

APPELLANT'S REBUTTAL

GARY WILLIAMS

HILLSIDE, WALFORD, ROSS-ON-WYE, HR9 5QS

APPEAL REFERENCE: APP/W1850/W/17/3184408

L.P.A. REFERENCE: 170615

J. L. B. Kendrick B.A.Hons. (Econ.),
Cert. T.P., M.I.E.D. C. F. Inst. L.Ex.,
Commissioner for Oaths
Procuro Planning Services Ltd,
Procuro,
St. Owens Cross,
Herefordshire,
HR2 8LG

1. The Appellant reiterates his Grounds of Appeal and also relies on those specialist ecological and arboricultural reports that have been submitted to the Local Planning Authority to support his Appeal case.
2. There are importantly no objections from the Local Parish Council with regard to his proposals.
3. The vehicular access track, the subject of this appeal is an **existing** and established vehicular track. Its condition was to be improved by minor works carried out by the Appellant, who was initially informed by the Local Planning Authority that planning permission was not required.
4. The works even though left in limbo have improved the gradient of the track.
5. The track has recently been used by BT Openreach and Western Power Distribution to carry out servicing to their equipment and tree cutting . They have used the track previously for these purposes but formerly had to park reluctantly on the drive of Japonica Cottage . to enable regular maintenance works to take place to higher lines.
6. The Appellant has an alternative access from his property to junctions with the Walford Road at Bulls Hill and Leys Hill. Both of these junctions are, less commodious in highway safety terms than the junction with Whittings Lane and Walford Road. This junction is lightly trafficked with only six or seven properties utilising it for the purposes of access and egress.
7. There is a large area of land within the Appellant's curtilage at the end of the track, the subject of this appeal, to allow manoeuvring, turning and circulation movements on open land. These movements will not be hindered by trees or other vegetation.
8. The Council in correspondence in 2011 described the Appeal track, as a car park and driveway and acknowledge works as being undertaken prior to the current appeal.
9. No damage has been occasioned to Whittings Lane by the Appellant.
10. The Appellant's specialist and well qualified ecological consultant has doubted any harmful effect at the location of this part of the Wye Valley A.O.N.B. Remedial works stretch only to an area of approximately 50 square metres compared to the total Wye Valley AONB area of 326 square kilometers.
11. Any tree or vegetation management has led to more vigorous regeneration and only been occasioned by BT Openreach and Western Power Distribution during their maintenance activities, not by the Appellant.

12. The works undertaken to date have made the access incline more easily traversable and a commodious alternative driveway.
13. The allegation of major earth and other works is completely untrue. They are minor and an arbitrary. A non-evidence based decision has been reached by the Local Planning Authority.
14. As far as the comments from Mr Smart are concerned he has facilitated works to the Appeal access and enabled the Appellants contractor vehicles to park in his drive on the basis that he was assisted in the misappropriation of the Elm trunk referred to in Ms F M Redmans' letter of objection.
15. Mr Smart has used a form of road base and obviously brought it up Whittings Lane to manicure his driveway. Ms Redman is a non resident and not personally affected by the current proposal. Her large private car park is also not affected.
16. In the Council's statement, as far as the photos on page 6 and 7 are concerned, they show an existing access going up to the double gates.
17. The only trees that have been managed were dangerous. Works undertaken have been to make this access more easily and safely traversable and to create a commodious driveway. This has only involved the realignment of existing materials.
18. Rebuttal letters from both the Appellant's ecological and arboricultural adviser are attached at Appendix 1 & 2 to this rebuttal.
19. The Appellants argument is that minor works have been carried out that do not create any visual, aural or environmental harm to this section of the Wye Valley Area of Outstanding Natural Beauty. These minor works are both necessary and realistic to maintain and improve the safe and adequate access to an existing property and merely replicate what has either been permitted or accepted with regard to access, egress and car parking arrangements to adjoining properties.
20. There is no history of accidents or highways safety concerns in connection with the use of the access Whittings Lane or access and egress onto the Walford Road.
21. The Appellant has been both diligent and careful with regard to the reinstatement this existing and established access on to Whittings Lane and has used his expertise as an engineer involved in highways engineering to produce a comprehensive CME statement.
22. It is argued fundamentally that the Local Planning Authority has misinterpreted the improvements to this access as damage to flora, fauna and other habitats. As

previously stated the arboricultural changes in this area have in the main been occasioned by Western Power Distribution cutting a swathe through the area for the maintenance of their equipment, poles and lines. This event appears to have totally misled the Local Planning Authority.

23. Conclusion the Appellant respectfully requests that his appeal be upheld and is prepared to accept any reasonable conditions to facilitate the appeal proposal in accordance with the tenets of Paragraphs 204-206 of the N.P.P.F.

J.L.B.K.

22.1.18

Annexe 1

Observations from the Appellants Ecologist:

“The ecology comments refer to assessment of the habitat before the suspended works took place. How one is supposed to this without a time machine I don’t know, but I would have thought that the fact that the access lies in the wayleave should be sufficient to demonstrate that the habitat will not be the same as the habitat in the untouched parts of the woodland. In other words the habitat was altered significantly by the electricity board when they created the wayleave and cut down and back all the trees along it. And the footpath already existed, so that too will have altered the ground flora as the ‘before’ photographs in the LPA document illustrate. The photographs clearly also show recent vehicle tracks, but whether these are on the original width of the footpath or are a result of some widening I don’t know.

Just because there is a record of a Badger sett 50 m away doesn’t mean there are Badgers on site. I didn’t see any signs of Badgers, but that doesn’t mean they don’t use the track/footpath. And the works will do nothing to disturb or obstruct Badgers anyway.

The ecologist talks about potential subsidence and surface erosion. This situation is more likely to occur now as the work was suspended before bank stabilisation could be completed. If a Construction Environmental Management Plan (CEMP) is needed, this could be conditioned. However, given the very minor scale of the works, I’m surprised this is even being considered by the LPA, especially as most of the work has already been undertaken.

As for an HRA, this is totally unnecessary. A small track along the route of an existing footpath in an existing electricity wayleave is going to have no impact on the SAC or SSSI. And the LPA already said that householder planning applications do not need to submit an HRA, so why bring it up? And the LPA have more than enough information to conclude there will be no significant impact, so I disagree with the claim that they haven’t.

I could understand the concern if this was going to be big road cutting with drainage, lighting and asphalt surfacing, requiring the removal of trees and ground flora, and disturbing wildlife, but it isn’t, and I’m amazed why it is causing such a problem for the LPA. Indeed, the Parish Council have not objected.”

Andy Warren BSc (Hons), MA (LM), Tech Cert (Arbor A), MCIEEM, TechArborA

Appendix 2

Observations from the Appellants Arboriculturist

In response to the LPA statement, there are many points which are not tree related but Andy has reviewed and has the following comments:

1.2 - The access is not new but the proposal seeks to improve the existing access.

2.1.1 (reasons for refusal) - no tree removals are required to facilitate the works.

4.3 - no extra tree works are needed over the existing utility clearance currently implemented and no tree damage was noted.

4.4 - no tree removals so now loss is proposed just improving existing driveway.

4.5 - arboricultural surveys look at trees not badgers.

4.6 - Construction management plan (CMP) to detail works and avoid regrading soils in RPAs. CMP may be conditioned as part of planning. No topographical survey at present but this can demonstrate retained soil levels and methods may be conditioned.

4.14 - regarding gradients, this would feed in to the Arboricultural Method Statement.

5.1 - we did not visit site prior to the works commencing so can not comment, but we do state that no tree works appear necessary.

5.3 - states the access was not existing but it appeared to be recently used by utilities for new pole installation and historically for overhead utility vegetation clearance?

In review, there does not appear to be any tree impacts from the proposals but we would need CMP and confirmation that levels can be retained etc.

Regards, Tony.

Kind Regards,

*Tony Banner TechCert (ArborA), TechArborA
Arboriculturist*