6. APPEALS UPDATE

APPEALS LODGED

Appeals received by Dacorum Borough Council between 01-05-2020 and 03/06/2020

Our reference: 19/02620/FHA

PINS Reference: APP/A1910/D/20/3248290
Hawkridge Lady Meadow
KINGS LANGLEY
WD4 9NF
Procedure: Written Representations

Our reference: 19/00528/UL

PINS Reference: APP/A1910/W/20/3245645
Land adjacent to 26 Station Road
BERKHAMSTED
HP4 2EY
Procedure: Written Representations

Our reference: 4/02286/18/MFA

PINS Reference: APP/A1910/W/19/3242910
Plots 2 and 3 Kier Park
Maylands Avenue
Hemel Hempstead
HP2 4 SQ
Procedure: Written Representations

APPEALS DISMISSED

Our reference: 4/01915/19/FUL

PINS Reference: APP/A1910/W/19/3240367

The Old Stables, Croft Lane

CHIPPERFIELD

WD4 9DXL

Procedure: Written Representations

Proposal: Three-bedroom detached family dwelling with carport/garage. Alterations to landscape including new orchard/copse, wildflower meadow and wildlife pond.

Summary

The appeal site (in Chipperfield) measures 0.88 hectares and was formerly used as a paddock to the adjacent stables. There are surrounding houses, however they are at some distance, with gaps of around 150m between nearest buildings. The proposal was for the construction of a detached dwelling under the 'limited infilling in villages' exception. Site lies adjacent to village boundary so Inspector considered it can be classed as within the village. However, the Inspector found that the position of the site, the current use of the land and the relationship with other buildings mean the site cannot be considered as a gap along a clearly identified built up frontage. Neither could it be considered to be a site within a group of buildings as it would be physically separate by some distance to other buildings to the north and east.

The appellant argued that the site has been used as residential curtilage for some years, however did not provide sufficient evidence to verify this so the Inspector does not consider that the land has any authorised residential or other alternative use.

In terms of openness, the Inspector found that the proposal would have a harmful effect on openness by virtue of the additional built form and the potential for ancillary structures and domestication of a large area.

The Inspector also touches on the visual vs. spatial argument, to say that there is no definition of 'openness' in the Framework, but it is commonly taken to mean the absence of built or otherwise urbanising development rather than being primarily about visual effects.

Our reference: 4/01012/19/OTD & 4/00955/19/OTD & 4/00955/19/OTD

PINS Reference: APP/A1910/W/19/3235231 & APP/A1910/W/19/3235655 & APP/A1910/W/19/3236531

18, 20 & 22 Bridge Street

Hemel Hempstead

HP1 1EF

Procedure: Written Representations

Proposal: Change of use of A1 to A3 restaurant

There are three appeals on the site. Although dealt with in one appeal decision, each proposal has been considered separately.

Schedule 2, Part 3, Class C of the GPDO permits, amongst other things, development consisting of a change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order to a use falling within Class A3 (restaurants and cafés). This is a qualified right in that exceptions apply whereby development is not permitted by Class C if the cumulative floorspace of the existing building changing use under Class C exceeds 150 square metres. Furthermore, if the development together with any previous development under Class C would result in more than 150 square metres of floor space in the building having changed use under Class C

then similarly it is not permitted development. Other conditions also apply however these are only applicable if the development is able to comply with the floorspace requirements.

The Council set out that this property is a single unit which was formerly in retail use for 'Dreams Beds' having operated on this site as a single shop for over 10 years prior to the submission of the applications. Reference is also made to the subdivision of Nos 14 and 16 having been previously subdivided by the same process.

Historically an application1 for a prior approval for the whole unit (360 m2 floor area) was refused. The floorspace conversions for the proposed changes of use in these prior approval appeals are given as: No.18, 100 m2; No.20, 120 m2; No.22, 75 m2. The overall total being 295 m2 of floorspace.

At the time of my visit the shop unit was empty however the unit remained as a single space.

Main Issue

Having regard to the above matters the main issue is whether the proposals constitute permitted development under Schedule 2, Part 3, Class C of the Town & Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended.

Reasons

The Council's reason for refusal indicates that the appeal proposal would not constitute permitted development by virtue of Schedule 2, Part 3, Class C of the GPDO as the cumulative floorspace total of the existing building changing use under class C exceeds 150 m2 and so fails the test required in that schedule.

This is not a matter of planning judgement but an empirical measurement relating to whether the building does or does not qualify with the requirements of the order. As the floorspace cumulatively exceeds 150 square metres it follows that the property, as submitted for the subdivided uses, cannot benefit from permitted development rights under Schedule 2, Part 3, Class C of the GPDO. Full planning permission is therefore required.

The Appellant argues that the three properties are separate addresses and permitted development rights should be applied to each. However, from what I have seen and read and from the evidence provided by the Council I am satisfied that this building is a single retail unit and its last authorised use was for that purpose. The fact that the property may historically have been separate addresses is not material to my determination of these appeals.

I note that the appellant makes reference to permissions at Nos 14 and 16 Bridge Street having already been converted to A3 café/restaurant use with no mention of the floorspace issue. I saw on my site visit that No.16 is an empty unit and that No.14 was shuttered and not currently operating. I also concur with the Council's comment that should any error have occurred during the consideration of the

separation of units 14 and 16 by the Council it does not have any bearing on the appeals before me.

The matter of the Councils' handling of applications for Nos 14 and 16 are matters for the Council, though the reference to them is relevant as prior conversions of part of the same building would mean that the cumulative floorspace test would also fail.

Conclusion

In the light of the above circumstances permitted development rights conferred by Schedule 2, Part 3, Class C of the GPDO cannot apply to any of the three appeal cases and the consequence of this is that planning permission would be required. Accordingly, all three appeals fail.

Enforcement Notice Appeals

Enforcement Notice Varied and upheld

PINS Reference: APP/A1910/C/19/3224848

Puddephats Lane

MARKYATE

AL3 UL

8AU

Procedure: Written Representations

The appeal is made against an enforcement notice issued by Dacorum Borough Council.

The enforcement notice was issued on 15 February 2019.

The breaches of planning control as alleged in the notice are (all without planning permission):

The material change of use of the land outlined red on the attached plan from a woodland to a mixed use of a woodland and parking of vehicles and storage of items not required for use in forestry management (including a mobile home). The creation of a vehicular access from Puddephats Lane and installation of a seven-bar metal gate immediately adjacent to the highway.

The requirements of the notice are:

Step 1: cease the use of the land for storage of items not required in connection with the lawful use of the land (for the avoidance of doubt, this includes, but is not limited to, the mobile home and vehicles).

Step 2: Remove from the land all items not required for the lawful use of the land (for the avoidance of doubt, this includes, but is not limited to, the mobile home and vehicles).

Step 3: permanently remove the seven-bar metal gate and the timber posts immediately adjacent on either side of this gate, shown on the approximate position

with a blue line on the attached plan, from the land, and ensuring that any holes/ foundations within the land arising from the removal of the gate and posts are returned to their condition and natural level before the breach of planning control took place.

Step 4: reinstate a boundary treatment of a height no greater than one metre within the gap created by the removal of the seven-bar metal gate and the adjacent timber posts.

The period for compliance with the requirements is three months.

The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.

Decision

The enforcement notice is varied by:

Deleting steps 1 and 2 in section 5 of the notice and substituting with:

> Step 1: Cease the use of the land for storage of items (including, but not limited to the mobile home) and parking of vehicles.
>
> Step 2: Remove from the land all stored items (including, but not limited to the mobile home) and parked vehicles.

Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

The Council's evidence suggests that rather than carrying out forestry activities on the land, it has been turned into a leisure plot. However, that assertion is at odds with the way that the Council drafted the enforcement notice, which is to allege a change of use to a mixed use with a woodland element. The appellant says that the site is being used for forestry purposes as well as for parking and storage.

I shall therefore assume that the allegation in the notice is correct. If the Council wishes to pursue other alleged breaches of planning control, including a leisure use, a new enforcement notice would be required.

In the same vein, I should also clarify that the drafting of the enforcement notice does not allege that the mobile home amounts to some fourth element of a mixed use. Rather, the alleged storage use includes the storage of a mobile home. Consequently, if the mobile home is positioned on the land for any other purpose, the Council would need to issue another notice in order to enforce against whatever use that might be.

Nevertheless, the enforcement notice is defective in one sense; the alleged mixed use is described as including the parking of vehicles, but that use is not required to cease. The notice does require the alleged storage use to cease and references vehicles in that context, but parking is a different use and is included as such in the allegation. This is a serious error because, if the notice requires only part of the breach is remedied and those requirements are subsequently complied with, then

planning permission will be deemed to be granted for the remainder of the matters contained in the allegation1 .

However, I have the power to correct any errors in an enforcement notice if this would cause no injustice to the appellant or the Council. Since the appellant is clearly aware that the Council wishes to enforce against the parking element of the mixed use, and indeed the notice requires the removal of vehicles, I am satisfied that the notice can be corrected to require that use to cease without causing injustice.

Just as the enforcement notice did not require the alleged parking use to cease, it does not require the alleged access to be removed. However, it would make the notice considerably more onerous, and thus cause injustice, if I was to add a requirement to remove the access. In any case, it may be that the requirement to close the boundary would suffice to prevent use of the access. The Appeal on Ground (c)

In essence, the appellant's case under ground (c) is that there has been no breach of planning control since the use – as it relates to the mobile home – benefits from permitted development rights.

In support of the appeal, the appellant has produced Annex E relating to permitted development rights for agriculture and forestry, taken from Planning Policy Guidance 7 (PPG7), which refers to the Town and Country Planning (General Permitted Development) Order 1995 (the 1995 Order).

PPG7 has been cancelled and the 1995 Order has been revoked and replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order). For the purposes of a ground (c) appeal, the relevant Order is the one in force when the development took place. I shall look at that date in relation to ground (d) but do not need to at this stage because the permitted development rights for forestry are essentially the same in both the 1995 and 2015 Orders.

In the 2015 Order, Article 3 and Schedule 2, Part 6, Class E grant planning permission (subject to conditions) for 'the carrying out on land used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes consisting of— (a) works for the erection, extension or alteration of a building; (b) the formation, alteration or maintenance of private ways…'

The appellant describes the alleged mobile home as a 'mobile building' and he says that it was put on the site for the purpose of a forestry workers rest room and tools storage facility. He has provided, however, no evidence that the structure is a building – when photographs indicate that it is a caravan. Since caravans are moveable by definition, their placement on land is normally taken as facilitating a change of use, and not the 'erection of a building' which might be permitted by Part 6, Class E.

Moreover, the appellant has not shown that a rest room or tools storage facility are reasonably necessary for forestry. Nor has he demonstrated that the storage of a mobile home is reasonably necessary for that purpose. Indeed, there is no evidence

that any tree works have taken place on the site beyond those which took place to make space for the alleged storage and parking uses, plus the creation of the access.

I accept that the appellant would not have needed to consult or seek prior approval from the Council in order to exercise permitted development rights set out under Part 6, Class E. However, that is not enough for me to find that the caravan or indeed the alleged storage use have the benefit of planning permission. On the balance of probabilities, the use is not permitted by Part 6, Class E.

To assist the appellant, I shall consider whether the stationing of the mobile home would be permitted by Part 5 of the GPDO which, taken with the Caravan Sites and Control of Development Act 1960, grants permitted development rights for the stationing of a caravan on forestry land for the seasonal accommodation of persons employed in forestry on the land, or the stationing of a caravan for the accommodation of permission employed in connection with permitted operational development.

However, the enforcement notice does not allege that the mobile home has been lived in by any person; the claim is that the caravan is being stored on the land. The appellant has not shown that the enforcement notice is incorrect in this regard or provided any evidence that the caravan has been used to accommodate forestry or other workers.

Although Part 6 Class E permits the formation of a private way, the alleged access is not permitted development because the appellant has not shown it to be reasonably necessary for the purposes of forestry. Moreover the seven-bar gate is not permitted by Class E because Article 2(1) of the GPDO 2015 makes clear that a ‘gate’ cannot be considered a building for the purposes of Part 6.

The Council has also produced evidence from the Gazetteer of Hertfordshire roads which shows that Puddephats Lane is a classified ‘C’ Road. Consequently, the permitted development rights provided by Schedule 2, Part 2, Class B for a means of access to a highway do not apply. The Council also state that the entrance gate and the timber posts are adjacent to a highway and are in excess of 1m in height. This is not disputed by the appellant. On this basis, the gate and timber posts do not benefit from the permitted development rights provided by Schedule 2, Part 2, Class B.

I therefore conclude that the appellant has not demonstrated that any of the matters alleged in the notice are not in breach of planning control. The appeal on ground (c) fails. The Appeal on Ground D

The appellant’s claim for ground (d) is that the alleged parking and storage uses are immune from enforcement action. In accordance with s171B(3) of the Town and Country Planning Act 1990, the appellant has to show that the alleged change of use occurred by or before 15 February 2009, ten years before the enforcement notice was issued, and that the uses continued for a ten year period.

It is the appellant’s position that car parking and storage on a small part of facility has been ongoing on the land for 25 years or more and that he has seen the area to

be used for these purposes for the past 20 years. However, the appellant has provided no evidence in support of these assertions to demonstrate that any part of the land has been used as such for the relevant ten year period. It is clear from the Council's evidence that several different cars have been parked at the site since 2016 but I have nothing before me which suggests anything approaching ten years.

Moreover, the appellant acknowledges that the mobile home, which is said to be stored on the land "has not been there for that many years." Indeed, in Appeal Decision APP/A1910/C/19/3224848 https://www.gov.uk/planning-inspectorate 5 response to a Planning Contravention Notice (PCN) served by the Council on 15 January 2016, the appellant stated that he first placed the mobile home on the site when he purchased the land – and Land Registry documents provided by the Council confirm that this was 13 August 2015, some three and a half years prior to the enforcement notice being served.

I conclude that appellant has therefore failed to demonstrate that, on the balance of probabilities, the use of the land for parking of vehicles and storage of items has gained immunity from enforcement action through the passage of time. For the avoidance of doubt, the appellant does not claim and has provided no evidence that the alleged creation of a vehicular access and installation of a seven-bar metal gate are immune from enforcement action. It follows that the appeal on ground (d) does not succeed.

Other Matters

The appellant states he that sought advice before he brought the mobile building to the site, and he thought it would be permitted development. He also says that a Council officer said they were satisfied with the use. However, I have no further details of the advice actually given to the appellant and I am not in any event bound by an officer's informal comments. The appellant's claims cannot alter my findings on the evidence for grounds (c) or (d).

The appellant has also expressed concern about Council bias but this is not a matter within my remit.

A local resident has made representations that the caravan is an attempt to establish residence and to build a house. However, I have no evidence to this effect and this is not a matter alleged in the enforcement notice. Moreover, as the appellant has not made any application for planning permission through an appeal on ground (a), I have not considered matters relating to the merits or otherwise of the mobile home.

APPEALS ALLOWED

None

APPEALS WITHDRAWN

None