

DELEGATED DECISION REPORT

SMD/2021/0540
Valid 13/08/2021

THE DAIRY
DALEBANK ROAD
FREEHAY
CHEADLE

**ACCESS THROUGH AN
ESTABLISHED GATE
OPENING ON DALEBANK
ROAD OPEN TO THE
PROPERTY BOUNDARIES
AND CREATE A TRACK DRIVE
IN KEEPING WITH THE AREA
TO THE PROPERTY.**

(FULL - MINOR)

MAIN ISSUES

- Impact on the character and appearance of the street scene/landscape character of the area.
- Impact on highway safety.
- Impact on neighbouring amenity.
- Impact on existing trees and hedgerows.
- Whether there is an essential need for the development within the open countryside.

DESCRIPTION OF SITE

The site comprises a detached barn that was recently converted via the Class Q permitted development prior approval route under application DET/2014/0054. The barn is located to the southwest of the former farmhouse. An agricultural building is sited northwest of the converted barn. Ashthorne House is located to the north of both the converted barn and the former farmhouse, with agricultural fields surrounding the property to all other sides. The site is located in the Open Countryside.

The application site comprises an access track and an access onto Dalebank Road.

PROPOSAL

Retrospective full planning permission is sought for the creation of an access onto Dalebank Road and the laying of an access track across the adjacent field.

This application is a resubmission following the refusal and subsequent dismissed appeal of application SMD/2020/0362. This application seeks to address the previous issues.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Staffordshire Moorlands Local Plan (Adopted Sept 2020)

SS1 Development Principles
1a Presumption in Favour of Sustainable Development
SS2 Settlement Hierarchy
SS10 Other Rural Areas Strategy
DC1 Design Considerations
DC3 Landscape and Settlement Setting
T1 Development and Sustainable Transport
T2 Other Sustainable Transport Measures
NE1 Biodiversity and Geological Resources
NE2 Trees, Woodland and Hedgerows

National Planning Policy Framework

Paragraph(s) 1 - 14
Section(s) 4, 9, 12, 15

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SMD/2020/0362	Access through an established gate opening on Dalebank Road open to the property boundaries and create a track drive in keeping with the area to the property Refused 28/0/2020 Appeal Dismissed 30/03/2021
SMD/2014/0202	Erection of a single agricultural pole barn structure Approved 04/06/2014
DET/2014/0054	Prior Approval for the change of use of agricultural barn to residential dwelling Approved 03/02/2015

CONSULTATIONS

Publicity

Site Notice expiry date: 17/09/2021
Neighbour consultation period ends: 06/09/2021
Press Advert: N/A

Public Comments: Three comments have been received that support the application. They consider that the access benefits the smallholding and they are aware of the issues the applicants face when using the existing access. They consider that the access is in keeping with the surrounding countryside and that the existing access was never intended to be utilised by two dwellings and associated farm vehicles.

Concern is raised by those residing at Hulme Farm regarding the continued use of the existing access. They consider that the use of the existing access results in vehicles passing close to their house and garden and is harmful to their amenity.

They raise concern regarding heavy vehicles crossing the access where the pipe to their septic tank is located close to the surface. They consider the existing access onto the road to pose highway safety issues. They have stated that they will not consent to the applicant undertaking any works on their land to improve the existing access. They fully support the use of the separate access.

Town / Parish Comments: None

Severn Trent Water: No objection to the proposals and do not require a drainage condition to be applied.

SCC Highways: No objection subject to conditions.

Tree Officer: No objection subject to a condition.

OFFICER COMMENTS

Background to the Development

Approval was granted for the conversion of the barn under a Class Q permitted development prior approval application (Ref: DET/2014/0054). The barn was to be served by the existing access to Hulme Farm and the Highway Engineer raised no objection to this arrangement at the time of the application.

The former owner of the barn decided to create the access and track in the adjacent field which led to an enforcement complaint. The Council's Enforcement Team investigated the alleged development and the former owner agreed to re-cover the track with soil and re-seed it. This was done and the enforcement case was closed.

The applicant was aware of the enforcement issue surrounding the access when purchasing the property but chose to complete the purchase with the intention of submitting a retrospective planning application for the access.

A retrospective planning application for the access and track was submitted in 2020 (SMD/2020/0362). This application was refused by the Local Planning Authority on four grounds:

1. An essential need for the development to be located in the countryside was not demonstrated.
2. Impact of the development on the rural character of the area.
3. Net loss of biodiversity.
4. Insufficient information in relation to the impact of the development on existing trees.

The Council's decision was appealed by the applicant and the appeal was dismissed by the Planning Inspector. In forming the decision, the Planning Inspector:

- Upheld the Council's refusal in that an essential need had not been demonstrated.
- Considered the development did not impact on the rural character of the area.
- Considered that the provision of hedging and tree planting resulted in a net gain in biodiversity.
- Upheld the Council's refusal that insufficient information had been submitted in respect of the development's impact on existing trees.

This application therefore seeks to demonstrate that there is an essential need for the development and that the development will not result in an adverse impact on existing trees.

Principle of Development

Paragraph 11 of the National Planning Policy Framework (NPPF, 2020) promotes a 'presumption in favour of sustainable development'. For decision makers this means (c) approving development proposals that accord with an up-to-date development plan without delay; or (d) where there are no relevant development plan policies, or the policies which are more important for determining the application are out-of-date, granting permission, unless: i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

In accordance with policies SS1 and 1a of the Staffordshire Moorlands Local Plan, the Council will expect all new development to make a positive contribution towards the sustainability of communities and to protecting, and where possible, enhancing the environment. When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF (2021).

The application site is located in the Open Countryside. Policy SS10 of the Local Plan relates to developments within other rural areas within the country and Green Belt outside of the Development Boundaries of the towns and villages and the open countryside surrounding the smaller villages. This policy outlines that *'these areas will provide only for development which has an essential need to be located in the countryside, supports rural diversification and sustainability of the rural areas, promotes sustainable tourism or enhances the countryside'* and then lists a number of types of development that are deemed acceptable in principle.

The creation of an access and track within the Open Countryside does not meet any of the developments listed within policy SS10. Therefore, the development needs to demonstrate *'an essential need to be located in the countryside'*.

The Planning Inspector, when determining the appeal, stated:

'15. It seems to me that the access is useful for the operation of the small holding and it would mean that The Dairy and Hulme Farm can be accessed independently. However, there is no substantive evidence to support the

appellant's claim about the viability of The Dairy being at grave risk without the access. This, along with the appellant's other points, leads me to consider that an essential need has not been proven whereby the appeal scheme supports the rural diversification and sustainability of the rural area.'

A Planning Statement has been submitted with the planning application that seeks to provide further information as to why there is an essential need for the access and track to be located in the countryside, namely:

- The existing access serving Hulme Farm and The Dairy is substandard due to inadequate visibility, the siting of an existing gate and the proximity of the parking and turning area associated with Hulme Farm to the access. They consider that the proposed access will improve highway safety.
- The drainage pipe to Hulme Farm's septic tank lies underneath the existing access. The pipe is 30cm beneath the surface with only soil located above. Heavy machinery crossing the access has the ability to damage this pipe.
- Works to improve the visibility at the existing access, to re-site/remove the existing gate, or to upgrade the existing access to prevent damage to the septic tank pipe are all located on land outside the applicant's control. Therefore such works cannot be undertaken.
- The use of the new access will remove any impact on the amenity of Hulme Farm by removing the need for vehicles to pass within close proximity of the neighbouring property's principal windows and garden. They state that vehicles could come and go from the application site at all times of the day and night, should issues arise regarding their animals that may require assistance from a vet.

The Highway Engineer has confirmed that the existing access at Hulme Farm is substandard and whilst it could be made up to standard, the landowner has made representations that they will not undertake these works and will not allow the applicant to undertake these works. In light of this, the Highway Engineer has stated that the new access is an improvement in safety terms over the existing access (due to the gate setback and good visibility) and he notes that it will reduce the intensification of the use of the substandard access to Hulme Farm.

It is agreed that the applicant cannot improve the surface of the existing access as it is outside his ownership and that ceasing to use the existing access will improve the amenity of the occupants of Hulme Farm.

It is for these reasons that it is considered that the applicant has provided sufficient evidence to overcome the previous reason of refusal. The development is therefore considered to have an essential need to be located in the countryside and therefore it is considered that it complies with policy SS10 of the Local Plan (2020) and the NPPF (2021).

Design

Policy DC1 refers to design and seeks to secure development of a high quality which is designed to add value to the area and to respect the site and its surroundings. New development should promote a positive sense of place and identity through its scale, density, layout, siting, landscaping, character and appearance.

Paragraph 130 of the NPPF (2021) requires the design of a development to add to the overall quality of an area, by being sympathetic to local character and by being visually attractive as a result of good architecture.

Policy DC3 of the Local Plan (2020) refers to landscape and settlement setting and seeks to protect and, where possible enhance, local landscape and the setting of settlements. It states that development that leads to a prominent intrusion into the countryside should be resisted. Supporting developments that conserve or enhance the biodiversity qualities of any natural or man-made features within the landscape, such as trees, woodlands, hedgerows, walls, watercourses or ponds.

The access is sited approximately 94 metres south of the existing access that serves Hulme Farm and The Dairy. A wooden 5-bar gate is set back from the highway edge, which opens inwards into the site. A track then extends approximately 47 metres in a westerly direction before turning 90-degrees north and extending for approximately 85 metres around the adjacent field belonging to Hulme Farm. The access and track is separated from the adjoining farmland by a post and wire fence. The track has been constructed by laying MOT type 1 and allowing the grass to grow to either side and along the middle. This has created a two-track access for the majority of its length. To form the access, part of the roadside hedgerow and other vegetation has been removed and the existing drainage channel has been constructed over, creating a bell mouth. The Highway Engineer has requested as part of their consultation response that the first 5 metres of the access drive measured from the back of the public highway has to be surfaced and maintained in a bound and porous material.

The application site is located in a rural part of the District that comprises largely agricultural fields with dispersed farms and some quarrying. The site is located within the 'Dissected Sandstone Cloughs and Valleys' landscape character type, as identified in the Staffordshire Moorlands Landscape and Settlement Character Assessment (LSCA). Page 33 of the LSCA states:

- *'Planning for Landscape Change SPG to Staffordshire and Stoke on Trent Structure Plan, identifies this landscape character type as locally very sensitive to the impacts of development and landscape change.'*
- *'Hedgebanks which are a significant local feature should be protected and maintained'.*
- *'Care should be taken to not introduce unnecessary urban features into the rural scene (e.g. signage, urban road kerbs).'*

When considering the impact of the development on the rural character of the area, the Planning Inspector made the following comments:

‘16. The track itself is discreetly aligned next to an established hedgerow which means that it can be seen from certain angles on the road, though it is not highly visible. The track is narrow and lined by grass either side and down the middle. Its appearance is therefore typical of an access in a rural area. As I set out earlier, the provision of landscaping would assist with assimilating the access into the rural landscape so that it respects its character. The initial 5 metres of the track would be, based on the Highway Authority’s comments, bound and surfaced with a porous material. This would alter the landscaped edge to the road, but there are existing accesses in the area leading off the road that are surfaced. Hence, I do not share the Council’s concerns about the scheme’s effect on the landscape. In this regard, the proposal would accord with Local Plan Policies DC1 and DC3.’

In light of the Inspector’s view, no objection is raised regarding the design or impact of the development on the surrounding area. The development is therefore considered to comply with policies DC1 and DC3 of the Local Plan (2020) and the NPPF (2021).

Amenity

Policy DC1 of the Local Plan (2020) and paragraph 130(f) of the NPPF (2021) seek to secure development that protects amenity, including residential amenity, in terms of satisfactory daylight, sunlight, outlook, privacy and soft landscaping.

The nearest dwellinghouse to the application site is Hulme Farm which will benefit from the retention of the access track, as it will result in fewer vehicles passing in close proximity to this property. There are no amenity issues therefore associated with the development.

Highway Safety

Policies DC1 and T1 seek to achieve a level of parking and an access that is appropriate to the development it serves.

Paragraph 110 of the NPPF (2021) states that *‘in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that: b) safe and suitable access to the site can be achieved for all users;’*

Paragraph 111 of the NPPF (2021) states that *‘development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe’.*

The Highway Engineer has assessed the application and makes the following comments:

'Application states that this uses an established access. Reference to google streetview shows no access as at August 2016. Application form also states that there will be a new access onto the highway.'

Access appears to be new and needs to be formalised by S184 notice.

Existing gates are set back approx 8.5m rear of carriageway edge. Original drawing 'Site Plan' dated 16/08/2021 showed gates at approx 4.6m.

Revised drawing received 27/09/2021 clarifying that the gates are to be relocated to 5.5m rear of the carriageway edge.

A small diameter pipe has been placed in the existing ditch. This is already filling with silt and has little cover. Piping of the ditch should be designed and constructed to maintain efficiency of drainage. A condition is intended to ensure this.

Visibility at the revised access point is good in both directions. Gates are proposed to be moved closer to the carriageway, but will be set back to accommodate a parked vehicle off the carriageway while the gate is opened/closed.'

The Highway Engineer raises no objection to the application subject to conditions and an informative, although the wording of the conditions should include a timeframe for the works to be undertaken given that the development is retrospective and already in use. Subject to the imposition of such conditions and informative, it is not considered that the development will have a detrimental effect on highway safety and it will comply with policies DC1 and T1 of the Local Plan (2020) and the NPPF (2021).

Trees/Hedgerows/Biodiversity

Policy NE1 of the Local Plan (2020) seeks to conserve and enhance the biodiversity and geological resources of the District by ensuring development includes measures for the protection and enhancement of site biodiversity, including biodiversity enhancement measures.

Policy NE2 of the Local Plan (2020) seeks to protect existing trees, woodlands and hedgerows from loss or deterioration. This will be achieved by requiring them to be retained and integrated within a proposed development unless the need for and benefits of the development clearly outweigh their loss. It goes on to state that the Council will refer to its adopted Tree Strategy in the consideration of proposals and will seek to retain as many trees and as much hedgerow on site as possible.

Policy 2.2.6 of the Council's adopted Tree Strategy states that *'the Council will not normally grant planning permission for development proposals which directly or indirectly threaten trees of significant amenity unless there is overriding justification to do so'*.

The development has resulted in the removal of a section of existing field boundary hedge and the laying of MOT type 1 surfacing to what was an otherwise agricultural, undeveloped field. The development is located in close proximity to 2no. mature field trees, with excavation taking place immediately adjacent to one of these trees.

Net Gain in Biodiversity

The Planning Inspector, in determining the appeal, stated:

'The appellant says that trees, plants and wildflower seeds have been planted along the length of the track next to existing fences and borders. Given this and the requirements of Policies NE1 and NE2 of the Staffordshire Moorlands Local Plan (Local Plan), I wrote to the main parties to ask whether a landscape scheme could potentially overcome the Council's concerns. In reply, the Council agreed that a suitably worded condition could mitigate the adverse impact of losing a section of hedgerow. This has led the Council to withdraw this reason for refusal.'

The Planning Statement submitted with the planning application states:

'5.27 The applicant has recently carried out new planting along the eastern site boundary (Hawthorn Hedgerow) of the access track, along with the planting of 5no. Silver Birch trees on the boundary with the existing fields. Once established will serve to further mitigate the impact of the development and assimilate it into the landscape. The retention and maintenance of that planting can be secured via an appropriately worded planning condition.'

In light of the Inspector's previous comments, it is considered that the planting that has occurred has resulted in a net gain in biodiversity and therefore the development complies with policy NE1 of the Local Plan (2020). As suggested by the Planning Agent, an appropriately worded condition should be attached requiring the retention and maintenance of this hedge and trees.

Trees

The Planning Inspector, in determining the appeal, stated:

'8. The Elm and the Ash trees next to the southern leg of the access are mature. Given the extent of their crown's, it is highly likely that their roots extend beneath the access. The appellant has not provided any substantive evidence that establishes whether or not the proposal has affected or is affecting these trees. However, due to the alignment of the access, and its use by vehicles, including the appellant's agricultural machinery, compaction to the roots of both trees is a likely. This can reduce the space within the soil and affect soil structure, and thus root development and the growth of the trees.'

9. While Local Plan Policy NE 1 talks about appropriately mitigating unavoidable adverse impacts, there is no evidence to suggest that the access could not be formed without affecting the trees. This leads me to conclude, in

respect of this issue, that there is not sufficient information before me to demonstrate that the proposal is not and will not have an adverse effect on existing trees.'

This planning application has been accompanied by an Arboricultural Report. The Council's Tree Officer has assessed the application and makes the following comments:

'The arboricultural report recommends that a cellular confinement load support system be laid over the existing track where this is within the Root Protection Areas of existing trees – namely an Elm T1 and an Ash T2.

Whilst this is appropriate in theory, as it would be installed as a "no-dig" measure and would subsequently spread vehicle loads and reduce/avoid harmful soil compaction in the root zone, I consider that it would in fact raise some practical difficulties if installed retrospectively to the now-existing track.

As it is a raised- surface structure some 105-175mm above existing ground, it would be more difficult to tie in to existing track levels, and this would especially be a problem where such special measures would be required within the RPA of the Elm T1 which runs right up to the edge of the highway carriageway – this would result in a 150-175mm step down to existing carriageway level off the end of the raised drive, clearly inappropriate and unacceptable. In addition, the cellular confinement sections added to the existing drive could be detrimental to the present low-key appearance which is in keeping with the rural character of the site/surroundings. And even given additional temporary tree protection measures during installation, there could be adverse impact on tree roots during the additional construction period.

Other factors to take into account are that the arboricultural report notes that the Elm T1 has decay to its base and fungal brackets to the stem; in addition it may be showing initial signs of Dutch Elm Disease. This tree may therefore have limited future lifespan anyway, irrespective of development. Meanwhile the Ash T2 is, unfortunately, quite likely to become infected with Ash Dieback and may also have a limited retention period. Both trees will also have well established root systems beyond the track which will not have been, and will not be, affected by any potential compaction.

On balance, I consider that it may do more harm than good to require retrospective use of no-dig cellular confinement specification which would anyway be impractical, and given the potential limitations of tree condition/lifespan this could prove to be wasted effort; by the same token these trees should perhaps not be held as overriding constraints to the development, albeit retrospective. Therefore, I have no objection to the application and would suggest that notwithstanding the applicant's arboricultural report the suggested retrospective construction specification within Root Protection areas need not be required in this instance.

There has been some recent planting of new Hawthorn hedging and 5 Birch trees; it would be appropriate to impose a condition, if retrospective planning

permission is now granted, to require these plants to be retained and properly maintained.'

Subject to the imposition of the condition recommended by the Tree Officer, the proposed development is considered to comply with policy NE2 of the Local Plan (2020) and the NPPF (2021).

CONCLUSION / PLANNING BALANCE

For the reasons outlined above, the additional information provided to support the application is considered to have overcome the concerns of the previously refused scheme. As such, the development is considered to accord with the relevant policies contained in the Staffordshire Moorlands Local Plan (2020) and the NPPF (2021) and the application is recommended for approval.

OFFICER RECOMMENDATION: APPROVE subject to Conditions

Case Officer: Ailsa Berry

Recommendation Date: 04/11/2021

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council