

DATE INSPECTED: 12 MAY 2009

TELEPHONE CLLRS: ~~YES~~ NO

DATE:

Ribble Valley Borough Council

DELEGATED ITEM FILE REPORT - REFUSAL

Ref: SW/JS

Application No:	3/2009/0348/P
Development Proposed:	Application for Certificate of Lawfulness for existing use, this being engineering works resulting in the creation of a length of access track at Lambing Clough Barn, Lambing Clough Lane, Hurst Green

CONSULTATIONS: Parish/Town Council

Parish Council – Not consulted.

CONSULTATIONS: Highway/Water Authority/Other Bodies

N/A

CONSULTATIONS: Additional Representations

No representations have been received.

RELEVANT POLICIES:

N/A

POLICY REASONS FOR REFUSAL:

COMMENTS/ENVIRONMENTAL/AONB/HUMAN RIGHTS ISSUES/RECOMMENDATION:

This is a Certificate of Lawfulness application that seeks to prove that a length of access track has been in existence for in excess of four years and is therefore immune from enforcement action as it is now classed as lawful development. The site in question is set to the south of Hurst Green in open countryside. The works in question are the formation of a 4m wide track to cut the corner off an existing access track (Lambing Clough Lane) that runs from the village of Hurst Green in a similar direction to the applicant's address at Lambing Clough Barn and Trough House Barn some distance away to the south. The track as it exists on site is approximately 110m long and takes movement away from both the applicant's property and Lambing Clough to its immediate north. It is formed by hard core gravel surface.

In order to establish that the track has been in place for in excess of 4 years three statutory declarations have been submitted from the applicant, his brother and a person who resides at Lambing Clough Farm – the property immediately adjacent to Lambing Clough Barn. The declarations from Mr John Wilkinson and Mr Richard Wilkinson state that:

- the works to form the access track commenced on 29 June 2004 and took approximately 2 months to complete; and
- the stone for the new access track was generated by the conversion of Lambing Clough Barn

The track was created in order to facilitate the easy movement of large vehicles going to and from Trough House Farm which was previously difficult according to Mr Richard Wilkinson's

declaration and he states the works were finished by early September 2004.

In determining an application such as this, the burden of proof lies with the applicant and they must satisfy the Local Planning Authority that, on the balance of probabilities, the engineering works resulting in the creation of a length of access track at this site has existed for in excess of four years

There are a number of factors which in this case, have led me to question the evidence submitted by the applicant as follows:

Site Visit

A site visit was undertaken on 12 May 2009 with a number of photographs of the track taken and placed on file for future record. The statutory declarations submitted state that the track was formed from stone generated by the conversion of Lambing Clough Barn. No photographic evidence of the condition of the track at that time has been submitted by the applicant. It was evident, when I undertook the site visit, that the surfacing material was a hard core gravel and of a type more akin to the material used on the original route of the access track than I would have expected if the material used to make the track had been taken out of barn when it was converted –(in that case I would have anticipated material of a lighter colour). I consider this sufficient to question whether the surface material used is, in fact, that which is claimed to have been used over 4 years ago

Aerial Photograph

An aerial photograph from a flyover on 2 November 2006 shows the line of the original track. There does appear to be some discolouration on the aerial photograph along the line that the applicants claim the new section of track was formed in 2004 but there is no clearly defined track, such as exists at present. On this basis I do not believe that, on the 'balance of probabilities' the track was substantially completed more than 4 years ago.

Local Knowledge

In dealing with the application a local farmer has contacted the Council both by telephone and in writing to express concerns over the development as applied for. The farmer called to say that the track had not been in existence for 4 years and that it had been laid directly over a water main with no membrane between the gravel and grass beneath. Whilst the latter points have no bearing on the determination of this application, his statement that the track has not been down for in excess of 4 years, again led me to question the evidence submitted

I have also been told that a local group of mountain bikers use the lane and whilst they have no photographic evidence from the last time they rode it, in September 2008, they cannot recall a track of the nature evident on site on 12 May 2009 (my site visit date) being in existence at that time.

Therefore having regard to all the above, I am of the opinion that even if the stone track was laid as claimed in 2004 there have been extensive/substantial works carried out to it since that time as is evident from the aerial photograph. These would have required planning permission which due to the time period elapsed since 2006, ie time of aerial photograph, are not considered lawful. On the basis of this, I consider that the certificate as applied for cannot be granted.

RECOMMENDATION: That the Certificate of Lawfulness be refused as, on the balance of probabilities of the evidence provided, the Local Planning Authority is not satisfied that the works applied for have been in existence in excess of 4 years