



Appeal Decisions

Site visit made on 11 January 2022

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal A: ref. APP/A1910/C/20/3257673

Land east of Watling Garth, Old Watling Street, Flamstead, St Albans AL3 8HN

- 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 by John Shayler against an enforcement notice issued by Dacorum Borough Council.
- The enforcement notice ref. 20/00045/ENFORC, was issued on 17 July 2020.
- The breach of planning control alleged in the notice is
The construction of a building, construction of gabion walls, widening an existing access, formation of two vehicular access points and creation of roadways onto the land.
- The steps required by the notice are to:
 1. Permanently remove from the land, the building, associated structures and all materials arising from the removal of the building and associated structures located in the approximate area marked with a green 'X' on the plan attached to the notice.
 2. Restore the land (where the buildings, associated structures and materials in requirement 1 have been removed) to its condition and natural level before the breach of planning control took place, including (but not limited to) filling in any foundations or holes arising from removal of posts or other structures, with soil.
 3. Permanently remove from the land the gabion walls and all materials arising from their removal, forming the access onto the land from the northern boundary of the site.
 4. Permanently remove from the land, the roadways constructed, or hard surfacing laid shown in the approximate portions with black dotted lines on the plan attached to the notice. This includes (but is not limited to) crushed concrete, other hard surfacing material and kerbstones.
 5. Where hard surfacing material has been removed from the land, restore that land to its condition and natural level prior to the breach of planning control taking place.
 6. Permanently remove any new boundary treatments along the boundary with Old Watling Street and reinstate the 3.5 metre wide access to the land which existed prior to the breach of planning control and reinstate a boundary treatment of a height no greater than 1 metre either side of the reinstated access point.
 7. Permanently remove the southern boundary 5-bar wooden gates and the timber posts immediately adjacent on either side of the gates, shown in the approximate position with a blue 'X' on the plan attached to the notice from the land and ensure that any holes/foundations within the land arising from the removal of the gates and posts are returned to their conditions and natural level before the breach of planning control took place.
 8. Reinstall a boundary treatment of a height no greater than 1 metre within the gap created by the 5-bar wooden gates and the adjacent timber posts.
- The periods for compliance with the requirements are:
 - Steps 1, 4, 7 and 8 - 2 months.
 - Steps 2 and 5 - 6 months.
 - Step 3 - 3 months.
 - Step 6 - 12 months.

- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a), an application for planning permission is deemed to have been made under s.177(5) of the Act.
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Appeal B: ref. APP/A1910/W/20/3256631
Cherry Tree Lodge (and adjacent land), Old Watling Street,
Flamstead AL3 8HN

- 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 John Shayler against the decision of Dacorum Borough Council.
 - The application ref. 20/01305/FUL, dated 28 May 2020, was refused by notice dated 15 July 2020.
 - The development proposed is the erection of two pairs of double gates on the southern boundary of the site to recreate previous access points.
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Appeal C: ref. APP/A1910/W/20/3256027
Cherry Tree Lodge (and adjacent land), Old Watling Street,
Flamstead, AL3 8HN

- 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 John Shayler against the decision of Dacorum Borough Council.
 - The application ref. 20/01008/FUL, dated 28 April 2020, was refused by notice dated 22 June 2020.
 - The development proposed is the erection of a chicken coop in the field adjacent to Cherry Tree Cottage (sic).
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Appeal D: ref. APP/A1910/W/20/3256029
Land adj Watling Girth, Old Watling Street, Flamstead

- 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 John Shayler against the decision of Dacorum Borough Council.
 - The application ref. 20/01009/FUL, dated 28 April 2020, was refused by notice dated 23 June 2020.
 - The development proposed is the widening of the existing access onto Old Watling Street to include added gabions and planting, plus gates.
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Decisions

Appeal A: ref. APP/A1910/C/20/3257673

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: ref. APP/A1910/W/20/3256631

Appeal C: ref. APP/A1910/W/20/3256027

Appeal D: ref. APP/A1910/W/20/3256029

2. The appeals are dismissed.

Preliminary matters

3. The site address in the enforcement appeal is different from the addresses in the three s.78 cases, where it is given as Cherry Tree Lodge (and adjacent land), Old Watling Street, Flamstead AL3 8HN. Cherry Tree Lodge is a dwelling on the eastern side of the appeal site, for which a LDC for an existing use of Class C3 (residential) was granted in 2020¹. However, the site plan relevant to Appeals C and D is the same red line area as the site shown on the plan attached to the notice. The site plan in Appeal B shows the site for the two southern accesses outlined in red, taking in the western rectangle of the larger site, and the Cherry Tree Lodge site to the east outlined in blue. The two areas constitute the same area of land as for the other three appeals. I have taken all four plans to show essentially the same site.
4. The three planning applications – all retrospective – are for the same three elements of development enforced against. I have therefore dealt with the three planning appeals together with the ground (a) enforcement appeal and deemed planning application, distinguishing as necessary.
5. In his ground (d) appeal the appellant argues again the creation of hardstandings on agricultural land of more than 0.5 of a hectare does not require planning permission. However, that is the basis of his own ground (c) appeal, and I have treated it as such below. Furthermore no evidence has been put in as to how long ago the development was carried out, which would be the basis for a ground (d) appeal to demonstrate the development was immune from enforcement action.
6. Also under ground (d) he also argues that the reinstatement of access points does not require planning permission and should not have been included as part of the enforcement action, since they are reinstatements of features that already existed. Again, there is no evidence about how long the access points had continuously existed, which would be the basis for a ground (d) appeal. This is a matter that is properly considered under ground (b), and I have treated this as though that were the case.

Background

7. The appeal site is situated between Old Watling Street to the north and the A5183 to the south. It is some 500 metres to the north of the village of Flamstead and within the Green Belt. It has an overall area of about 0.78 of a hectare. Towards the eastern end is a small brick building

Appeal A on ground (b)

8. This ground is that the breach of planning control has not occurred as a matter of fact. It is one of the 'legal' grounds, where the burden of proof is on the appellant to demonstrate this is the case on the balance of probabilities.
9. In cases of this type if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to dismiss an appeal provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the case on the balance of probability.

¹ Decision notice ref. 19/03231/LDE dated 27 March 2020.

10. The evidence that the two accesses from the A5183 trunk road - which runs along the southern side of the site – is that there are dropped kerbs in these two positions.
11. Looking at the sections of kerb, that towards the eastern end of the site does show a drop – although this was difficult to see as a result of the amount of mud/rubble present, and the length of any drop was by no means apparent. As to the kerb towards the eastern end of the site, again any drop is not clearly visible, or the extent of the drop, although I accept it is lower.
12. The appellant has put in no photographic evidence of the dropped kerbs, and the Council's 'Streetview' images from 2012 are indistinct. It might be expected that more thorough photographic evidence and perhaps plans to show the previous existence of the accesses would be submitted. Overall, the appellant's evidence is very thin indeed, and does not constitute the degree of precision or lack of ambiguity I would expect in a ground (b) appeal. I conclude that on the balance of probabilities the ground (b) appeal should not succeed.

Appeal A on ground (c)

13. This ground is that there has been no breach of planning control. This is also a 'legal' ground and I follow the same procedure as for the ground (b) appeal above.
14. The appellant argues that the land is agricultural, where a hardstanding of not more than 1000 square metres on a piece of such land in excess of 0.5 of a hectare is permitted development.
15. Class B of Part 6 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) relates to permitted agricultural development on units of less than 5 hectares.
16. Paragraph B of that Class permits the carrying out on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 hectares, of various forms of development where the development is reasonably necessary for the purposes of agriculture within the unit. Included at paragraph B(e) is the permitted provision of a hard surface.
17. However, paragraph B.1 precludes development in certain circumstances, including at B.1(c) if any part of the development would be within 25 metres of a metalled part of a trunk road or classified road. Furthermore, paragraph B.4 precludes Class B(e) development if the area to be covered would exceed 1,000 square metres.
18. Furthermore GPDO Paragraph D.1(1) states that:
'Agricultural land' means land which, before development permitted by Part 6 is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden.
19. There is no evidence to show that the appeal site is being used agriculturally as a trade or business. Although the appellant says he intends to pursue his plan to keep poultry and to sell eggs locally, this has yet to materialise. Furthermore, I am not at all satisfied the appellant has demonstrated the hardstanding is reasonably necessary for the purposes of agriculture within the unit.

20. Although the site area is given as 0.78 of a hectare, it is by no means clear whether this includes or excludes the area which includes the dwellinghouse for which the LDC was granted.
21. The area of hardstanding so far constructed appears to extend from the Old Watling Street entrance through to the entrance formed onto the A5183 trunk road that runs along the south of the site. The actual area already constructed is not at all clear since much was covered in mud. Furthermore, there are several piles of hardcore/rubble that might be intended for use as hardstanding.
22. Also, the part of the hardstanding to the south of the site is within 25 metres of the trunk road, and therefore the entire area is precluded from the allowance under the provisions of paragraph B.1(c).
23. For all these reasons I find that on the balance of probabilities the construction of hardstanding is not permitted under the GPDO, and that the ground (c) appeal must fail.

Appeal A on ground (a), the deemed planning application and planning Appeals B, C and D

24. Ground (a) is that planning permission should be granted for all or part of the matters stated in the enforcement notice.
25. The appeal site lies within the Green Belt. Paragraph 133 of the National Planning Policy Framework (NPPF) – 'Protecting Green Belt land' sets out the great importance the Government attaches to Green Belts; that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping the land permanently open, and that the essential characteristics of Green Belts are their openness and permanence.
26. NPPF paragraphs 143 and 144 state that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt, and very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
27. NPPF paragraph 145 states that the construction of new buildings in the Green Belt should be regarded as inappropriate but sets out a number of exceptions including buildings for agriculture and forestry. These exceptions are subject to the riders that they should not have a greater impact upon openness of the Green Belt than the existing development. NPPF paragraph 146 sets out other forms of development – such as engineering operations – that are not inappropriate in the Green Belt, provided they preserve openness and do not conflict with the purposes of including land within it.
28. In the light of the foregoing I consider the main issues in the appeals to be:
 1. The effect of the development upon Green Belt interests in the light of prevailing national and local planning policy. (All appeals)
 2. The effect of the development on highway safety for users of the appeal site and nearby roads. (Appeals A & B)

3. The effect of the development on living conditions for occupants of nearby dwellings in terms of potential noise and odours. (Appeals A & C)
4. The effect of the development on the character and appearance of the appeal site and area in its vicinity. (Appeals A & D)
5. Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. (All appeals).

Issue 1 – all appeals

29. The access points and double gates onto the A5183 are not amongst the exceptions identified in NPPF paragraph 145 and are therefore inappropriate development that is by definition harmful. The western access is at an early stage of construction, with the verge still intact, and has yet to be properly formed. However, it appears to me that the hard surfacing of the new eastern access causes a clear reduction in openness. This is as compared with the hedging and trees that were there formerly and contributed to the rural character to the appeal site. While land to the east of the site is developed for various commercial purposes, and there is sporadic residential development on Old Watling Street, the appeal site and surroundings are very much a part of the countryside.
30. Even if this part of the development were to be looked at as an engineering operation - and an exception under NPPF paragraph 146 – it would not preserve openness and would conflict with the Green Belt Purpose of safeguarding the countryside from encroachment.
31. Turning to the chicken coop and attached run, the Council argue that it is for domestic purposes rather than agriculture. The appellant gives as an example that if there were 48 birds there could be production of some 250 eggs a week – far more than needed for domestic purposes – and he says he intends to sell eggs locally. Since there are no chickens there currently and do not appear to have been any, a realistic judgment on this cannot be made. The appellant says elsewhere that he intends to have a total of 30 birds, but this would still mean a production of about 160 eggs per week, again in excess of a family's needs. Overall, I accept there is a potential for egg production in excess of that needed for domestic use, and this might be seen as an agricultural use.
32. Considering the building itself, although I saw the building recently granted a LDC, and the slight remains of a small brick building towards the southern boundary, that was clearly from long ago. Otherwise the site was previously devoid of buildings. The coop and attached run are a reasonably substantial construction clearly visible from Old Watling Street, and from Watling Garth the adjacent house to the west. The construction has a greater impact upon the openness of the Green Belt than the existing development. In my view, even if it is for an agricultural purpose, its presence diminishes the openness of the site both visually and spatially and must be seen as inappropriate.
33. Regarding the works to the access onto Old Watling Street, again these are not within the exceptions listed in NPPF paragraph 145. In my view they reduce openness as a result of introduction of an urbanising feature in what otherwise is a largely rural lane. The elements that might be seen as engineering

operations, such as hard surfacing, diminish openness similarly and fail to safeguard the countryside from encroachment.

34. I conclude on Issue 1 that these aspects of the development are inappropriate within the Green Belt, cause significant harm to openness, and fail to safeguard the countryside from encroachment. They do not accord with the development plan, in particular with respect to Policies CS1 and CS5 of the Dacorum Borough Council Core Strategy of 2013 (the Core Strategy). These include aims to conserve the Borough's rural character and protect Green Belt interests. The latter policy very much reflects the advice of the NPPF on Green Belt on the protection of Green Belt land.

Issue 2 – Appeals A & B

35. The effect of the development on highway safety for users of the appeal site and nearby roads. (Appeal B only)
36. The section of the A5183 in the vicinity of the appeal site is a two-lane road with very little curvature. I saw there was heavy traffic in both directions and that many vehicles were travelling at or near the speed limit of 50 mph. I found it was difficult to find adequate time to cross the road on foot to the footway on the opposite side.
37. Visibility from the eastern entrance towards the east was good – I could see at least as far as the filling station, probably about 400 metres away. However, looking towards the west my view was obstructed by hedging and foliage on the verge. I estimate there is no more than 15 to 20 metres visibility of oncoming traffic from this access. The Highway Authority advice is there should be 160 metres visibility to either side of the access taken from a point 9 metres back from the highway edge.
38. This access provides so very much lower visibility than that advice that I conclude on Issue 2 the development is likely to cause serious harm in terms of highway safety for users of the appeal site and nearby roads. The development does not accord with the development plan, particularly with reference to saved Policy 54 of the Dacorum Borough Local Plan of 2004 which includes aims to ensure new development proposals will be expected to meet current national and local standards for highway design and access.

Issue 3 – Appeal A & C

39. Considering the effect on living conditions for occupants of nearby dwellings, Watling Garth – the house adjacent to the western site boundary I understand it is about 15 metres from the poultry coop at its closest. However, the attached run extends virtually to the boundary.
40. The appellant says that at their loudest hens produce the same decibel level as human conversation. However, he does not relate this to any particular number of birds. He also says that there is an allowance to keep up to 50 hens in back gardens without the need for planning permission, but I know of no such allowance. Although DEFRA may require registration to keep more than 50 birds, that is not connected to the planning regime and does not justify housing them close to dwellings.

41. In my experience keeping a few hens for domestic purposes in a nearby garden can lead to noise and odour nuisance, as well as infestations of insects. Watling Garth is a relatively isolated house in countryside surroundings, I consider its occupants can expect reasonable peace and quiet in their day-to-day lives. I consider that keeping 30 birds in such close proximity to the house and its garden is likely to result in significant harm to the living conditions of occupants in terms of noise and odours.
42. I can understand the appellant's wish to pursue his agricultural ambition, but it is not necessary to position the poultry coop and run in such close proximity to the neighbouring house. The trees and other planting will do little to reduce the effects of either noise or odours.
43. I conclude on Issue 3 that the development will cause significant harm to living conditions for occupants of a nearby dwelling in terms of potential noise and odours. The development does not accord with the development plan particularly in the light of the aims of Core Strategy Policy CS12 concerning the quality of site design including the avoidance of disturbance to surrounding properties.

Issue 4 – Appeals A & D

44. Old Watling Street is essentially a narrow single carriageway rural lane with limited development along it. In this part of the lane there are generally trees and dense mixed hedging and scrubby undergrowth to either side. The site access before this development took place was a simple a timber gate set within the hedge and had clearly existed for many years.
45. This development has greatly increased the width of the access to provide splays to either side and resulted in the loss of a considerable length of the roadside trees/hedge. To the left of the opening – looking from the road - is a laurel hedge with a post and wire fence to the front and backed by a 2 metre close-boarded timber fence. To the right is also a laurel hedge behind which are the gabions, which are about 1.8 metres high.
46. I find the laurel hedge to be an unsympathetic and rather formal and uniform introduction in the context of the former mixed and informal boundary treatment. Furthermore the gabions and the extent of hard surfacing of the access are jarring features in this rural scene.
47. Overall, the loss of a significant section of old mixed hedging/trees, the urbanising features of the laurel hedges, the hard surfacing and the gabions cause significant harm to the character and appearance of this formerly rural section of Old Watling Street. The development does not accord with the development plan, particularly with respect to Core Strategy Policies CS12 and CS25. These include aims to plant trees and shrubs to help assimilate development and to integrate development with the streetscape character, and to help conserve and enhance Dacorum's natural and historic landscape.

Issue 5 – All appeals

48. I have found the matters enforced against and the three developments for which retrospective planning permission is sought cause harm to the openness of the Green Belt, as well as harm in terms of highway safety, residential amenity and the character and appearance of the area. I must now consider

whether harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

49. The appellant argues that the development as a whole should be regarded as sustainable in the terms envisaged in paragraph 8 of the NPPF. That is, in economic terms it would reduce food bills for occupants of the site and generate income from selling eggs. Furthermore the coop is well-designed and its impact is minimised. It has no below ground foundations, so it is readily removable. The egg production enterprise will help reduce food waste, the poultry manure can be used for fertilizer, and greenhouse gas production will be minimized by reduction in the need for transport.
50. I accept that egg production would provide some, if limited, economic advantage to the site occupants. However, this would have little impact on any wider economy in that sale of eggs would entail delivery or collection costs for a disproportionately small element in any family's budget. As regards the social aspect of sustainability, I have found that the development does not foster a well designed or safe environment, in terms of highway safety, residential amenity and its impact upon the character and appearance of the site and surrounding area. Similarly, in environmental terms the development does not serve to protect or enhance the natural environment.
51. I conclude on Issue 5 that none of these considerations outweigh the harm to the Green Belt by reason of inappropriateness and the other harms identified, and do not amount to the very special circumstances necessary to justify the development. The development as a whole does not accord with the development plan, particularly with reference to Core Strategy Policy CS5, which aims to ensure protection of the openness and character of the Green Belt, and that national policy should be applied.
52. Appeal A therefore fails on ground (a), and the deemed planning application is refused. Appeals B, C and D are dismissed.

Appeal A on ground (f)

53. This ground is the steps required by the enforcement notice are excessive and lesser steps would overcome the Council's objections. The appellant argues that reinstatement of the boundary treatment to either side of the 3.5 metre wide access would not restore the land to its condition before the breach took place – one of the purposes of an enforcement notice that a local planning authority may specify.
54. The requirement to '*reinstate a boundary treatment*' rather than a requirement to '*restore the land to its previous condition*' appears to me to give the appellant considerably greater flexibility in the type of boundary treatment to employ. For instance, he may decide to plant a hedge no greater than 1 metre high, which would be much less onerous than reinstating mature or semi-mature trees, high hedging and bushes to replicate the existing type of treatment. It appears to me that the Council have under-enforced in this instance, which is of benefit to the appellant.

55. As to infilling the holes/foundations after removal of the gate-posts, these holes and any foundations are clearly part and parcel of the development of the accesses. The requirement is therefore part of the restoration of the land. Whether or not the holes/foundations would require planning permission is a matter of fact and degree but is in any case irrelevant to the question of whether infilling/removal is part of the restoration.
56. The argument about whether or not the construction of hardstanding is permitted development is a matter dealt with under ground (c) and is not relevant to a ground (f) appeal.
57. Overall, I conclude that the ground (f) appeal must fail.

Appeal A on ground (g)

58. This ground is that the compliance periods are too short. It is argued that the period for all the requirements should be extended to 12 months.
59. The Council say the various periods were calculated to ensure each step could be undertaken without 'over-stepping' each other. I agree this is a rational approach. It would, for instance be undesirable to require the Old Watling Street access to be reinstated before removal of the hardstanding.
60. The periods allowed appear to me quite practically feasible, and I see no reason to extend any of them. The appeal on ground (g) therefore fails.

Conclusions

61. For the reasons given above I conclude that the enforcement appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. I further conclude that the planning appeals B, C, and D should be dismissed.

Stephen Brown

INSPECTOR