



Appeal Decisions

Site visit made on 31 May 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 08 June 2022

Appeal A Ref: APP/A1910/C/21/3282333

Land at Church Road, Little Gaddesden, Berkhamsted, Hertfordshire, HP4 1NZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MR MOHAMED MOHSEN HAMDY AHMED against an enforcement notice issued by Dacorum Borough Council.
- The notice was issued on 12 August 2021.
- The breach of planning control as alleged in the notice is without planning permission, the creation of a new vehicular access and the installation of wooden gates, construction of 3 timber buildings and installation of post and wire fencing.
- The requirements of the notice are: Step 1: permanently remove the 5 bar timber gates and the timber posts immediately adjacent on either side of the gates, shown in the approximate position with a blue 'X' on the attached plan, from the land, and ensure that any holes/foundations within the land arising from the removal of the gates and posts are returned to their condition and natural level before the breach of planning control took place. Step 2: Reinstate the boundary treatment which existed prior to the breach of planning control taking place, (for the avoidance of doubt, this is a post and wire fence) within the gap created by the removal of the 5 bar timber gates and the adjacent timber posts. Step 3: Permanently remove from the land, the three buildings and all materials arising from their removal, located in the approximate area marked with blue rectangles numbered 1 to 3 on the attached plan. Step 4: Permanently remove from the land, the timber posts and wire fencing in the approximate location marked with a purple line on the attached plan.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- A similar appeal B (3282334) has been made by Mr Ibrar Shahid.

Appeal C Ref: APP/A1910/C/21/3283466

Land at Church Road, Little Gaddesden, Berkhamsted, Hertfordshire, HP4 1NZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MR MOHAMED MOHSEN HAMDY AHMED against an enforcement notice issued by Dacorum Borough Council.
- The notice was issued on 25 August 2021.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a timber outbuilding.
- The requirements of the notice are: permanently remove (demolish) the outbuilding, marked in the approximate position with a black hatched rectangle on the attached plan, and ensure materials used in its construction are permanently removed from the site.
- The period for compliance with the requirement is: 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not

been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

- A similar appeal D (3283467) has been made by Mr Ibrar Shahid.
-

Decisions

Appeals A and B

1. The appeals are 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.

Appeals C and D

2. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Two separate notices have been issued which has led to two separate appeals both with associated joint appeals. As they all relate to the same area of land and have the same issues I shall deal with them all together.
4. The Church at Little Gaddesden stands isolated from the built up area of the village along Church Road. The land to the south is open fields. It seems a portion of these fields have been parcelled up into small sections and sold off. The appellants have purchased one or more of these sections more or less opposite the last dwelling on the northern side of Church Road. They have created an access off Church Road into the new plot and placed stakes to define the eastern boundary of the plot and alongside a Right of Way, the Chiltern Way, which runs diagonally across the top corner of the site. There are also a number of sheds and other structures on the southern boundary of the field where there is a line of trees.
5. According to the Council they visited the site when alerted to the construction of the access, fencing and sheds by local residents. The Council wrote to one of the appellants warning them to stop what they were doing and that an enforcement notice would follow. This is the notice subject to appeals A and B. Part of that email noted that an existing shed on the land could be refurbished but the new sheds should go. Further complaints from residents revealed the existing shed had been demolished and replaced by a new shed, although exactly what happened is disputed. This led to a second enforcement notice directed solely at the shed, which is in the adjacent field behind the one next to the road and is subject to appeals C and D. The enforcement notice site for these appeals includes all of the site for appeals A and B and another adjacent area of land of about the same size.
6. Further activity on the site included the construction of an aviary style building and the Council concluded the appellants would not cease work, despite the issue of the notices, and so sought an injunction. This was granted and runs to 31 May this year.

The Appeals on grounds (b), (c) and (d)

7. Ground (b) is that the matters alleged have not happened. There is no dispute the access has been created and a pair of wooden gates installed. It is alleged

the fence was erected alongside the Chiltern Way as well as down the eastern boundary of the plot of land as far as the tree line. Photographs show the wooden fence posts in place joined by a single strand of wire. The appellant apparently confirmed he intended to make the fences chicken proof with more wire. On site I saw the posts in position but no wire. Nevertheless, it is clear from the photographs that both fences were constructed sufficiently to comprise a means of enclosure, even if they were not completed.

8. On the land now there are various sheds and animal enclosures. The appellant argues that he has just improved an existing shed and does not want any new sheds. Though at one point he admits to adding a small metal shed for storing animal feed and thinks that as this can't be seen it should be granted planning permission under ground (a). Photographs provided by the appellant and the Council show two large 'garden shed' style buildings under the line of trees at the back of the Appeals A and B site, next to a gate into the field beyond. Beside them is a tall thin shed, all are painted blue. These are the three sheds subject to the enforcement notice.
9. It is unclear to me where the existing, dilapidated shed was supposed to be, but further photographs show a brand new shed behind the tree line in roughly the position shown on the plan attached to the notice subject to appeals C and D. The photographs show a pile of materials which are labelled "materials from previous building demolition". As I saw on site this shed is large, and even if it does incorporate part of the existing shed, that shed no longer exists and has effectively been replaced by a new, larger, structure. It cannot be argued this is merely repair and maintenance.
10. It is clear for appeals A and B the new vehicular access and gateway, the 3 timber buildings and the fence have all been erected or created, while for appeals C and D the timber building is new and not just the refurbishment of an existing shed. The ground (b) appeals must therefore fail.
11. In November 2019, in order to protect the open quality of the land to the south of Church Road, the Council issued an Article 4 direction which removed permitted development rights to, amongst other things, construct or erect fences or a means of access to a highway. There is no suggestion the access and fences were constructed before the article 4 direction came into force. The fences, gates and access therefore require planning permission. The various sheds are clearly buildings that fall within the definition of development and so also require planning permission. As the site is less than 5ha there are no permitted development rights for new agricultural buildings and so they too require planning permission. The ground (c) appeals also fail.
12. There is no suggestion that any of the development has been in place for more than 4 years prior to the issuing of the enforcement notices. The appeal on ground (d) fails.

The Appeal on ground (a)

13. The ground (a) appeal is only for the access, gates, fence and sheds referred to in Appeals A and B and not for the new shed the subject of Appeals C and D.

14. The site lies within the Chilterns AONB and within the Little Gaddesden conservation area¹. Various policies from the Core Strategy have been provided but the most directly relevant are CS24 which seeks to protect the special qualities of the AONB, CS25 which requires development to preserve the natural historic landscape and CS27 which requires development to positively conserve and enhance the character and appearance of the conservation area and to conserve the integrity, setting and distinctiveness of heritage assets.
15. Several third parties have helpfully quoted from a recent appeal decision² concerning Plot 17, which I assume is a nearby plot in the same parcel of land. That appeal was for an access, gates and new fencing separating the parcel of land from its neighbours and was refused. The Inspector describes the wider area in detail and rather than re-write it I shall quote it in full *"the landscape of this part of the AONB is generally wide and open, characterised by parcels of woodland and typically large fields with some scattered individual buildings and villages providing for an attractive rural scenic and landscape quality. Much of the village of Little Gaddesden is designated as a CA [Conservation Area]. The significance of the CA derives in part from the attractive openness and distinctive rural character resulting from the loose overall arrangement of the buildings of mostly traditional appearance, as well as the close relationship of this village with its surrounding rural context. The position of the parish Church of St Peter and St Paul [listed grade I] somewhat isolated from buildings within the village by intervening fields and paddocks similarly means that it is perceived as part of the rural landscape, and I consider that the open character of its surroundings forms an important part of the setting of this listed building which contributes to its significance"*.
16. I would add that the isolation of the Church would appear to be as a result of rural depopulation in mediaeval times, probably as a result of the Black Death and the separation of village and Church adds to the historic significance of the Church and the surrounding conservation area. From photographs provided and the description in the conservation area appraisal it would seem the open greensward in front of the Church was not only beautiful in its own right but clearly an important part of the setting of the listed Church and the conservation area. I would say therefore that dividing the land into plots, with the associated accesses and fences required to separate them from each other would be irreparably damaging to the character and appearance of the conservation area and the setting of the Church, as well as seriously harming this part of the AONB.
17. I note the impact on the setting of the listed Church has not been raised by the Council so I shall not specifically consider the s66(1)³ duty to have special regard to the desirability of preserving the setting of a listed building. However, the setting of the Church more generally within the conservation area and the village and the quality of the landscape in this part of the AONB are important considerations.

¹ The notice describes it as "the rural area, part of the land (to the NW boundary) sits within the conservation area". I'm not sure exactly what this means as the whole site is rural and all of it appears, from the conservation area map, to sit within the conservation area.

² APP/A1910/W/20/3264515, issued 29 March 2021

³ Planning (Listed Buildings and Conservation Areas) Act 1990

18. The appeals before me are for only a small part of the land that has been sold off. Nevertheless, although I need to consider this appeal on its own specific merits, it is difficult to reach a conclusion that is different from the previous Inspector. The long straight line of fencing along the southern side of Church Road has been interrupted by the insertion of the access and gates, and the latter is much more prominent than the original fence. The Council note the access is dangerous as it sits directly opposite the access to the Chiltern Way, heavily used by walkers, and that vehicles have difficulty negotiating the entrance. This is supported by numerous third party testimony. The appellant offers to set the gates further inside the field and while this may solve any highway safety issue it would simply make the access more prominent and intrusive.
19. The fences separating the northern side of the plot from its neighbour are equally intrusive and out of place, completely undermining the essential openness of the character of the landscape on this side of the road. The insertion of the access also allows a much more intensive use of the land as shown by the track that has been worn across the pasture. While the lawful use of the land is agricultural the combined effect of the Article 4 designation, the conservation area and the AONB are to severely limit the way the land can be used in order to protect the very specific and locally unique setting of the Church and the conservation area. It follows that the introduction of just one access or one fence is harmful and should be resisted.
20. The three sheds sit at the back of the field and, although they have now been painted brown, they still stand out as intrusive and harmful. I note there was previously a dilapidated shed in a similar position but the lawfulness of that is uncertain. In 2020 the appellant received pre-application advice for a dwelling on the site. The planning history of the site includes various items that do not seem to relate to the land at all, including the demolition of a stables and storage building and a new stable block, storage buildings (in the plural), feed store, tack room and implement store. There is no sign of these buildings anywhere on the appeal site or nearby although they apparently date to 2011. There is also mention of single and two-storey extensions and a detached double garage in 2004 and a further side extension and 'alterations to main roof' in 2017. This implies a dwelling is on the site, but there is none present, which suggest to me the planning history cannot be relied upon. Nevertheless, the introduction of the three sheds, although they are relatively small, is clearly harmful to the open, rural feel to the land, which is characterised by lightly used pasture and an absence of buildings or structures.
21. The visual impact of the use introduced by the appellant serves to underline the harm that splitting the wider landscape into smaller parcels is likely to create. The introduction of small buildings, animal shelters, parked vehicles, and general detritus and paraphernalia associated with a small holding is entirely typical of this sort of development, and it is this fragmentation the various protections provided by the Council are intended to prevent. In my view, whether seen collectively or taken individually, each element of the matters alleged is seriously harmful to the conservation area and the AONB and contrary to the Council's policies. The appeal on ground (a) fails.

Other Matters

22. Various other structures and enclosures have been added to the land along the tree line but these are not subject to the enforcement notices and so are not before me. A number of local residents suggested that people may be living on the site in a caravan. The appellant himself admits people are living on the site to look after the animals and says that it would be better to allow a nice bungalow than a scruffy encampment that is there now. I did see a caravan and next to it a large blue panelled lorry but did not investigate them as the question of a residential use was not before me.

Simon Hand

INSPECTOR