



Appeal Decisions

Hearing Held on 18 May 2021

Site visit made on 20 May 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2021

Appeal A Ref: APP/Z3825/C/20/3245103

Plot G, Land East of Dukes Hill, Coolham Road, Thakeham, West Sussex

- 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 Wayne Frewen against an enforcement notice issued by Horsham District Council.
- The enforcement notice, numbered EN/19/0436/COU, was issued on 20 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from use for agriculture to a mixed use for agriculture and use as a leisure plot.
- The requirements of the notice are:
 1. Discontinue the use of any part of the land as a leisure plot; and
 2. Remove from the land the timber cabin associated with the leisure use of the land. The approximate location of the timber cabin is shown edged in black and marked out as "building" on the plan; and
 3. Remove from the land the table and chairs which are not associated with the lawful agricultural use of the land; and
 4. Remove the children's sports and play equipment associated with the leisure plot from the land; and
 5. Revert the land back to its lawful use as agriculture land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/Z3825/C/20/3245105

Plot G, Land East of Dukes Hill, Coolham Road, Thakeham, West Sussex

- 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 Wayne Frewen against an enforcement notice issued by Horsham District Council.
- The enforcement notice, numbered EN/19/0436/OPEDDEV, was issued on 20 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a timber building on the land in the approximate position shown outlined in black and marked as 'The Building' on the plan.
- The requirements of the notice are:
 - (i) Demolish the unauthorised timber building on the land; and
 - (ii) Remove the resulting debris from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (g) of the

Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. Both enforcement notices require the removal of the building subject of appeal B. However, appeal B includes an appeal on ground (g) that the period specified in the notice for compliance falls short of what should reasonably be allowed. Consequently, if I were to uphold the enforcement notice subject of appeal A, for consistency I also need to consider the relevant requirement of that notice under ground (g).
2. Appeal A was made on ground (d) but that has been withdrawn. Appeal B was made on grounds (b) and (c) but these have also been withdrawn.
3. The enforcement notices suggest two possible addresses for the site. The appellant and Council agreed a single address that I have used in my headers above. I will also amend the notices to provide that single address.
4. The appellant questioned whether the notices were properly authorised and whether it was expedient for the Council to serve both enforcement notices. However, I do not have jurisdiction to deal with submissions as to whether the Council acted outside their powers by issuing the notice. Section 172 of the Town and Country Planning Act 1990 as amended (the Act) states that the local planning authority may issue a notice where it appears to them that it is expedient for them to do so. These do not fall within the statutory grounds of appeal at section 174 of the Act. As a result, these are not matters for me in this appeal.
5. My attention has been drawn to the judgements in the cases of *Burdle v Secretary of State for the Environment and another* [1972] 3 All ER 240, *Wychavon District Council v Secretary of State for Communities and Local Government, Butler and Butler* [2008] EWCA Civ 692 and *Wavendon Properties Ltd v Secretary of State of Housing, Communities and Local Government and Milton Keynes Council* [2019] EWHC 1424. I have taken these into account in coming to my decision.

Appeals A and B on Ground (e)

6. Section 172 of the Act requires that a copy of enforcement notices shall be served on the owners of the land to which they relate. In both of these cases, the enforcement notices covered an area larger than the area in the ownership of the appellant and it was accepted by the Council that they did not serve the enforcement notices on owners of parts of the identified site. Consequently, they agreed that the site plans attached to the notices should be varied such that these would only relate to those areas on the enforcement notice site plans within the ownership of the appellant.
7. For these reasons, I conclude that the appeals under ground (e) should succeed to that extent and I will vary the enforcement notices by replacing the existing site plans with that attached at the annexe to this decision.

Appeal A on Ground (b)

8. An appeal on this ground is that the matters described in the notice have not occurred. Section 174(2)(b) of the Act sets out this ground of appeal and is worded in the past tense, such that if an alleged breach had ceased that would not be a reason to succeed under this ground of appeal. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
9. This enforcement notice alleges a mixed use of the land, comprising agriculture and use as a leisure plot. The issue before me in this case is whether any leisure activities of the family of the appellant whilst visiting the site were incidental or ancillary to the agricultural use or whether that was an additional leisure use that resulted in a mixed use of the land.
10. It is common ground that the appellant manages most of the land for agriculture, keeping sheep and chickens and growing vegetables and other produce. He spends a lot of time tending the land and caring for the animals, particularly at certain times of the year such as when the sheep are lambing.
11. Within the building the appellant keeps a dining table and chairs, large corner sofa, heater and cooking facilities as well as agricultural storage including straw, tools, timber, hatched chicks and a tractor. There are other tables and chairs outside. I understand that the appellant sometimes sleeps on the sofa in the building when staying overnight to care for the livestock. It is not clear that can't be provided by another means, or whether the size of sofa is larger than is necessary for that purpose.
12. The appellant has a large family who sometimes join him on the land. The furniture and cooking facilities are available and used by the family when visiting. The amount of furniture provided is excessive to provide basic welfare facilities for the needs of the agricultural use alone. The children's sports and play equipment that have been largely removed since the notice was issued were used to entertain the family. I note that they also help with the agricultural operations.
13. The facilities on the land, such as the sports and play equipment, sofa, tables, chairs, BBQ and cooking facilities could have facilitated a leisure use of the land. The area in front of the building is mostly grassed, which is kept short although not manicured. This resulted in the appearance of a leisure use within and in front of the building, albeit not physically or functionally separate in terms of use and occupation from the agricultural use and appearance of the remainder of the land.
14. Taking all of these factors into account I consider that, on the balance of probability, the leisure use had gone beyond being incidental or ancillary to the agricultural use such that it was a primary use of the land. Consequently, it resulted in a mixed use of the land.
15. For these reasons, I conclude that the appeal under ground (b) should fail.

Appeals A and B on Ground (a) and the Deemed Planning Applications

Background and main issues

16. This ground of appeal and the deemed planning applications relate to the development set out within the alleged breaches of planning control on the enforcement notices. These comprise, in appeal A, the material change of use of the land to a mixed use for agriculture and leisure; and, in appeal B, the erection of a timber building on the land. I could come to different decisions on the two appeals and will take that into account in coming to my decision.
17. Consequently, the main issues on these grounds are:
- whether the location of the development is consistent with the strategy for development set out within the Horsham District Planning Framework and Thakeham Parish Neighbourhood Plan;
 - the effect of the mixed agricultural and leisure use and building on the intrinsic character and beauty of the landscape; and
 - whether there are any material considerations sufficient to override any conflict with policy.

Reasons

Policy background

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan in this case comprises the Horsham District Planning Framework (HDPF), and Thakeham Parish Neighbourhood Plan (NP). The National Planning Policy Framework (NPPF) is a material consideration that carries great weight in the planning process.
19. I understand that a Local Plan is at an early stage of production such that it can only attract limited weight in the planning process. The NPPF was replaced during the course of the appeal. I have based my decision on the latest version.
20. Policy 2 of the HDPF seeks to provide development in accordance with the identified settlement hierarchy and retain the existing settlement pattern. It seeks to retain and enhance landscapes and landscape character. Policy 26 of the HDPF is the strategic policy relating to countryside protection. It seeks to protect the rural character and undeveloped nature of the countryside against inappropriate development. It requires development to be both essential to its countryside location and meet a number of criteria, including that development should support the needs of agriculture and may provide for quiet informal recreational use. In addition, development should be of a scale appropriate to its countryside character and location and should protect, and/or conserve and/or enhance the features and characteristics of the landscape character. These policies relate to the appropriate location for development.
21. Policy 25 is the strategic policy on the natural environment and landscape character, seeking to protect, conserve and enhance the landscape character of the district. Policies 32 and 33 of the HDPF seek development to be of high quality design that protects the rural character of the district, retains and

enhances natural environmental resources, including landscapes and landscape character.

22. Policy Thakeham8 of the NP sets out that development on holdings of between 0.4 and 5 ha involving the erection of small structures will be resisted unless such development is solely for agricultural or horticultural purposes. Policy Thakeham9 relates to equestrian development ancillary to dwellings, the conversion of existing agricultural buildings to business or residential uses and the extension of houses. Given that the development in this case relates to the change of use of land and a new building, Policy Thakeham9 of the NP is not directly relevant.
23. It was suggested at the hearing that, in seeking to protect the character of the countryside, in particular at Policy 26, the HDPF goes further than required by the NPPF that recognises the intrinsic character and beauty of the landscape. I note that the NPPF seeks also to both protect and enhance valued landscapes, but the appeal site is not within a designated landscape. In protecting, conserving or enhancing character Policy 26 of the HDPF does not require enhancement as with NPPF policy on valued landscapes. I note that the policy refers to inappropriate development and that development should be essential to its location and these aren't phrases used in the NPPF relating to development within the countryside. I consider that Policy 26 of the HDPF provides a distinctive local policy. It is consistent with the policy in the NPPF to recognise the intrinsic character and beauty of the countryside. In addition, policies of the HDPF should not be read as if they had the force or linguistic precision of statute. Consequently, the HDPF is not out of date for these reasons.
24. As a result, the presumption in favour of sustainable development set out within the NPPF means approving development proposals that accord with the development plan without delay.

Strategy for development

25. The land at Plot G comprises a modest area within a larger area of former farm land that has been subdivided into a number of plots of varying sizes. This plot has been provided with a number of buildings to support the agricultural use of this plot, along with the building subject of appeal B that has also been used as a welfare and leisure facility whilst the appellant is working on the plot.
26. The building was constructed to support the mixed agricultural and leisure use of the land. Consequently, the building conflicts with Policy Thakeham8 of the NP.
27. The mixed use described in the notice includes agriculture and a quiet informal recreational use in that the appellant manages the land for agriculture and has space for his family, which reflects the criteria contained within Policy 26 of the HDPF. Given the link between the agricultural and leisure uses in this case, the use is essential in this location. Nevertheless, this is a small piece of land that has led to a relatively intensive mixed use. Individually, it has not led to a significant increase in the level of activity within the countryside but, taking account of the subdivision of land in the vicinity, may lead to a significant cumulative increase in activity contrary to Policy 26 of the HDPF.

28. For these reasons I conclude, on balance, that the mixed use for agriculture and as a leisure plot as alleged in appeal A and the erection of the timber building subject of appeal B are not consistent with the strategy for development set out within the HDPF and the NP, in particular in relation to Policies 2 and 26 of the HDPF and Policy Thakeham8 of the NP.

Character and beauty of the landscape

29. Thakeham is a village set within a rural landscape. The area around the appeal site forms part of that rural landscape and comprises former fields that have been sub-divided to create a number of plots. There are limited public footpaths and roads, with the appeal site set away from them such that it is visible only from the private routes through the area and neighbouring plots. There is an Article 4 direction on the area that restricts the ability of plot owners to erect fences. Nevertheless, there are a number of fences and hedges between and around plots. There are buildings or moveable structures and vehicles within some plots. The lawfulness or otherwise of these fences, buildings, structures and vehicles is unclear.
30. As a result, the subdivision of the area has resulted in small scale fields containing a variety of activities with a fragmented and dispersed appearance to development in the vicinity of the site that appears incongruous within the larger scale fields and agricultural activity in the wider surrounding landscape, including the setting of the village of Thakeham.
31. Plot G was granted planning permission for fences to surround and subdivide the plot, resulting in paddocks for the grazing of sheep, an area for free range chickens and vegetable plots. There is a coop within the chicken enclosure, two modest storage sheds and a field shelter within a sheep paddock. The size and style of the building subject of the enforcement notice in appeal B, including windows and doors, results in a domestic character and appearance, albeit altered with doors to enable access by a tractor. There are outside seating areas, a BBQ and other domestic paraphernalia located outside the buildings and the grassed, albeit not manicured, area in front of the building has contributed to a domestic appearance to part of the appeal site.
32. The buildings, including that subject of appeal B, within Plot G are of a permanent appearance that differs from most of the other structures and vehicles on other plots in the vicinity. These permanent structures, along with the domestic appearance to part of the site, contribute to the fragmented and dispersed nature of development within the vicinity. This has had a gradual and continuing adverse effect that does not reflect the intrinsic character and beauty of the surrounding landscape.
33. For these reasons, I conclude that neither the material change of use to a mixed use for agriculture and as a leisure plot as alleged in appeal A, nor the erection of the timber building subject of appeal B, reflect the intrinsic character and beauty of the landscape. As such, they are contrary to Policies 2, 25, 26, 32 and 33 of the HDPF and the NPPF.

Other material considerations

34. The appellant manages Plot G such that it is in agricultural production, contributing to the rural economy, which requires secure storage and welfare facilities. This is supported by the buildings on the plot, although that subject

of appeal B has also been used to support the mixed use of agriculture and leisure. I understand that, since the enforcement notices were issued, the appellant now has access to other land in the vicinity that is likely to be in agricultural production. However, it is not clear whether the building subject of the enforcement notice under appeal B is larger than necessary to support this agricultural use.

35. My attention has been drawn to the potential for a caravan, container or other moveable structure to provide welfare and secure storage facilities on the land as an alternative to the building. However, this would be of modest size such that it could be easily removed and would have a different effect on the character and appearance of the area.
36. For these reasons, these material considerations do not overcome the conflict I have found with the development plan.

Conclusion

37. For the reasons set out above, I conclude that on balance the material change of use of the land to a mixed use for agriculture and leisure, and the erection of the timber building, do not accord with the development plan. There are no material considerations of such weight as to warrant a decision other than in accordance with that development plan. The appeals on ground (a) therefore fail.

Appeal A on Ground (f)

38. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
39. In this case, the requirements seek to discontinue the use of the land as a leisure plot and remove the building, sports and play equipment, and any tables and chairs not relating to the agricultural use. As a result, they would remove all the development subject of the breach of planning control in order to restore the land to its condition before the breach took place. Consequently, they would remedy the breach of planning control. For ground (f) to succeed it is necessary to show that the requirements are excessive to remedy the breach.
40. It was agreed by the parties at the hearing that the first requirement would be better expressed as "cease the leisure component of the mixed use" and that the fifth requirement exceeds what is necessary to remedy the breach of planning control, so could be deleted. I see no reason to disagree, so will vary the notice accordingly.
41. The requirements of this enforcement notice include that the building also subject of the enforcement notice under appeal B should be removed from the land. A notice directed at a material change of use may require the removal of works that facilitate that use. The building contains furniture and cooking facilities, in addition to agricultural storage, such that it is used for both the agricultural and leisure uses. As a result, it does facilitate the leisure use of the land such that its removal would contribute toward remedying the breach of planning control. Therefore, the requirement to remove this building should

remain. However, in light of appeal B, I will also consider this requirement under ground (g).

42. For these reasons, I conclude that the appeal under ground (f) should succeed and I will amend the enforcement notice accordingly.

Appeals A and B on Ground (g)

43. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
44. The Council agreed that the enforcement notice subject of appeal B should be varied such that the period specified in the notice should be six months. I see no reason to disagree with their conclusion.
45. This would mean that the period for compliance with the requirement to remove the building would differ between the two enforcement notices. In order to ensure consistency, I will also vary the enforcement notice under appeal A to amend the period for compliance specified in the notice insofar as it relates to the second requirement requiring the removal of the building.
46. In varying the period of compliance on the enforcement notices, I will also delete the word calendar as it is confusing.
47. For these reasons, I conclude that the appeals under ground (g) should succeed and will vary the notices accordingly.

Formal Decisions

Appeal A

48. It is directed that the enforcement notice is varied by:
- the deletion of "Land at Plot G, Bramble Lane, Thakeham, West Sussex also known as Plot G, Dukes Hill, Thakeham, Pulborough" at section 2 The Land To Which The Notice Relates of the enforcement notice and substitution of "Plot G, Land East of Dukes Hill, Coolham Road, Thakeham, West Sussex";
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
 - the deletion of "Discontinue the use of any part of the land as a leisure plot" and the substitution of "Cease the leisure component of the mixed use" in requirement 1 at section 5 What You Are Required To Do;
 - the deletion of "Revert the land back to its lawful use as agriculture land." in requirement 5 at section 5 What You Are Required To Do; and
 - the deletion of the period of compliance and substitution with "Requirements 1, 3 and 4 set out at section 5 What You Are Required To Do shall be achieved within three months from the effective date of this Notice. Requirement 2 set out at section 5 What You Are Required To Do shall be achieved within six months from the effective date of this Notice."
49. Subject to the variations, the appeal is 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.

Appeal B

50. It is directed that the enforcement notice is varied by:

- the deletion of "Land at Plot G, Bramble Lane, Thakeham, West Sussex also known as Plot G, Dukes Hill, Thakeham, Pulborough" at section 2 The Land To Which The Notice Relates of the enforcement notice and substitution of "Plot G, Land East of Dukes Hill, Coolham Road, Thakeham, West Sussex";
- the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
- the deletion of three calendar months and the substitution of six months as the period for compliance.

51. Subject to the variations, the appeal is 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.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green Green Planning Studio

Rachel Price

Wayne Frewen

Steve Younger

Steven Snowdon

FOR THE LOCAL PLANNING AUTHORITY:

Reg Hawks MRTPI Principal Planning Officer, Compliance Team

Rob Leet Compliance Officer

INTERESTED PARTIES:

Owen Richards Parish Clerk, Thakeham Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

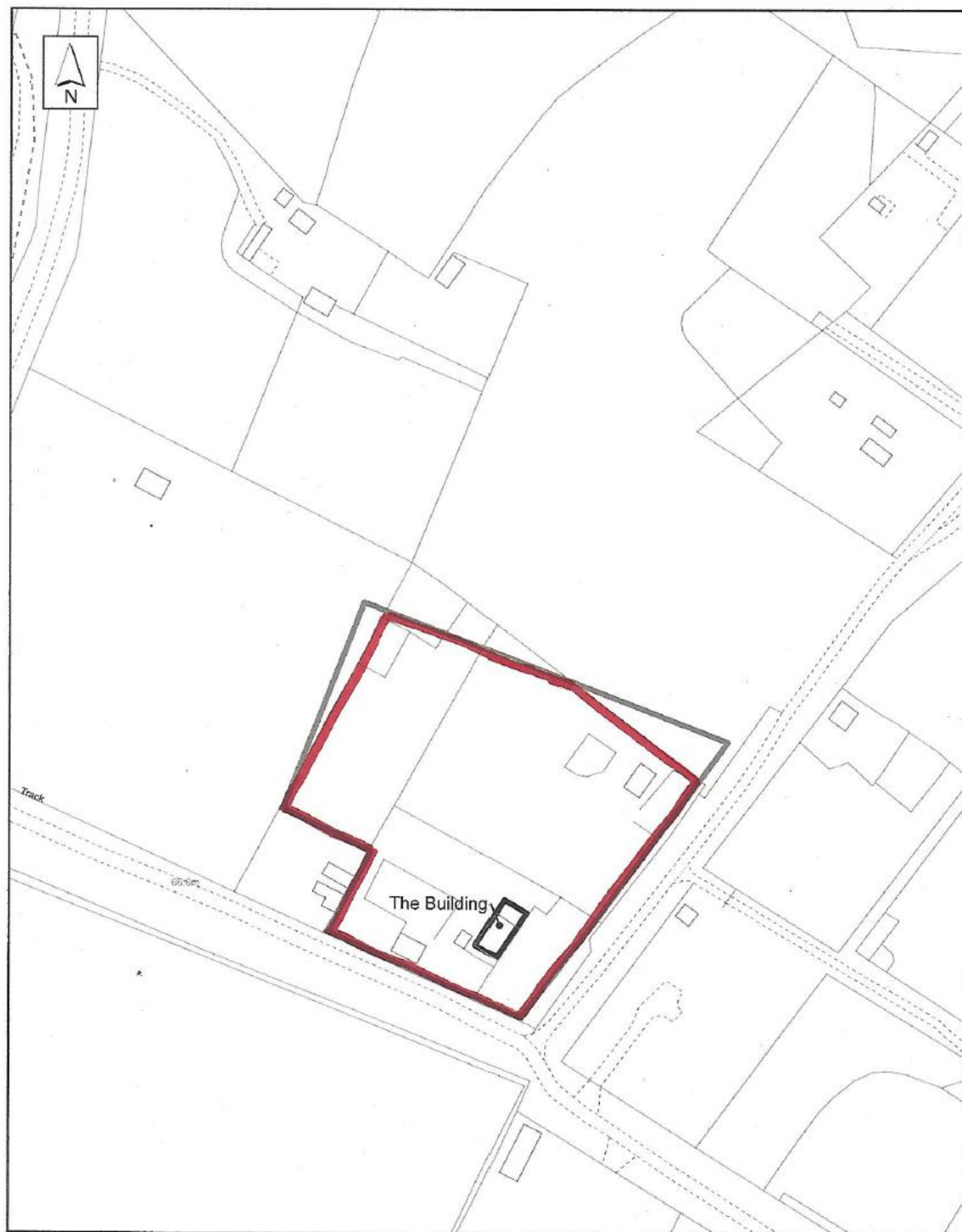
Document 1: Letters of notification of hearing dated 27 April 2021

Document 2: Photograph of building with door installed dated September 2019

Document 3: Judgement in the case of *Wychavon District Council v Secretary of State for Communities and Local Government, Butler and Butler* [2008] EWCA Civ 692

Document 4: Judgement in the case of *Wavendon Properties Ltd v Secretary of State of Housing, Communities and Local Government and Milton Keynes Council* [2019] EWHC 1424

Annexe



Horsham District Council

Parkside, Chart Way, Horsham
West Sussex RH12 1RL.

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Plot G, Dukes Hill,
Thakeham, Pulborough,
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Reference No : EN/19/0436

Drawing No :

Not to scale