carried out in 2010 included, in places, altering natural contours of the land to create a level surface. There is evidence on the ground, noted at the site visit, of 'cut and fill' procedures; the disturbed ground of

the uphill 'cuts' has yet to become overgrown, as is undisturbed ground alongside the track. Opposite the 'cuts' there are short steep slopes covered by broken stone that has spilled over from the track. The track itself is broken limestone. This is the local stone and is used to surface footpaths and access tracks in the area.

16. However, it is the creation of a level surface, rather than the surface finish of the track, that has intruded into the landscape. This is most apparent when on the track itself but this viewpoint is not significant. The track is clearly visible in views from the access to the Lodge Park and from sections of a footpath slightly further to the south-west. From these vantage points it is not the track that is particularly visible but the changes that have been made to the natural contours of the land. Previously ground levels rose naturally up across the fields and then up through the woodland. The natural contours of the land have now been disturbed by the creation of the track and this disturbance of ground levels has been exacerbated by the introduction of a significant depth of broken stone. The track is an intrusive feature that has adversely affected the character and appearance of the landscape.

17. The creation of the track that is the subject of the enforcement notice has had a significant adverse effect on the character and appearance of the landscape. The track thus conflicts with saved policy E37 of the Cumbria and Lake District Joint Structure Plan (SP) and with policy CS8.2 of the South Lakeland Local Development Framework Core Strategy.

18. Water company equipment and the electricity meters for the Lodge Park are located at the top of the slope of the land that relates to planning permission SL/2012/0766. The Appellant maintains that the all weather access track is vital for maintenance and repair of the equipment and meters because the utility vehicles would otherwise have to pass through the farm with its livestock and vehicle movements and then through the Lodge Park with its code controlled gate. There is no reason why the utility companies could not be provided with the code for the gate to the Lodge Park and passing through the farm is only likely, if at all, to cause minor inconvenience.

19. The Appellant also maintains that the track is required to provide an alternative means of access to the Lodge Park for emergency vehicles. There is no evidence to indicate that the main access to the Lodge Park is liable to flooding or is ever not available for any other reason. It is reasonable to suppose, furthermore, that in an emergency there would be someone on hand to open the gate to the Lodge Park or that an emergency opening facility of the gate could be provided. The track that is the subject of the appeal is not essential for use by utility and emergency vehicles and this matter is not sufficient to outweigh the identified conflict with the Development Plan.

20. The track has had a significant adverse effect on the character and appearance of the landscape and conflicts with the Development Plan. There are no material considerations to indicate a conclusion other than in accordance with the Development Plan. The ground (a) appeal thus fails.

The ground (f) appeal

21. Most of the matters mentioned in support of the ground (f) appeal, such as the track providing "...access to this fringe of the farm including management of the woodland", relate to the merits of retaining the access track and are therefore not relevant to consideration of whether the requirements of the notice are excessive. There is no evidence to suggest that "...the bank expects it" and, in any

event, financial matters are not relevant, and there is no evidence to indicate that removing the alternative access to the Lodge Park for vehicles, including emergency vehicles, would have any "...consequences...for...park occupants".

22. Removing the broken stone surface and restoring the contours of the land would serve a planning purpose. The works of restoration would redress the harm that has been caused to the landscape. The requirements of the enforcement notice are not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

23. The cost of the works of restoration is not a relevant consideration. The winter season following issue of the enforcement notice has passed and the three month period for compliance with the second and third requirements of the notice will be during the late spring and summer. A three month period for removing the broken stone surface and for restoration of ground contours is reasonable and if it proves not to be, for a good reason, the Council has the power to extend the periods for compliance. The periods for compliance with the requirements of the enforcement notice are reasonable and the ground (g) appeal thus fails.

John Braithwaite

Inspector

