

Our Ref: 1011/01
Your Refs: APP/J3720/W/18/3215187 and
APP/J3720/C/18/3206999

Mr R Thomas
The Planning Inspectorate
Room 3B
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By email: teame1@pins.gsi.gov.uk

21 December 2018

Dear Mr Thomas

**LINKED APPEALS BY PROJECTPART HOMES LTD
LAND SOUTH OF HOME FARM, OLD SCHOOL LANE, LIGHTHORNE, WARWICKSHIRE CV35 OAU AND
HOME FARM, OLD SCHOOL LANE**

I refer to your letter dated 15 November 2018 confirming the above appeals are valid and linked together, and to be determined by the Written Representations procedure.

Under appeal reference APP/J3720/W/18/3215187, we have already submitted our Statement in respect of Stratford on Avon District Council's refusal of planning permission on 20 September 2018, for the change of use of a 10 metre strip of land to become part of the gardens to the approved residential development (plots 1 to 4). I acknowledge the recent email from the planning officer confirming that the drainage reason for refusal will not be defended. I accept any relevant condition which the Inspector considers is still necessary.

Prior to this, a previous application had also been refused by the District Council in May 2018, following which, in June 2018, the Council issued an Enforcement Notice.

An appeal against the Enforcement Notice was lodged on 12 July 2018 and as confirmed in your recent letter, this will proceed on grounds (a), (f) and (g). A brief summary of our case was submitted with the appeal form. I now enclose an additional statement expanding on the grounds of appeal for the Enforcement Notice. Where relevant I provide the link between the two appeals.

T H E A I T C H I S O N R A F F E T Y G R O U P

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A list of Directors, Chartered Surveyors and Chartered Town Planners is available on request.

Essentially, in respect of the Enforcement Appeal Ground (a), our case is presented in the Planning Appeal Statement. This is clarified in the enclosed additional statement. In addition, the inaccuracies of the Enforcement Notice are addressed.

I have spoken with the Enforcement Officer at the Council, who is now fully aware of the procedure set out in your letter of 15 November. I have, therefore, forwarded this letter and additional statement directly to the Council.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel C Ozier'.

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**TOWN AND COUNTRY
PLANNING ACT 1990**

**Enforcement Notice Appeal
by Projectpart Homes Ltd**

**Home Farm
Old School Lane
Lighthorne
CV35 0AU**

December 2018

**Statement on behalf of
The Appellant
by
Nigel C Ozier
BA (Hons) MRTPI**

**LPA Reference
17/00558/CRIT**

**Appeal Reference
APP/J3720/C/18/326999**

**Linked Appeal Reference
APP/J3720/W/18/3215187**

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CHARTERED TOWN PLANNING CONSULTANTS

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1. INTRODUCTION

- 1.1 On 11 June 2018, the District Council issued an Enforcement Notice. The Notice confirmed that it will take effect on 16 July 2018. In correspondence with the Council, we pointed out that alterations were to be made through a revised planning application and requested that the Council considered delaying the Enforcement pending the outcome and decision on the revised application and also in view of its inaccuracies. However, the Council decided to proceed with the Enforcement and therefore on 12 July 2018, we lodged an appeal.
- 1.2 Notwithstanding this appeal, on behalf of Projectpart Homes Ltd, we submitted the revised planning application on 10 July 2018 but which was subsequently refused by the Council under officer delegated powers on 20 September 2018. This is the subject of an appeal now linked with this Enforcement Notice appeal.
- 1.3 In light of this, and the inaccuracies in the Enforcement Notice, it is requested that the Inspector considers altering the detail of the Enforcement Notice to reflect the proposals as set out in the refused planning application, rather than those indicated by the existing Enforcement Notice.

2. DETAILS OF THE ENFORCEMENT NOTICE

- 2.1 The Enforcement Notice alleges the following breach of planning control:

“without planning permission the material change of agricultural land to garden land (associated with the dwellings approved by planning permission 17/03207/VARY) which has been facilitated through engineering operations to re-level the land and the erection of a 1.8m close boarded fence (in the approximate position marked A-B on the Plan) to enclose the land”

- 2.2 The reasons for issuing an Enforcement Notice were:

“It appears to the Council that the above breach of planning control has occurred within the last 10 years

1. *The site lies in an open countryside location in planning terms. The unauthorised development does not meet any of the development forms supported in principle by Policy AS.10 which relates to development in Countryside and Village locations. The unauthorised development is not considered to be fully justified or offer any significant benefits to the local area. Furthermore the unauthorised development is considered to cause planning harm contrary to the requirements of Policy AS.10. The unauthorised development therefore represents an encroachment into open countryside for which the principle of the development is not supported in line with the Policy AS.10 of the Stratford-on-Avon District Core Strategy 2011-2031.*
2. *The unauthorised development by reason of the site’s location, extent and steepness of the bank created; extent, design, siting and height of the fence is considered to introduce a significant adverse impact on the rural character experience within the locality of the site. The fence and engineering operations have resulted in the loss of mature vegetation and are considered to introduce a harmful stark harsh contrast to the edge of the settlement which is usually prominent from the public realm. Furthermore the use of the land for garden purposes together with the potential*

associated domestic paraphernalia could introduce visual harm to the character of the area. The development is therefore considered to be contrary to Core Strategy Policies AS.10, CS.5 and CS.9 of the Stratford-on-Avon District Core Strategy 2011-2031.

3. *The unauthorised development by reason of the site's location, extent and steepness of the bank created, together with the extent, design, siting and height of the fence is considered to introduce a harmful impact on the rural village edge and how the conservation area is experienced which is exacerbated through the loss of the vegetation. Furthermore the use of the land for garden purposes has the potential to result in associated domestic paraphernalia on the land which would add to the visual harm to the character of the area. The unauthorised development is therefore not considered to preserve the character of the conservation area which amounts to 'less than substantial' harm on the heritage asset. In the absence of any public benefit to outweigh the harm the unauthorised development is considered to be contrary to Policy CS.8 of the Stratford-on-Avon District Core Strategy 2011-2031 and relevant guidance within the National Planning Policy Framework'*

- 2.3 The Enforcement Notice sets out what is required within 4 months from the date the Notice would take effect. These are:

- "a) Remove the fence along the alignment A-B from the land*
- b) Reinstatement of the land levels to that identified as the 'Original Ground Level' shown as Drawing 350 Rev C submitted with planning application 18/00549/FUL*
- c) Only use the land for agricultural purposes"*

- 2.4 As indicated above, we contacted the Enforcement and Planning Officers to point out the inaccuracies on the Notice. It was confirmed that the 1.8 metre close boarded fence was being removed and that the revised planning application, now subject of the linked appeals, would replace this with a 1.2 metre post and wire fence, together with an additional area for planting. It was also pointed out that the land could not be put to agricultural use given its poor quality and that it contains hard rock. However the Council proceeded with the Enforcement Notice as written.

3. GROUNDS OF APPEAL

Ground (A)

That planning permission should be granted for what is alleged in the Notice

- 3.1 In respect of Ground (A), the details referred to in the Enforcement Notice and set out in paragraph 2.3 above are not the details for which planning permission is being sought. As also referred to above, we have pointed out to the Council on receipt of the Enforcement Notice that there was no intention of proceeding with the 1.8 metre fence, which has been removed. Therefore, we request that the details of the Enforcement Notice are altered to reflect the proposals which are those subject to the linked planning appeals.
- 3.2 The proposal seeks the change of use of a 10 metre strip of land adjoining the above development, engineering works to grade the additional land (as already undertaken) and a 1.2 metres post and wire fence with amended landscaping detail which includes an increased area for native species planting.

3.3 The case for planning permission is set out in Section 5 of our Statement submitted in respect of the linked appeal. Therefore, we do not intend to repeat in full in this Statement, but emphasise the following points in support of the grant of planning permission.

- 1) The 10 metres of land adjoins the approved, now built, development of five dwellings. While it is outside the village confines boundary, the land has had no useful agricultural value largely because it comprises hard rock but also because it clearly relates more to the new residential properties, particularly plots 1 to 4 (paragraph 5.2 of Statement). It has never been used for agricultural purposes.
- 2) The inclusion offers clear benefits to the new housing and given the nature of the surrounding area and recently built residential development, does not harm the appearance of the area and creates no harm to the appearance or character of the Conservation Area. The appeal site is related to the new houses which effectively screen the additional area of land. It enhances the quality of the approved development without harming the visual quality of the area (paragraph 5.2 of the Statement).
- 3) While the use of the 10 metre strip as part of the residential site comprises land outside the confines boundary, it does not extend development into the countryside and clearly relates to the village form and approved site. It does not undermine the Core Strategy and represents a clear benefit without harm to the appearance or character of the surrounding area (paragraph 5.3 of the Statement).
- 4) The level at which the houses have been constructed sets them on rising land with the result that through the permission granted for the 5 dwellings the usable element of the rear garden is very restricted on Plots 1 to 4. The approved drawings for the development of the houses show unclear details on how the existing area relates to the houses. The proposed additional 10 metre strip provides the opportunity to grade the land which improves the setting of the development and avoids a steep slope and retaining walls. This is an improvement, cannot be seen from outside the site and does not harm either the character of the area nor open countryside. With the planting proposed, and acknowledging there is already substantial planting beyond the appeal site, it ensures an attractive edge is provided to the development and village (paragraph 5.5 of the Statement).
- 5) The proposal does not involve a large area of land nor land which has an agricultural use (paragraph 5.6 of the Statement).
- 6) The proposed change of use and inclusion of the additional strip of land as part of the built residential development does not undermine the strategy or policies in the Core Strategy. The development is sustainable and improves the setting of the new dwellings without harm to the surrounding area.

3.4 The proposal which is the subject of the linked planning appeal is considered acceptable in relation to local and national planning policies. Planning permission is sought for the development set out in the linked planning appeal and not that described by the Council in the Enforcement Notice. As indicated, we did request that the detail of the Enforcement Notice be altered prior to it coming into force and this appeal, but Officers at the Council declined to do so.

Ground (F)

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 maybe, to remedy any injury to amenity which has been caused by any such breach.

- 3.5 The Enforcement Notice refers to the removal of a 1.8 metre close boarded fence. The fence has been removed and no permission is being sought for this. Therefore, it is clear that the need to remove the fence exceeds what is necessary.
- 3.6 In addition, the Notice requires the land to be only used for agricultural purposes. Essentially the 10 metre strip has not been used for agriculture due to its original form and the nature of the land and its relationship with the new dwellings and wider area.
- 3.7 To return the land to its original form will require utilising substantial lorry movements, the delivery of unsuitable soil and rocks which were the original form of the 10 metre strip. The approved details for the 5 dwellings would have involved a change of levels and retaining wall and it is considered that no harm is caused by the inclusion of the additional strip in terms of planning policy, the visual quality of the area or character of the Conservation Area. The inclusion of new planting will ensure the creation of an attractive edge to the new dwellings and village.

Ground (G)

That the time given to comply with the Notice is too short

- 3.8 The Enforcement Notice gives a period of 4 months to comply with its requirements. As indicated, it is considered that requirements a) and c) are not reasonable in light of the fact that the fence has been removed and that the land has never been in agricultural use.
- 3.9 In respect of requirement b), it has been unclear in the approval of the development of 5 dwellings how this can be undertaken. The original form of the land is impacted upon by the built dwellings Plots 1 to 4, and to return the land to the original levels will not be feasible. It is considered the slope is an improved form for the land benefitting the new dwellings without harm to the area.
- 3.10 However, should the appeal be dismissed, it is considered in view of the need to gain approval from the Council for the final form and retaining structures and the significant number of lorry movements to deliver materials, that at least 6 months would be needed to undertake requirement b) of the Notice.

4. THIRD PARTY COMMENTS

- 4.1 The Council's questionnaires in respect of both appeals include comments made largely in relation to the refused planning application. These are noted although it is evident in the majority of comments, that these are identically written.
- 4.2 It is noted that some comments are in support of the proposal and acknowledge that the landscape proposals for the 10 metre strip of land are a benefit to the area, particularly as the land is essentially rocky and unsuitable for agricultural use.

- 4.3 The comments include reference to existing planting on the land and in response it is relevant that the proposals set out in the refused planning application include details for the planting of native species/hedge to form the southern boundary. Comments by third parties on the importance of previous planting/hedge are unfounded. The Council's questionnaire includes details of a Review of Lighthorne Conservation Area, dated 1994, through a series of plans/figures.
- 4.4 In figure 2, eight 'Character Areas' are identified. The appeal site is shown in Character Area D, Old School Lane. Figure 3 shows features defining village spaces including hedge lines. It is noted there is no reference to the southern boundary of the approved residential site or the 10 metre strip of land. There are no defining features.

5. CONCLUSIONS

- 5.1 On the basis of the matters in this Statement and the linked appeal Statement, it is considered that planning permission should be granted for the development, but as proposed in the refused planning application and not as set out by the Enforcement Notice.
- 5.2 The proposals do not harm the character or appearance of the area, largely unseen from public vantage points. The land has no agricultural value and the proposals will enhance the approved residential development without conflict with Core Strategy policies. It is considered the Enforcement Notice appeal as set out and amended, should be allowed, together with planning permission.