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## Appeal Decisions

Site visit made on 25 May 2021

by **N Thomas MA MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 26 August 2021

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### **Appeal A Ref: APP/X2220/C/20/3249896**

#### **The land known as land adjoining Wolverton Cottages, Alkham Valley Road, Dover CT15 7DS**

- 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 Ms Rebecca Anderson against an enforcement notice issued by Dover District Council.
  - The enforcement notice, numbered UDEV/16/00271, was issued on 4 March 2020.
  - The breach of planning control as alleged in the notice is without planning permission the formation of a vehicular access, construction of hardsurface, erection of fencing and gate.
  - The requirements of the notice are:
    1. Cease the use of the newly formed access, in the approximate location shown at A on the attached plan.
    2. Demolish and excavate the concrete apron shown in the approximate location on the attached plan hatched in black. Remove the resultant materials, rubble and rubbish from the land.
    3. Remove the gates and 2m high fence posts on which they are mounted, shown in the approximate location B on the attached plan.
    4. Seal off the new access as shown in the approximate location A on the attached plan, by re-instating the pig-net post and wire fencing across the access in its former position, running adjacent to the highway to form the enclosure of the site shown in the approximate location X to X on the attached plan.
  - The period for compliance with the requirements is 1 month for Step 1 and 3 months for Steps 2, 3, and 4.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### **Appeal B Ref: APP/X2220/W/20/3261400**

#### **Woodland east of Wolverton Cottages, Alkham Valley Road, Dover CT15 7DS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Rebecca Anderson against the decision of Dover District Council.
  - The application Ref 20/00571, dated 2 June 2020, was refused by notice dated 8 September 2020.
  - The development proposed is closure of existing vehicular access to site and creation of new vehicular access with associated hard surfacing, gating and fencing works (part retrospective).
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## **Decisions**

### Appeal A: APP/X2220/C/20/3249896

1. 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: APP/X2220/W/20/3261400

2. The appeal is dismissed.

## **Application for costs**

3. An application for costs was made by Ms Rebecca Anderson against Dover District Council. This application is the subject of a separate decision.

## **Preliminary Matters**

4. The appeal site is a roughly rectangular area of woodland, which lies adjacent to Alkham Valley Road. At one end of the site, adjacent to Wolverton Cottages, is a historic access to the site. The appeal is concerned with the creation of a new vehicular access roughly halfway along the road frontage of the site. A wide hardsurfaced apron has been created, which tapers to a further area of hard surfacing with compacted hardcore or similar, leading to a gateway into the woodland. The woodland is set at a lower level than the road, and therefore the hard surfaced area has been built up to create a more gradual gradient for the access. It is fenced off from the rest of the woodland with stock fencing and a metal gate. The woodland is subject to a woodland Tree Preservation Order<sup>1</sup> (TPO).
5. A planning application<sup>2</sup> for the access was submitted and refused in January 2020. Following the service of the enforcement notice, a further application was submitted and refused, and is the subject of Appeal B.
6. A revised version of the National Planning Policy Framework (NPPF) was published on 20 July 2021. I have invited the main parties to comment on the implications for the case and I have taken account of their response in my determination of the appeal.

## **Appeal A on ground (a) and Appeal B**

7. The terms of the deemed planning application in Appeal A ground (a) are defined by the alleged breach of planning control, which is the development which led to the notice being served. The application the subject of appeal B is partly retrospective, and seeks to permission for the access that has already been created with the addition of timber post and rail fencing and a five bar timber gate. Landscaping with indigenous mixed hedgerow planting is proposed. The access would be surfaced with black tarmac or other suitable material. As the council's concerns are similar for each development, I have considered the ground (a) appeal and Appeal B together.
8. Having regard to the reasons for issuing the notice and the reason for refusal, the main issues are as follows:

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<sup>1</sup> TPO No 16/00014

<sup>2</sup> Ref 19/00753

- The effect of the development on the character and appearance of the site and surrounding area, including the Kent Downs Area of Outstanding Natural Beauty (AONB) and protected trees; and
- The effect of the development on highway safety.

### *Character and appearance*

9. The site is in a rural area within the AONB, where the NPPF requires that great weight is given to conserving landscape and scenic beauty. It is within a dry chalk valley, characterised by small settlements and scattered development within open undulating farmland, which is a mix of arable and grassland. The open farmland is interspersed with small blocks of woodland. Being a characteristic area of woodland within the landscape, it would have made a positive contribution to the landscape and scenic beauty of the AONB, prior to the development taking place.
10. The Appeal A development has resulted in a wide vehicular access being created within the wooded road frontage. It is not clear whether any trees were removed, but it is likely that a considerable amount of vegetation was cleared to allow the levelled area to be created and hard surfaced. It has therefore reduced the amount of tree cover present at the site. Even though there is still a wooded backdrop to the access, as a result of its prominent position at the side of the road, the hard surfaced area and the break in the wooded frontage, it is readily apparent to passing traffic. It appears as a visual intrusion that detracts from the wooded rural character of the area.
11. With appeal B, the appellant is proposing to improve the visibility for vehicles using the access by cutting back vegetation alongside the road within the appellant's control, on either side of the access, as indicated on the submitted plan<sup>3</sup>. I saw on my site visit that the vegetation either side of the access grows up to the back edge of the carriageway, so it would be reasonable to assume that, at least for sections of the frontage closest to the access, a substantial part of the frontage vegetation would need to be cut back, and that this would further open up views of the access for approaching traffic. It is not clear from the evidence provided whether individual trees would need to be removed, or whether significant works to protected trees within the woodland would be required. Even if it was only necessary to cut back vegetation, as the visibility splays would need to be retained in perpetuity, there would be a lasting detrimental effect on the character and appearance of the site.
12. Appeal B proposes that the access could be resurfaced to improve its appearance. The existing fence would be replaced with low level agricultural style timber gate and fencing, with new indigenous mixed hedgerow planting behind to provide additional softening and screening. These improvements could be secured by condition but they would not overcome the harm caused by the creation of the wide vehicular access which detracts from the rural character of the area. The appellant has also provided photographs of existing vehicular accesses in the area, but these do not indicate that a further access is acceptable.
13. I therefore conclude that the ground (a) and the Appeal B developments are harmful to the character and appearance of the site and surrounding area,

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<sup>3</sup> Unnumbered drawing dated March 2020 showing 120m x 2.4m visibility splays.

including the AONB and protected trees. They are therefore in conflict with Policies DM1 and DM15 of the Dover District Council Core Strategy 2010, insofar as they seek to resist development outside settlement boundaries and which would adversely affect the character and appearance of the countryside. It is also in conflict with the guidance in the NPPF and policies LLC1 and SD1 of the Kent Downs AONB Management Plan (2014-2019).

### *Highway Safety*

14. Alkham Valley Road is a main road running along the slope of a chalk valley. In the vicinity of the appeal site, it runs through a rural area and has no footways. It is subject to a 40 mph speed limit but the alignment of the road is curvilinear, following the route of the valley. At the time of my site visit, which was around noon on a weekday, there was a regular flow of fast moving traffic. Although this was only a snapshot in time, it would be reasonable to assume that traffic volumes would be higher during morning and evening rush hours.
15. The Highway Authority has advised that visibility splays of 120 metres by 2.4 metres are required in each direction from the access. Forward visibility of 120 metres is also required from the east and west, so that a vehicle waiting to turn into the site can be seen with adequate stopping distance from eastbound traffic, and drivers waiting to turn into the site can see approaching westbound vehicles. I observed on my site visit that existing vegetation on the appeal site significantly restricts visibility in both directions, so that vehicles emerging from the access have little visibility of and by approaching traffic.
16. The appellant has provided a drawing indicating 120 metre sightlines in both directions with Appeal B, which show that adequate visibility could be obtained using highway land and land within the appellant's ownership. This would require significant cutting back of vegetation in both directions, either side of the access. The appellant states that the land is either within their control or part of the highway, and I have seen no evidence from the Council that would lead me to conclude otherwise. I am therefore satisfied that adequate visibility splays could be secured through a planning condition, if I were minded to allow the ground (a) appeal or Appeal B.
17. Details of forward visibility have not been indicated on a drawing, but it appears to be less than the required 120 metres, due to the alignment of the carriageway. The road curves either side of the appeal site, which restricts forward visibility. This restricts views from approaching eastbound traffic towards an eastbound driver waiting to turn right into the new access. An eastbound driver waiting to turn right into the access would have restricted visibility of approaching westbound traffic. In view of the fast moving traffic, I am not satisfied that adequate forward visibility exists, and I have seen no evidence that it could be improved, due to the alignment of the carriageway. As a result, the use of the access is potentially harmful to highway safety.
18. The appellant argues that the new access is safer than the existing access to the site, allows use by larger vehicles and trailers, and allows two vehicles to pass. Furthermore, the development allows the existing access to be closed. The existing access is sited at the end of the frontage, adjacent to Wolverton Cottages. I have viewed the access on site and I am aware that the access track approaches the road at an angle, is adjacent to the access to Wolverton Cottages, and that cars are sometimes parked to the front of the adjacent dwelling. However, no firm evidence has been put forward to indicate that it is

more dangerous than the new access. It is not unusual to have access points sited close together. Moreover, it has not been shown that there is no scope to make improvements to the existing access to improve its geometry. I do not therefore find that this consideration outweighs the identified concerns.

19. I therefore conclude that the development is harmful to highway safety and that this could not be overcome with conditions. It is therefore in conflict with paragraph 111 of the NPPF, which requires that that safe and suitable access to sites can be achieved for all users.

*Conclusions for Appeal A ground (a) and Appeal B*

20. Appeal A on ground (a) therefore fails, and appeal B should be dismissed.

**Appeal A ground (f)**

21. The ground of appeal 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 constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
22. The appellant argues that it is sufficient to require the use of the access to cease, and that it is excessive to require the gates, posts and fencing to be removed. She argues that they are permitted development as they are under 2 metres in height. This is an argument more appropriately advanced under ground (c). However, no appeal was made on this basis and the evidence put forward is very limited. Furthermore, the gate and fencing clearly facilitate the use of the access and appear to have been installed on the hardstanding. It is not excessive to require their removal.
23. The appellant also considers that it is excessive to require new fencing to be erected as it is a matter of personal choice for the landowner as to whether they enclose the land or not. Be that as it may, the appellant has not advanced an argument that there was no pig-net fencing across the frontage prior to the new access being formed. It is therefore not excessive to require it to be reinstated in order to close the access and return the land to its former condition. The appeal on ground (f) therefore fails.

**Appeal A ground (g)**

24. The ground of appeal is that the periods for compliance with the requirements of the notice are too short. The period for compliance with step 1 is one month, while the period for compliance with steps 2-4 is three months.
25. The appellant argues that as there are no records of accidents and the access has been in situ for nearly four years, it is unreasonable to require its removal within one month. However, without improvements to visibility there are highway safety concerns, and as there is an existing access that can be used, the requirement to cease the use of the access within one month is reasonable.
26. The appellant is also concerned that, due to the Covid-19 pandemic, it is highly likely that there will still be restrictions in place on works such as this. As a result, the three month compliance period for steps 2-4 is potentially unviable, and a six month period would be more reasonable. However, the works are relatively small scale and three months is a reasonable balance between the

interests of the appellant and the need to bring to an end the breach of planning control. The appeal on ground (g) therefore fails.

### **Conclusion**

27. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. I shall dismiss appeal B.

*N Thomas*

INSPECTOR