



Appeal Decision

Site visit made on 13 August 2025

by **Simon Hand MA**

an Inspector appointed by the Secretary of State

Decision date: 20th August 2025

Appeal Ref: APP/D1265/C/24/3338351

Holtwood House Holtwood, Holt, WIMBORNE, BH21 7DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Paul Miller against an enforcement notice issued by Dorset Council.
- The notice was issued on 8 January 2024.
- The breach of planning control as alleged in the notice is the material changes in the use of the Land from an agricultural use to use for domestic purposes ancillary to the adjacent dwelling including integral operational development comprising: a. Construction and laying out thereon of a domestic greenhouse and shed used to house domestic appliances; b. Laying out hardstanding; c. Erection thereon of fencing unrelated to agriculture and above permitted development height; d. Creation of a domestic style vegetable patch unrelated to agriculture; e. Creation of a domestic style pond unrelated to agricultural use; f. Installation of retaining wall and steps to dwelling; g. construction of pillars and gates on the highway boundary to create access to adjacent dwelling.
- The requirements of the notice are : In respect of the Land: 1. Cease to use the Land for domestic purposes and uses associated with a dwellinghouse; Identified on the map as Site B. 2. Dismantle and remove the brick retaining wall and steps from the area identified as Area 1 on the Map. 3. Remove the close boarded fencing from the southern boundary of the Land. 4. Reinstate the vegetable plot within the area identified as Area 4 on the Map to a state consistent with the agricultural field comprised in the Land. 5. Dismantle and remove the greenhouse and any associated base from the area identified as Area 5 on the Map. 6. Dismantle and remove the shed and any associated base from the area identified as Area 6 on the Map. 7. Remove all hardstanding from as area identified as Area 7 on the Map. 8. Remove the pillars and gates from the area identified as Area 8 on the Map. 9. Remove all other equipment and paraphernalia associated with domestic use from the Land. 10. Fill in the part of the pond situate within the area identified as Area 10 on the Map. 11. Remove all building materials and debris arising from the works set out above from the Land. 12. Make good the Land using topsoil and reseed the surface of the ground and allow it to recover so as to be suitable for agricultural use.
- The period for compliance with the requirements is: four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) 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.

Decision

1. It is directed that the enforcement notice is varied by: the deletion of requirement 1 and its replacement with “*1. Cease to use the Land for domestic purposes and uses associated with a dwellinghouse; Identified on the map as Site B except for Areas 1 and 10 as shown on the Map*”; the deletion of requirement 2 and its replacement with “*2. Dismantle and remove the steps from the brick retaining wall, making good the wall with bricks to match, from the area identified as Area 1 on the Map*” and remove requirement 10. Subject to these 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.

Preliminary Matters

2. The background to the appeal appears to be that the original building on the site was a farmhouse. Planning permission was granted to convert various buildings into dwellings and demolish the farmhouse and replace it with two dwellings one known as Holtwood House. The plans submitted as part of the application clearly show Holtwood House to have a small back garden, separated from the garden of the neighbour at Kingsettle Lodge by a small area of paddock. This paddock then wraps around the back of the neighbour to form an extensive area of land behind the houses on two roads that do not appear to have names but one runs north-south, where the shared access for the two new dwellings is located and one runs west-east to which the paddock and Kingsettle Lodge face and onto which a new access to Holtwood has been created.
3. During the building works it seems from various photographs that the part of the paddock subject to this appeal was churned up by construction traffic along with the 'garden' area and access to the site was gained from the road roughly where the new gate pillars are today. When the final landscaping was begun the paddock seems to have been forgotten. The land sloped down from the neighbour at Kingsettle to the back of Holtwood House and it seems the site of Holtwood was excavated to provide an area level with the road which accentuated the slope. Mr Millar suggests the developer then installed the retaining wall about 1/3 of the way into the paddock area otherwise the steep slope would have been unstable and even if the soil did not move water would flood down into Holtwood House. The result is that the narrow rear garden has been roughly doubled in size to create a flat lawn separated from the rest of the paddock/garden by the retaining wall.

Reasons

4. Aerial photographs show the paddock clearly separating the farm from the neighbour so that the east-west road had a very rural feel. The various houses built or converted at the farm have changed that feel somewhat but the paddock should still act as a separator between Holtwood House and the neighbour. This was the view of the Inspector who dealt with an appeal for a different form of the development that was refused. Part of the reasoning was that the paddock, that was due to be at least partly built on, was an important feature helping to retain the rural feel of the road and retaining the scattered spaciousness of the existing dwellings in the area. This is a conclusion with which I have no reason to disagree.
5. At the moment the whole area looks like a garden and a laurel hedge has been planted along the roadside with a close boarded fence behind and a new access created in the corner, closest to the house, of what would have been the paddock. This access has large gate pillars and opens onto a new area of gravelled hardstanding with a large shed used to store machinery for maintaining the paddock. The land then slopes up to behind the retaining wall forming a grassy plateau with a wooden greenhouse and vegetable plot. This plateau then runs seamlessly into the paddock, except it is mown and laid to lawn and separated by a fence.
6. Before I get into a discussion of curtilage, permitted development rights or the material change of use, I should say it seems obvious to me the smaller area of lawn between the retaining wall and the house plus the pond, seem perfectly acceptable. The plateau of grass beyond the retaining wall could still act as the

visual separator between the two plots if it were returned to paddock and the southern boundary opened up again.

7. The retaining wall should be retained. Not only because removing it would be a significant engineering effort, but I am not sure what it would achieve. The notice could have required the land to be reprofiled, but it does not do so. Had it done, that would have resulted in a very steep slope from Kingsettle down to the official boundary of Holtwood. This would not only be difficult to use and maintain but would also represent a danger in terms of stability and run-off as argued by the appellant. Although I have no structural engineering evidence to this effect, common sense suggests there would not be a comfortable relationship between Holtwood and the slope, and possibly even the garden of Kingsettle. However, the notice only requires the land to be made good and re-seeded. This would leave a dangerous cliff edge in the middle of the paddock. If the wall is retained, which I believe is necessary, then it makes no sense to return the flat area of lawn to paddock as this is now divorced from the paddock by the wall. There would, however, be no need for the steps as access to the paddock can come from other locations.
8. As to curtilage, the leading judgement is *Blackbushe Airport*¹ which went to the Court of Appeal. That found that all the various tests in the preceding cases that are regularly quoted in curtilage cases essentially all revolve around the one point that is the intimate association test. While the history of the site shows the garden has clearly encroached into a field and that is, without doubt, a material change of use, the smaller area of flat grass between the rear of the original boundary and the retaining wall (area 1 on the enforcement notice plan) now has an intimate association with the dwelling. In this case, because of the retention of the wall and the relationship of the lawn to the house and the retaining wall, as discussed above, I consider it has become curtilage, thus the lawn and pond are permitted development.
9. The raised area of grass beyond the retaining wall, the gravelled area and the land on which the shed stands can all easily be returned to the paddock and with the removal of the fence, vegetable plot and greenhouse the rural gap can be reinstated. It could be argued the gravelled area has a similar relationship to the house as the lawn and of course that part, which is close to the house up to the line drawn along the back by the original boundary is excluded from the notice and is clearly also curtilage. Beyond that (area 7) however it extends into the paddock area and only serves a functional role because of the new entrance and gates. These however, require planning permission which I am not going to grant. Thus the gravelled area is not curtilage and neither is the raised land beyond the retaining wall.
10. Whether or not the land is curtilage it all requires planning permission to be used as residential land as its lawful use is agricultural. Because my main concern is to return the rural separation to the site, I shall grant planning permission for the flat lawn (area 1) but not the rest. This means the vegetable beds (area 4) and greenhouse (area 5) have to go as they are not permitted development. The shed (area 6 on the plan) similarly needs to be removed.

¹ *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398

11. The appellant argues the shed is required to store the machinery needed to maintain the paddock and for them to be able to access the paddock. This rather suggests the assertion made by the appellant that the area under discussion has no possible beneficial agricultural use is not correct as it can be used in exactly the same way the rest of the paddock which is clearly used and maintained by the appellant. Access to the paddock can be gained from the lane to the north, which is presumably where it has been accessed from traditionally. There are plenty of other options to locate a shed to store small tractors and cutting machines rather than right on the roadside in the area that ought to be kept open.
12. I also agree the new entrance gates and pillars need to go as they lend an urbanising effect to the road that defeats the object of the need to re-establish its rural nature. Also they would now lead into the paddock as the gravel in area 7 has to go. However, I note there is no requirement to stop-up the access so presumably the paddock could still be accessed from here, perhaps through a typical field gate? It might also be possible to continue to access the house from here, there is nothing in the notice to prevent that, as long as the gravel hardstanding is removed. The close boarded fence along the southern boundary also needs to go for the same reason as the gate pillars.
13. As I have argued above the paddock should still serve as a separating function. Its loss is harmful to the character and appearance of the area and so contrary to point 1 of HE3² that the character of settlements and their landscape settings should be taken into account. I do not need to consider the green belt issue as whatever my conclusion on that, the proposal is still contrary to HE3. Nevertheless, it is quite clear the conversion of the paddock to residential use with a shed, greenhouse and potentially all manner of domestic paraphernalia would be a material change of use that did not preserve openness. No very special circumstances have been suggested.
14. The effect of all these changes is that the retaining wall and enlarged rear lawn remain, but the other changes are undone to reinstate the paddock and its relationship to the road. Whether the intrusive laurel hedge remains is up to the appellant, but I would hope it is removed if only to allow access for the removal of the fence. I consider this strikes the right balance between protecting the character of the area and a sensible outcome for the appellant.

Conclusion

15. I shall uphold the notice but vary requirements 1 and 2 and remove requirement 10 in order to achieve the outcome I have described above. Planning permission will be granted by s173(11) for any of the matters in requirements 1, 2 and 10 that remain insofar as permission is required.

Simon Hand

INSPECTOR

² Christchurch and East Dorset Local Plan – Part 1 – Core Strategy