



Appeal Decisions

Inquiry Held on 10-12 March 2021

Site visit made on 15 March 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 March 2021

Appeal A: APP/Q3115/C/19/3234244

Land at Hill View, Oakley Wood near Nuffield, OX10 6QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Doug Swadling against an enforcement notice issued by South Oxfordshire District Council.
 - The enforcement notice A, was issued on 19 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from use incidental to the use of a single dwellinghouse (namely Hill View) to use as a single dwellinghouse (sitting within its own planning unit).
 - The requirements of the notice are (i) stop using the land as a single dwellinghouse.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
 - An identical appeal (3234245) without the ground (a) has been made in Mrs Swadling's name
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Appeal B: APP/Q3115/C/19/3234241

Land at Hill View, Oakley Wood near Nuffield, OX10 6QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Doug Swadling against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice B, was issued on 19 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the undertaking of building, engineering or other operations to facilitate the creation of a separate planning unit, namely a) the erection of a close boarded fence exceeding 2m in height in the approximate location shown blue on the Plan; b) the creation of a new access including the construction/installation of entrance pillars and gates exceeding 2m in height in the approximate location marked green on the Plan; c) the laying of a hardstanding driveway and car parking area shown hatched orange on the Plan; and d) the installation of a freestanding mail box in the approximate location shown coloured yellow on the Plan.
- The requirements of the notice are (i) insert a pedestrian gate or other means of access in the close boarded fence referred to in 3 above; (ii) demolish (or as the case may be) dismantle the entrance gates and pillars referred to in 3 above; (iii) stop up the new access referred to in 3 above by the erection of a fence across the opening in the boundary to match the height, materials and appearance of adjacent fencing; (iv) dig up the areas of hardstanding referred to in 3 above; (v) take down and remove from the Land the freestanding mail box referred to in 3 above; (vi) remove from the Land waste material resulting from steps (i),(ii), (iii), (iv) and (v) above; (vii) reinstate areas

of the Land disturbed by steps (i),(ii), (iii), (iv) and (v) above by the spreading of topsoil and the sowing of grass seed.

- The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
 - An identical appeal (3234242) without the ground (a) has been made in Mrs Swadling's name.
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Decisions

Appeal A – 3234244 & 3234245

1. It is directed that the enforcement notice be corrected by deleting the allegation and replacing it with "*without planning permission the material change of use of the building shown hatched in black on the plan attached to this decision to use as a single dwellinghouse*" and varied by adding a new requirement "*(ii) remove the freestanding mailbox situated at the entrance gates which provide access to the building subject to this notice*". Subject to these corrections and variations the appeal is dismissed and 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.

Appeal B – 3234241 & 3234242

2. It is directed that the enforcement notice be corrected by deleting allegations (b) and (d) and varied by deleting the requirements in full and replacing them with "*(i) insert a pedestrian gate or other means of access in the close boarded fence referred to in (a) above; (ii) dig up the areas of hardstanding referred to in (c) above and shown in green and hatched in black on the plan attached to this decision; (iii) reinstate the land disturbed by (ii) with soft landscaping*". Subject to these corrections and variations the appeal is dismissed and 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.

Preliminary Matters

3. Prior to and during the Inquiry various issues concerning the content of the two notices were agreed between the parties. Firstly, on notice A the allegation should be corrected to read "the material change of use of the building hatched in black on plan A to a dwellinghouse". Plan A was provided by the Council showing the building hatched in black and this will be substituted for the plan attached to the notice.
4. Some of the matters alleged in notice B had now been overtaken by events. The close boarded fence had been erected as a matter of fact and the appellants have reduced it in height to 2m and provided a gate as required by requirement (i). It was suggested I could grant planning permission for the fence with a condition requiring a gate to be retained. In fact the Council are only seeking to ensure a gate is provided and as this has already been carried it is simplest to leave the allegation and requirement in notice B.

5. The part (b) of the allegation concerns the driveway, pillars and gates. These were recognised as being lawful by the issue of an LDC in July 2020¹. I shall therefore delete allegation (b) and requirements (ii) and (iii). It was agreed the postbox, the subject of allegation (d) was de minimis, and, if necessary, could be required to be removed if notice A was upheld.
6. This left the Inquiry to consider only the use of the building as an independent dwelling (grounds (d) and (a) of notice A) and the retention of the hardstanding (grounds (c) and (f) of notice B).

Background to the Appeals

7. Hillview is a large house that has been substantially remodelled over the years and stands in its own grounds at the end of a private track in Oakley Wood, a small hamlet near Benson. Close to the access into the gardens was a large, mostly wooden building that contained a garage and a gym with a further garage behind it. Behind this, in the top corner of the garden is another building, known in 2014 as the Annex which is now the Cottage. A drive has been extended from the entranceway, behind the garage/gym, part of which was demolished, to the Cottage and a parking area created in front of it by demolishing the second garage. This is the hardstanding referred to notice B.
8. The private track also provides access to a neighbour's house belonging to Mr and Mrs Harley who gave evidence at the Inquiry. Their house is next to Hillview, closer to the main road.

Notice A – the Appeal on Ground (d)

9. This ground is that the matters alleged, in this case the material change of use of the building known as the Cottage to an independent dwelling, are immune from enforcement action through the passage of time. The appellant needs to show that the Cottage has been occupied since the 19 June 2015 as a separate dwelling and not as accommodation ancillary to the occupation of Hillview. This occupation needs to be shown as being continuous, as any significant breaks would start the clock again.
10. Although people have lived in the Cottage on and off for many years, the appellants accept that either the use has not been continuous or the nature of the occupation was ancillary prior to 2013. In 2009 the Council carried out enforcement action against the use of the cottage, which was either being used as an office (Mr Swadling paid non-domestic rates for it and continued to do so up until recently) or as ancillary accommodation. It was set up as a two bedroom dwelling and there is no dispute it would at that time have passed the Gravesham² test as a dwelling.
11. At about the same time, the Swadlings left Hillview and began living in Reading. They rented out Hillview and it would seem the Cottage was generally used as ancillary accommodation. In 2013, following a disruptive tenancy, they moved back to the site, renting out their Reading property. Mr Swadling says they lived in the Cottage and oversaw extensive renovations to Hillview which lasted until 2015. In 2013 Hillview was put up for sale and the Cottage was described as a self-contained cottage with business use.

¹ P20/S1751/LDE 8 July 2020

² Gravesham BC v SSE and O'Brien [1982] 47 P&CR 142

12. In 2015 the works were complete, although the exact date is uncertain, the Swadlings returned to Reading and Burtons rented Hillview. By an extraordinary coincidence, which is not unusual in ground (d) cases, their occupation would seem to have begun on the 20 June 2015, 1 day after the 4 year period begins. This is important because they sublet the Cottage to a person they knew, Georgia Keegan, who moved in either on or close to the same date. When Ms Keegan moved out is also in dispute as is the nature of her occupation, but it is clear that on her own admission she was gone sometime in June 2018 and in mid-August Hannah Swadling moved in. She is the appellants' daughter and by this time works to separate the Cottage from Hillview had taken place, the fence and hardstanding mentioned in notice B had been constructed and there was no doubt the cottage was now being occupied independently. The Council accept that from mid-August 2018 onwards the cottage has been occupied as an independent dwelling.
13. The key matters in dispute are therefore the nature of the Swadlings' occupation of the cottage and when they left; when did Ms Keegan move in; did she occupy the Cottage as an independent dwelling; did she stay for the whole time from 2015 to 2018; and how big was the gap between her leaving and Hannah Swadling moving in?

The nature of the Swadlings' occupation 2013-2015

14. There is no dispute that the Swadlings lived in the Cottage and supervised renovation works at Hillview. Equally, there is no dispute that the cottage was capable of being occupied as an independent dwelling, however, the Council argue the occupation was ancillary because they were simply living there temporarily while the main house was being renovated. This was akin to living in a mobile home in your garden while doing up your house. This was just a continuation of the previous ancillary use of the Cottage. The Council go further and argue the Swadlings also used Hillview for eating and living, even if they did sleep at the Cottage.
15. The evidence for this latter claim rests on photographs and reports made in 2014 by two separate companies valuing the property. A mortgage valuation report was issued following an inspection on 1 May 2014. This describes Hillview as having been extended and completely redecorated. Photographs show the rooms to be fully furnished and apparently lived in and the Swadlings sitting in the breakfast room. The description of the property mentions the Cottage which it notes is arranged for residential use but has a commercial planning consent and business rates are payable. A second valuation in December 2014 which notes the existence of the Cottage (called the annex in the report) but makes no further comment on it but does say later that "I noted that the premises were occupied by the owner", and by premises the report must be referring to Hillview which is the subject of the report.
16. Mr Swadling explained that Hillview was dressed to look as if it was lived in to facilitate the hoped for sale, which is perfectly plausible, and from time to time they did eat in the kitchen when working on the house, but they lived in the Cottage. Although the two reports state that Hillview was in good order Mr Swadling explained further works were needed on the heating system and to improve the pressure of the water supply which require further redecoration after 2014.

17. On the basis of this evidence it seems to me the Swadlings were clearly living in the Cottage, but that residential use, was, as suggested by the Council ancillary to the main house. The purpose of living in the Cottage was to enable the house to be extended, redecorated and then for further works and further redecoration to be carried out and they do seem to have used the facilities of Hillview from time to time. Had this been a more usual situation where they normally lived in Hillview and temporarily moved into the Cottage while Hillview was not pleasant to live in due to the works, there would be no doubt the use was ancillary. If the Council visited the property during that period there would be nothing to suggest otherwise and they would not have been able to successfully allege a separate unit had been created. There is no material difference between that hypothetical situation and the actual one. It was simply a continuation of the ancillary use.

When did the Swadlings leave the Cottage?

18. When the works were all finally complete the Swadlings returned to their house in Reading. The date for this is given as June 2015, but they could not be more precise. The Council suggested it was earlier than that. There is no rental evidence for the Reading house after October 2014 and Mr Swadling accepted the works were 90% completed by the end of December 2014, so there would have been no need to stay.
19. I'm not sure I can take this much further as there is no reason to doubt Mr Swadling's recollection of June 2015. In any event, it was before the Burton's took over which we know was not before 20 June 2015. There may well have been a gap when the house and cottage were both empty, but I do not think that matters as up to then, at least, there had been no material change of use. The Cottage was still an ancillary use.

When did the Burton's move in?

20. When the Burton's arrived to rent Hillview was subject to much discussion, not because it is important in itself, but because it relates to the occupation of the Cottage by Ms Keegan. Matters are complicated because the Burtons negotiated the installation of a new kitchen before moving in and negotiated a reduced rent in order to pay for it. Mrs Burton was clear this was installed before they moved in and although the various documents provided did not give a clear date, there was nothing to suggest this was incorrect.
21. Mrs Burton was clear they moved into Hillview on the 20 June. The rental period for Hillview ran from the 21st of the month, although it started before June. The estate agency that was responsible for the rental confirmed the rental began on the 20th June. Mr Harley, the neighbour, argued they did not move in until August, when a removal lorry broke a branch off a tree on the shared private track. The date of the branch incident may have been accurate but it does not mean they didn't move in until then. It is a very large house and I imagine it would require more than a single removal lorry to get all the furniture in. It certainly does not suggest the recollections of the Burtons, Swadlings and the other evidence is inaccurate.

When did Ms Keegan move in?

22. Ms Keegan worked at a livery stables or stud at Cane End, near Reading. This was where Mrs Burton kept some horses and she got to know her there. Ms

Keegan was training to be a veterinary physiotherapist and was setting up her own business, which at the time was based at the stables. Ms Keegan was having domestic difficulties and her partner was about to lose his accommodation at a nearby private school. According to Mrs Burton, she told Ms Keegan they were shortly to be renting Hillview which had a cottage in the garden and would Ms Keegan like to rent it. The offer was gratefully accepted. At first Ms Keegan, her daughter and partner all lived there but soon her partner moved out, possibly back to his parents in Henley, and thereafter Ms Keegan occupied the Cottage with her daughter until sometime in June 2018.

23. Ms Keegan has provided several witness statements and her moving in date is also referenced by Mr Swadling in several statements and by Mrs Burton, but no-one puts it any more accurately than June. However, it seems clear that Ms Keegan didn't move in before the Burtons, firstly that wouldn't have made sense for a tenant to move into the Cottage before the Burtons occupied Hillview, but also because that is what Mr Swadling and Mrs Burton both told the inquiry. In fact in his proof, Mr Swadling suggested Ms Keegan actually moved in after the Burtons. When cross-examined he suggested she might have moved in on the same day, but then accepted it might also have been a few days later. Mrs Burton agreed that Ms Keegan moved in 'in dribs and drabs' and was fully installed within a few days of the Burtons moving in. Mr Harley suggests the Burtons didn't move in until August and Ms Keegan a month later.
24. The key point the Council take from this, which I consider to be persuasive, is that while the exact dates are unlikely to be remembered from 6 years ago, the sequence of events is, and it seems it was the Burtons first then Ms Keegan. The only dissenting piece of evidence is an email provided by Ms Keegan with photographs of the Cottage, which seems to be empty, and is dated 15 June. But that can't be the date she moved in as both Mr Swadling and Mrs Burton are clear the earliest she could have moved in was the 20th. This is more likely when she first looked round the Cottage, prior to moving in.
25. These dates are important as I have already concluded the occupation of the Cottage by the Swadlings did not amount to a material change of use. Therefore on the 20 June 2015 the use of the cottage was still ancillary, and indeed it would seem most likely to have been empty for several days until Ms Keegan moved in.

The nature of Ms Keegan's occupancy

26. There are two issues with Ms Keegan's occupation, firstly whether she was occupying the Cottage as an independent dwelling and secondly whether she stayed there for the whole 3 years.
27. There was some discussion as to whether Ms Keegan was an employee of the Burtons. She certainly did work for them in looking after Mrs Burton's horses at the stables and providing some equine physiotherapy. Mrs Burton applied to the Council for an extra bin for the Cottage and described the occupant as an employee on the form. Ms Keegan clearly did some work from time to time for the Burtons but that does not make her their employee except in the loosest sense of the word. The bin request was made in August 2016 and I find it odd that over a year after moving in, Mrs Burton should choose to describe Ms Keegan, who was by Mrs Burton's own admission by then a friend, as an employee. The likeliest explanation to me is that everyone was well aware

they shouldn't be renting out the Cottage as it was supposed to be ancillary, so in official correspondence with the Council it was best not to draw attention to this. Nevertheless, I don't think it can be argued that Ms Keegan's occupation of the Cottage was ancillary to Hillview because she occasionally worked for Mrs Burton.

28. However, her occupation was not straightforward as there was no tenancy agreement and nothing in writing was presented to the Inquiry to show whether she paid rent at all. Mrs Burton said she was helping out Ms Keegan, who was not in a good financial place, and Ms Keegan offered what work she did do as in lieu of rent, and other times she simply paid what she could afford. It was a very relaxed arrangement. There was also at this time no separation between the Cottage and Hillview. The house is substantial, but the garden is not as commensurately large. As I saw now, the Cottage is entirely screened from Hillview by a 2m close boarded fence and planting, but in 2015-17 it was just in the garden, only yards from the swimming pool. It would have been a very cosy arrangement with little opportunity for privacy from each other. I shall come back to this point later.
29. The doubt over the length of stay stems from the electoral records. Ms Keegan was registered to vote at Wayside Green, Woodcote in 2015, she then changed address to Henley in 2016 and was there until August 2017. When she changed to Henley it was noted on the online form that her previous address had been in Woodcote, but she also had a second home. On the other hand Ms Keegan has provided emails sent to her daughter's school in June 2016, registering for a course in November 2016 and other people and organisations in July and October 2016 and May 2017, all explaining she now lives at Hillview.
30. The Woodcote address was explained as the home address linked to the Oratory School, also in Woodcote, where she had originally lived with her partner and the Henley address was her partner's parents, where he moved after they split up. Mr Swadling provided an explanation for the voter registration as to do with ensuring her daughter could still attend the school in Henley but admitted this was an assumption rather than information given him by Ms Keegan. Ms Keegan was described as being somewhat chaotic, and she had just split up from her partner, was trying to set up a new business and had no money and she clearly didn't get around to informing people of her address at Hillview until long after she moved in. It seems highly unlikely to me that she was actually living in two separate places and keeping the Cottage as a second home. It is possibly more likely she was not certain how long she was going to stay in the Cottage, as her existence seems to have been very much hand to mouth and it wasn't until 2016 she was secure enough to change her address. Possibly Mr Swadling's assumption is correct about the electoral role but whatever the explanation I do not believe it undermines his, Mrs Burton's and Ms Keegan's testimony and other evidence to the contrary, that she was living in the Cottage for the whole period.

Hannah Swadling moves in

31. Ms Keegan reports moving out of the Cottage in June 2018 and Hannah Swadling says she lived in the Cottage for a period of 3 months ending in mid November 2018. That means Hannah Swadling moved into the Cottage in mid August. Hannah paid no rent to the Burtons but Mr Swadling maintained the

swimming pool instead. He began this work in May 2018, before Ms Keegan moved out which does suggest she went early in June rather than later, but there is no actual evidence either way. The best case scenario for the appellants is that Ms Keegan moved out in late June leaving a gap of 6-7 weeks before Hannah Swadling moved in, but it could have been up to 11 weeks. There was some minor redecorating to do but Mr Swadling says he had already lined up the Cottage for Hannah and agreed this with the Burtons, hence the pool maintenance. So the Cottage essentially stood empty for a month or so in between Ms Keegan and Ms Swadling.

Conclusions on ground (d)

32. The appellant characterises the issue as a simple one. The Cottage was used in an ancillary fashion up to 2013. Once the functional link is broken between the occupiers of the Cottage and Hillview then the ancillary use is lost and the independent dwelling use begins. I am not sure it is quite so black and white. The lawful use of the Cottage is as ancillary accommodation for Hillview. The appellant needs to demonstrate that a material change of use took place to use as a separate dwelling, not just that the ancillary use ceased. I have noted the decisions mentioned by the appellant from the JPEL, but these are all of considerable vintage and do not necessarily represent the complexity of differentiating between an ancillary and an independent use. The Council suggest there was a gradual progression as the use of the Cottage evolved over time. I agree that by the time Hannah Swadling moved in the fence had been erected and a separate driveway constructed. The Cottage was then entirely separate from Hillview, a new planning unit comprising a separate dwelling with its own curtilage had been created.
33. When Ms Keegan moved in the use was much less firmly established. I do not think she occupied it in an ancillary manner by virtue of being an employee of Mrs Burton, but neither does she seem to have occupied it as a fully independent dwelling. She didn't get around to telling anyone else of her new address for at least a year and although I don't believe she flitted about between Hillview, Woodcote and Henley, she was certainly happy for her whereabouts to be uncertain. Nevertheless, giving the appellant the benefit of the doubt on this issue, the evidence still suggests Ms Keegan didn't occupy the Cottage until several days after 20 June, so there is a gap of several days at the beginning of the 4 year period. There is a longer gap between Ms Keegan and Ms Swadling. This later gap was not de minimis and could not be characterised as simply a short break between tenants while the building was being redecorated.
34. These gaps are important as the material change of use must not only have begun 4 years prior to the issue of the notice but also been affirmatively established across the whole period. If there are any gaps that are more than de minimis then during those gap periods an enforcement notice could not have been issued as the unlawful use has ceased. In this case the material change of use did not take place, at the earliest, until several days into the 4 year period. That alone is determinative. There isn't a leeway period of a day or so that can be considered de minimis. The Act is explicit that enforcement action cannot be taken after 4 years from the breach in the case of a material change of use to a dwelling. It does not say roughly 4 years, or 3 years and 364 days. Similarly the gap between the occupation of Ms Keegan and Ms Swadling is also fatal, so taken together the ground (d) appeal cannot succeed.

The Appeal on Ground (a)

35. The Council's local plan is of recent vintage³ and is up to date with the NPPF and there is no shortfall in housing land supply. Three policies are directly relevant, STRAT1, H1 and H17. The site is also within the area of the Benson neighbourhood plan. STRAT1 sets out the overall housing strategy of the plan. Although there was some discussion on this, it is clear to me it sets out a hierarchy of sites designed to meet the required housing numbers. Major new developments are focused in the Science Vale, strategic allocations are listed, the main towns are picked out as having an important role and overflow housing from Oxford should be provided near to the city boundary. Sections (vii), (viii) and (ix) are more directly relevant to this appeal. (vii) lists the larger villages in the district whose role as local service centres will be supported. Benson is a larger village for planning purposes. (viii) allows limited housing to help secure services in the smaller and other villages, while (ix) seeks to protect the two AONBs and the green belt. This is all pretty standard stuff as far as I can see.
36. H1 then deals with how to deliver new homes. Section 3 deals with sites that are not allocated in the development plan. The appeal site is not allocated and so falls within this part of the policy. I also note the plan relies on windfall sites (ie those not allocated) to provide 1200 dwellings by 2035. H1 has eight sub-sections of which only (iii) is relevant as it was accepted the development did not fall within any of the others. It is worth quoting (iii) as the exact meaning of the words was subject to considerable debate. Residential development will only be permitted "*where it is development within the existing built up areas of towns and larger villages as defined in the settlement hierarchy*". Appendix 7 of the plan lists all the villages in the District. The site is in a hamlet called Oakley Wood, but this is too small to be in the list at all. However, it is within the parish of Benson and thus, according to the appellant lies within Benson – a larger village - for the purposes of H1. This argument is linked to an interpretation of the wording of (iii) which did not mean houses should be within the existing built up areas of larger villages, but the policy should be read as only applying the phrase 'built up areas' to towns. Housing can be allowed anywhere within a larger village. So, as the site lies within the parish of Benson, it counts as being in Benson and so housing on the site meets the criterion of (iii) which allows housing anywhere within the parish of Benson.
37. This is clearly a nonsense. The ordinary meaning of (iii) is that housing is confined to built up areas within both towns and villages. If the policy, for some extraordinary and unexplained reason wanted to allow a much more liberal housing allocation within villages than within towns then it should say so, but it does not. This reading of the policy also means that housing is equally policy compliant anywhere within the very rural parish of Benson, or indeed any other defined larger village. There would effectively be nowhere within most of the District that housing would not be supported by the policy, subject to a few specific caveats within (iii) concerning environmental, historical and ecological value, public views and open spaces.
38. The site is actually in an area of open countryside several kilometres from Benson or any other village, large or small, mentioned in Appendix 7. It is in

³ South Oxfordshire Local Plan 2035 – adopted 10 December 2020

- policy terms nowhere near Benson and cannot be considered to be 'in' Benson for the purposes of H1. To consider otherwise would make a nonsense of the hierarchy of sites for development and allow a free-for-all in the rural areas of the District which is precisely what the local plan seeks to avoid.
39. This conclusion also holds good for H1.4, which allows development on previously developed land within the "*built up areas of towns, larger villages and smaller villages*". Again the reliance on artificially constraining the phrase 'built-up areas' to only towns becomes more unlikely as now it would allow development on previously developed land anywhere within the parish of a smaller village and yet not on the edge of a town. The development is thus contrary to H1.
 40. H17 concerns "*the sub-division of dwellings and conversions to multiple occupation*", which will be allowed subject to certain caveats. The appellant argues this policy is relevant because when it refers to dwellings it really means either planning unit or curtilage. So the conversion to a dwelling of a building in the garden of a dwelling would count as sub-division. Again this straining the plain and obvious meaning of the wording of the policy beyond reason. Dwelling simply means dwelling. If it meant something else such as planning unit or curtilage then it would have said so. The appellant was unable to point to any other occasion in any planning document where the word dwelling meant anything other than dwelling. Dwelling, planning unit and residential curtilage are quite distinct concepts. There is no need for the policy to explicitly say that it refers only to a building, as that is implicit in the word dwelling. The development is not contrary to H17 because H17 is irrelevant to the outcome of the appeal.
 41. The neighbourhood plan covers the parish of Benson and policy NP1 is relevant. This policy states, and I paraphrase, that development outside of the built-up area of Benson will be supported where it is consistent with the policies of the development plan. As the development is not consistent with the policies of the local plan then it is contrary to NP1.
 42. Reference was also made to NPPF paragraph 79 which deals with isolated homes in the countryside. The appellant sought to argue that the site is not isolated as it is next door to another house and is close to services. In fact the nearest services are at least 1.5 miles away and a bus stop is 200m away. This does seem pretty isolated to me, however, that is not the test. It is well known that isolated in paragraph 79 means isolated from a settlement and no argument has been made, or could be made, that the site is not isolated from any recognised settlements. Oakley Wood is barely a hamlet, more a straggle of farms and the site is not even close to any of those.
 43. The appellant also argues the exception in 79(d) applies as it is the subdivision of an existing dwelling. This is contrary to my conclusions above on sub-division which holds good for the NPPF as well as H17. Paragraph 79 of the NPPF is relevant as the site is isolated in the countryside and the development is contrary to that paragraph.
 44. Finally the appellant argues the development is not contrary to the development plan as a whole, as it meets the criteria of several other policies. For example it doesn't harm neighbours' amenities, or living standards or the AONB, any heritage assets and it won't cause flooding or highway issues and so on. Therefore, it is only contrary to one policy, but supported by many others

and so is not contrary to the development as a whole. The case of Corbett⁴ was referenced to support this argument.

45. The decision maker clearly has a duty to consider the development plan as a whole, but that does not mean adding up all the policies that a proposal doesn't infringe and comparing that to the number it does. Corbett was a case involving competing policies that pulled in different directions and so a judgement has to be reached as to whether the development is in accord or contrary to the development plan 'as a whole'. In this case there are no competing policies. Just the usual policies seeing to protect certain matters such as heritage assets and neighbours' amenities. Not harming these policies does not make a development policy compliant. The most significant policy in this case is that concerning the location of new housing development and being contrary to that policy is sufficient, when there are no other policies that suggest the development should be allowed to render it contrary to the development plan as a whole. It is also contrary to the NPPF paragraph 79 and the neighbourhood plan.
46. The appellant argues there are other material considerations to consider before reaching a conclusion on the development plan. Firstly there would be a new house that would count towards the windfall target and secondly a 2 bed house would be created and there is an acknowledged shortfall in such house types. However, I agree with the Council that windfall sites and smaller houses are provided for within the constraints of H1. That is why it allows for various categories of unallocated sites to be developed for housing, within the built up areas of towns and larger villages for example, or as infill in smaller villages, or on brownfield sites also within villages. There is no need to go beyond the policies in the plan to seek to provide for windfall sites or small houses. The proposed development is therefore contrary to the development plan and there are no benefits to weigh in the balance to enable a different decision to be reached.
47. The final issue is the fallback position. It remains the case that if the appeal is lost the use of the Cottage will still lawfully be ancillary to Hillview. It could therefore have someone living there as has happened in the past, a chauffeur or housekeeper, or Mr Swadling's parents. It could be used as a 'granny annex' or as an office – one of the reasons Mr Swadling said he continued to pay business rates was to keep the office use alive as that could make the house easier to sell. But whatever the use, or however occupied it, it would have to be ancillary.
48. The appellant argues this would be no different to anyone else living there, such as Greta Thomas, the current tenant. They would have the same impact on the demand for services, the same potential for noise, disturbance, traffic use of the track, and so on. Therefore if there is no harm, it makes no sense to refuse planning permission.
49. I think this ignores the likely nature of the occupation. Firstly, if allowed on appeal the property could be sold on the open market to anyone interested in a 2 bed country property. It is reasonable to assume there would be no problem selling the Cottage and so someone is bound to live there, possibly a small family, with all the comings and goings associated with such occupancy, including reliance on services from this isolated location. However, if it was to

⁴ R o a William Corbett v Cornwall Council [2020] EWCA Civ 508

be used in an ancillary manner, there is no guarantee anyone would live there at all, it could be used as an office, or for friends and family to stay on occasional visits. Or it could be used as a granny annex with a close functional link to the main house. All these options would have a lower impact than use as an independent dwelling.

50. As the Council say, the alternative is that any garden building used as ancillary accommodation could then become a separate house on the basis it caused no harm, driving a coach and horses through the Council's housing policies which are designed to guide housing to the most sustainable locations. The fact that there are theoretical examples of ancillary accommodation that would cause harm, such as by requiring a new access or being too large, does not detract from the general principle. In my view the actual fallback position has the potential to be considerably less harmful than allowing the appeal. This ignores the fact that being contrary to the development is harm in itself, and there are valid policy reasons for treating ancillary accommodation differently to independent dwellings.
51. Conditions were discussed at the Inquiry and schemes for external lighting and landscaping the boundaries were suggested, but neither would overcome the harm I have identified. Consequently, the proposal is contrary to the development plan as a whole, to the NPPF and to the Neighbourhood Plan. There are no material considerations that indicate a decision should not be taken in accord with the plan. The appeal on ground (a) fails.

The Hardstanding – Grounds (c) and (f)

52. The hardstanding in question is effectively the new drive that links the gates onto the private track with the Cottage. A large building which consisted of a double garage facing towards Hillview, an attached gym and a second double garage serving the Cottage originally stood in the way. Part of the Hillview garage/gym was demolished to enable the drive to run behind that building between it and the boundary fence of the property, while the garage that served the Cottage was demolished in its entirety to create a turning area in front of the Cottage. The appellant argues that all of the hardstanding was in place, except for a small section of the turning area which was originally lawn. A large portion of it consists of the original concrete floor to the demolished buildings. The rest was originally gravel path that ran from the gates, down the edge of the old Hillview garage/gym and squeezed between it and the boundary fence and went on to the Cottage.
53. The Council accept some of the hardstanding was originally the floor of the buildings and there was a small gravel area in front of the Hillview garage/gym, but the rest is all new. They also argue that even the original parts were completely re-laid and so the whole drive is effectively a new act of development.
54. I was shown numerous photographs of the driveway under construction which showed piles of waste materials and the alleged gravel path. It is difficult to draw any firm conclusions from these except that if there was a gravel path it was so old it had become overgrown. The boundary fence is and was a simple post and rail and the adjacent land is wooded. Trees had grown up through parts of the gravel path area. Another part was used for storing old building materials, but what lay beneath those materials is impossible for me to say. I'm quite happy to accept Mr Swadling believed there had once been a gravel

path, but whether one still existed at the time the new driveway was constructed is another matter and I do not consider this has been demonstrated on the balance of probabilities.

55. I also agree with the Council that the re-laying of the driveway amounted to a new act of development, not just repair or maintenance. Large portions of the drive were new and the rest was entirely changed in nature. Therefore the creation of the hardstanding driveway in 2018 was an act of development that required planning permission.
56. Planning permission is granted by Class F of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015 for hardstanding within the curtilage of a dwelling as long as it is for "*any purpose incidental to the enjoyment of the dwellinghouse as such*". At the time the hardstanding was laid the fence was also being erected and the Cottage was in the process of being separated off from Hillview. Those works resulted in the creation of a new, unlawful, dwelling with its own curtilage. The hardstanding could not have been in the curtilage of the Cottage when it was constructed as its construction was part and parcel of the creation of the separate planning unit which resulted in a dwelling with a curtilage. Therefore when built it must have been within the curtilage of Hillview. However, its purpose was to provide access to a new dwelling and so was not a purpose incidental to the enjoyment of Hillview. It does not, therefore benefit from permitted development rights and its construction requires planning permission. I have already concluded that planning permission should not be granted for the Cottage as a separate dwelling so it follows, and for the same reasons, that planning permission should not be granted for a separate driveway to serve that dwelling.
57. There is a further argument that the requirement to replace it with topsoil and grass is excessive. Even though the whole drive is new it would not make sense to return those elements of the new drive that were concrete floors back to that state. So I think it is clear the only section of hardstanding that actually needs replacing is that which was originally the alleged gravel path and the lawn area helpfully shown in green on a plan provided by the Council. The appellant argues only a small part of this area was originally lawn, the rest was overgrown gravel path. He says the most the requirement can do is to reinstate the land to its previous condition. However that previous condition was a mix of overgrown gravel, shrubs and even trees. It would be unnecessarily onerous to require that condition to be faithfully replicated. I agree the Council cannot require an improvement to the land, but once the new hardstanding is dug up and removed something will have to replace it otherwise there would be unsightly and possibly dangerous hole in the ground extending from the gateway to the Cottage. In my view the site of the gravel path had effectively turned into a form of soft landscaping and if this forms the requirement then it leaves it open to the appellant to replace it with anything non-permanent. The Council have already indicated that if the appellant wanted to change grass for bark chippings or similar that would be equally acceptable so a general wording such as soft landscaping would seem to be a reasonable compromise.
58. Apart from the change noted above the appeals on grounds (c) and (f) fail. It was suggested that the hardstanding be transferred to notice A and if that were upheld the hardstanding could be removed as part and parcel of the material change of use. I do not think there is a need to do this, what is left of

notice B after all the corrections and variations is capable of enforcement and it is sensible to keep the operations element and the use separate.

Conclusions

59. I shall correct the allegation in notice A to refer to the material change of use of the building and add a requirement to remove the mailbox. I shall correct and vary notice B by deleting allegations (b) and (d) referring to the new access, pillars, gates and mailbox. I shall delete all the requirements and replace them with (i) insert a pedestrian gate or other means of access in the close boarded fence referred to in (a) above; (ii) dig up the areas of hardstanding referred to in (c) above and shown in green and hatched in black on the plan attached to this decision; (iii) reinstate the land disturbed by (ii) with soft landscaping.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Edward Grant - barrister
He called
Doug Swadling – appellant
Louise Burton - tenant
Ben Temple - agent

FOR THE LOCAL PLANNING AUTHORITY:

Cain Ormondroyd - barrister
He called
Robert Cramp – planning officer

INTERESTED PERSONS:

David Harley - neighbour

DOCUMENTS

- 1 Statement of Common Ground
- 2 Site notice amended
- 3 Plan showing previous condition of the land
- 4 Suggested conditions
- 5 Hannah Swadling updated statement
- 6 Appellant's openings
- 7 Georgia Keegan signed statement
- 8 Louise Pasker signed statement
- 9 Documents provided by Mrs Burton

Plan for Appeal A attached to Notice A

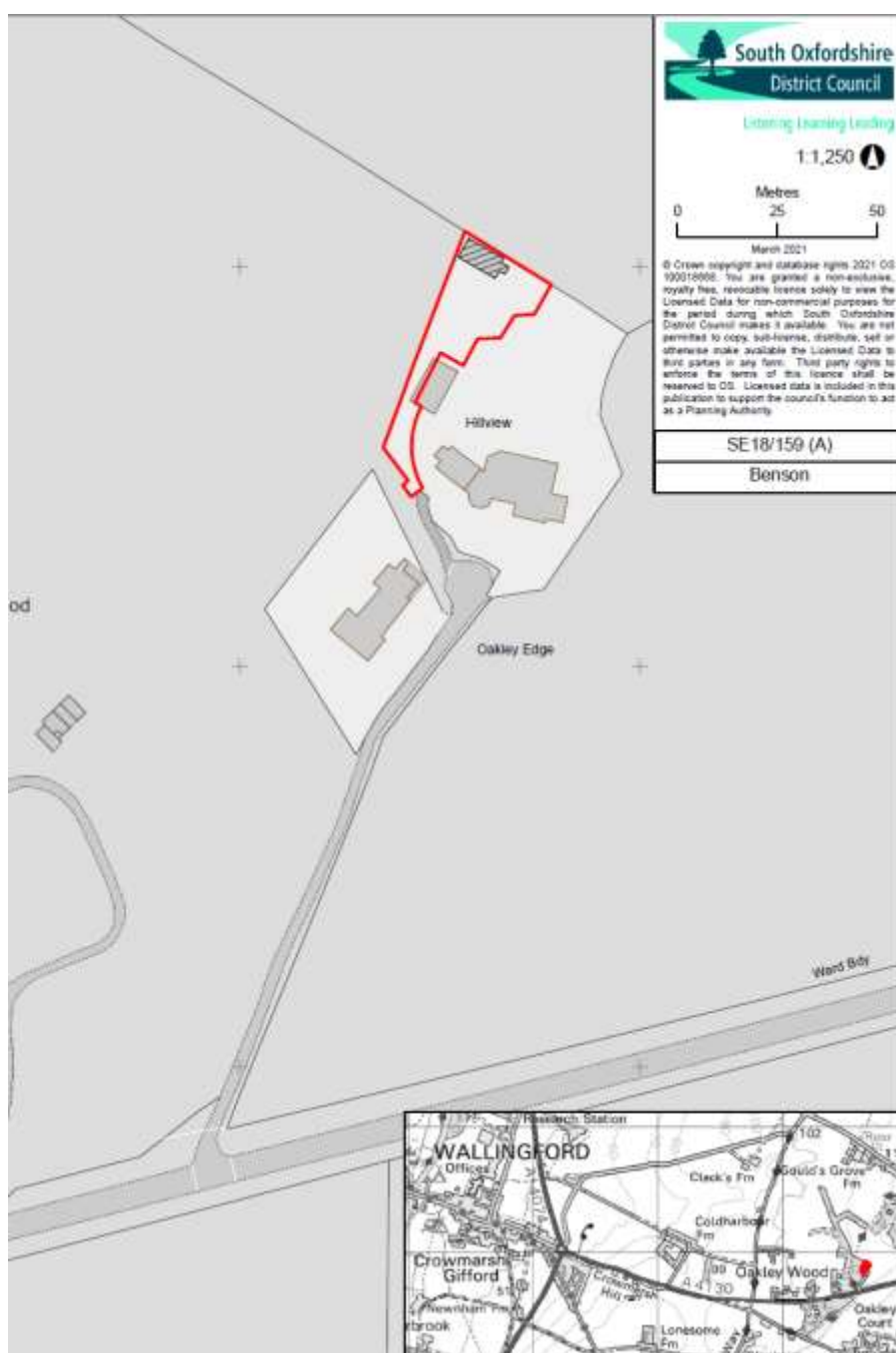
This is the plan referred to in my decision dated:

by Simon Hand MA

Land at: Hill View, Oakley Wood near Nuffield, OX10 6QG

Reference: APP/Q3115/C/19/3234244

Scale: not to scale





Plan for Appeal B attached to Notice B

This is the plan referred to in my decision dated:

by **Simon Hand MA**

Land at: Hill View, Oakley Wood near Nuffield, OX10 6QG

Reference: APP/Q3115/C/19/3234241

Scale: not to scale

