



## Appeal Decision

Site visit made on 11 August 2022

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 September 2022**

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**Appeal Ref: APP/D3505/C/21/3281794**

**Petersfield House, Church Lane, Copdock, Ipswich, Suffolk IP8 3JZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Joost Gazendam against an enforcement notice issued by Babergh District Council.
  - The notice was issued on 4 August 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the formation of an access to the Highway, along with the erection of brick pillars and electrically operated gates.
  - The requirements of the notice are to:
    - a) Demolish the gates and brick pillars
    - b) Remove all associated materials from the land.
    - c) Permanently stop up the access and restore the hedgerow and embankment to its condition prior to the formation of the access.
  - The period for compliance with the requirements is: 2 months.
  - 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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### Decision

1. It is directed that the enforcement notice is corrected by:
  - At section 2 of the notice, the deletion of the word 'pillars' and the replacement with 'walls', so that it reads 'Without planning permission, the formation of an access to the Highway, along with the erection of brick walls and electronically operated gates.'
  - At section 4 of the notice, the deletion of the word 'pillars' and the replacement with the word 'walls', so that requirement a) reads 'Demolish the gates and brick walls.'
2. Subject to the corrections above, 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.

### Preliminary Matters

3. The notice refers to brick pillars in the allegation and requirements. However, it is clear from the evidence and from my site visit that what has been constructed comprises brick walls. I have wide powers of correction under section 176(1) of the Act, subject to it causing no injustice to either party. Since both parties have advanced their case on the basis of the structures constructed on site, I consider there would be no injustice in correcting the notice.

## **Ground (a)**

### **Main Issues**

4. The main issues of the appeal are the effect of the appeal scheme on:
- The character and appearance of the area; and
  - Highway safety.

### **Reasons**

#### *Character and appearance*

5. Church Lane is a generally rural lane, with sporadic buildings located along its length. Mature hedgerows and trees either side of the road give the lane a verdant character, which makes a significant contribution to the character and appearance of the area. The Council has provided me with a photograph of Church Lane before the development was carried out, which shows mature vegetation where the appeal access has been created.
6. Although the enforcement notice does not make a reference to local development plan policies, the Council state that the appeal site is within a Special Landscape Area and has drawn my attention to Policy CR04 of the Babergh Local Plan (2006)(BLP), which states that development proposals in Special Landscape Areas will only be permitted where they maintain or enhance the special landscape qualities of the area. Although the designation does not form part of the emerging local plan, the Council advise that the emerging plan is subject to examination and is not yet adopted. Consequently, I afford the emerging plan very limited weight.
7. The creation of the access has opened up views into the site from Church Lane, revealing the main dwelling, as well as the outbuilding. This, together with the erection of the brick walls and gate has an urbanising effect on the character of the lane and has diminished the verdant character of this part of the lane. This is harmful to the character and appearance of the area, contrary to policy CRO4 of the BLP and paragraph 130 of the National Planning Policy Framework (July 2021)(the Framework) which seeks development which is visually attractive and is sympathetic to local character, including landscape setting.

#### *Highway safety*

8. Church Lane is a generally single track road, with passing places along it to allow two vehicles to safely pass each other. The road passes over the A12 and appeared to be well used by both motorised vehicles and cyclists at the time of my visit. There is an established entrance to the premises, which is served by gates and substantial rendered walls. As a consequence, visibility from the existing access is limited in both directions.
9. The appellant has constructed the appeal access further along Church Lane, towards a bend in the road. The access is set back from the road, with brick walls and an electric gate. The appellant suggests that the gate is set only to allow pedestrian access, enough to allow a motorcycle to access/egress and it would only be necessary to allow for a van or trailer delivery from time to time. However, during my visit, I saw the access being used to allow access and egress for a van.

10. The Framework seeks safe and suitable access for all users and advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. While the appellant states there were no accidents recorded on 'Crashmap' between 2015 and 2020 along Church Lane, this doesn't mean that the appeal access is a safe access to use.
11. The Highways Authority, in response to a consultation on an application for an access in this location, advised that for the access to be acceptable in terms of highway safety, visibility splays should be commensurate with the standards set out in the 'Design Manual for Roads and Bridges' (DMRB) and should measure 2.4m by 90m in both directions. The appellant contends that the advice contained within Manual for Streets should be used and therefore that the visibility splays should be 2.4m by 43m in both directions.
12. The road adjacent to the site is subject to a 30mph speed limit. The appellant suggests that the road geometry and presence of the bend are self-regulating features along Church Lane, which generally ensures driver speeds are low and has carried out a speed survey in September 2021, which indicate that typical speeds along the lane, approximately 50m from the access, are around 30mph. The appellant has provided me with extracts of Manual for Streets (MfS) 2, which advises that in situations where speeds are lower than 40mph, MfS Stopping Sight Distance (SSD) parameters are recommended.
13. However, in order to achieve either visibility splay in the western direction, vegetation would need to be removed. Although this is within the ownership of the appellant, the removal of such vegetation would further diminish the verdant character of the area, which is harmful to the character and appearance of the area. Without the removal of the vegetation, very limited visibility splays can be achieved in the western direction.
14. In the eastern direction, the appellant states that visibility was measured on site and although it over-sails the sloping bank, this does not block visibility to the access because a driver can sight over the lower portion of the slope to meet the vertical visibility plane requirements. However, during my visit, I saw that vegetation along the bank limits visibility and restricts views to and from the access. Although the vegetation could be removed, since the bank is outside of the appellant's ownership, this is not something that could be secured by condition.
15. The appellant suggests that there is no reasonable means by which a connection through the garden, from the established entrance to the outbuilding can be constructed. The appellant asserts that issues from surface water run-off flooding have caused the original proposal to run a roadway within the site to be abandoned. However, given the extent of garden between the highway and track shown on the plan approved under DC/19/03216, I see no reason why it would not be possible to manage surface water flooding so that the track does not become waterlogged.
16. Although larger delivery vehicles may be unable to use the established entrance due to its dimensions, it is not clear when such larger vehicles would need to be used, or their frequency of use. The appellant advises that no large HGV traffic is anticipated and I see no reason why a van would not be able to use the established entrance. Consequently, I afford this matter very limited weight.

17. The wall and gates which have been erected extend to around 1.35m in height. The appellant asserts that if the wall and gates were reduced to a height of 1m, they would be permitted under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO).
18. However, the structures that have been built are part and parcel of a means of access to Church Lane, which is development which is not permitted by the GPDO. Furthermore, the GPDO does not grant retrospective planning permission. Although it would be possible for the appellant to comply with the notice and then erect a 1m high wall, I see no reason why the appellant would choose to do so in this location since elsewhere along the frontage the appellant has retained the hedgerow. I therefore afford this matter very limited weight.
19. I acknowledge that the existing access to the highway has particularly limited visibility. However, the existing access would still be used. Furthermore, without the removal of vegetation, any improvement to visibility in the western direction would be very limited. I therefore afford this matter very limited weight.
20. I am advised that Church Road [sic] is a proposed 'Quiet Lane', which if designated, will lead to additional signage in Church Lane, designed to alert drivers that the road is a shared space with walkers, cyclists and horses. However, even if Church Lane is designated a 'Quiet Lane', it is not clear what effect this will have on the speed at which drivers using the Lane are likely to travel. I therefore afford this matter very limited weight.
21. Thus, for the reasons given above, I consider the appeal scheme fails to provide adequate visibility splays and is not a safe and suitable access for all users which is harmful to highway safety, contrary to the expectations of the Framework, the requirements of which are set out above.

### **Ground (f)**

22. An appeal under ground (f) is made on the basis 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.
23. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice, that its purpose is to remedy the breach.
24. The appellant suggests that the removal of the wall and gates in their entirety would be excessive and that the gates could be programmed to allow pedestrian access only. However, as set out above, I have found that the wall and gates harm the character and appearance of the area. Although it would be possible for the appellant to erect a wall 1m in height under permitted development rights once the enforcement notice is complied with, as set out

above, I see no reason why the appellant would choose to do so in this location.

25. The notice requires that the walls and gate are demolished. Leaving the wall and gates in situ would therefore fail to remedy the breach. Consequently, their removal is not excessive. I can see no obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal and the appeal under ground (f) must fail.

### **Ground (g)**

26. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant asserts that the time is too short to comply with the notice and that a period of 3 months would be more reasonable, or 12 months to resolve surface water flooding at the site.
27. The appellant suggests that works to resolve a serious highway flooding issue at the site is yet to be resolved. However, this is a separate matter and I see no reason why this should delay the demolition of the walls and gate or the restoration of the site.
28. Given the works required to comply with the notice, I consider 2 months is sufficient to enable the walls and gate to be demolished, to stop up the access and remove materials from site and restore the site. Consequently, the appeal under ground (g) must fail.

### **Conclusion**

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

*M Savage*

INSPECTOR