

Article 4 Direction Review- Land at New Road and Stockbridge Road (A3057), Timsbury

1. Site Location and Description

- 1.1 The site comprises approximately 6.32 hectares of agricultural land located due east of the A3057 Stockbridge Road and New Road, Timsbury. The site was previously used for arable farming but now appears to be used for hay cropping, however, an area of land that runs alongside New Road has been the subject of extensive planting of shrubs and trees. A public Right of Way dissects the site from the south, off of Stockbridge Road (A3057) almost opposite the "The Goat", and takes a diagonal route due north east across the site towards the rear of the dwelling known as "Old Waterworks House". The footpath then continues north to join Hill View Road. Access to the field is via a break in the hedge situated on New Road due south of the property known as "The Fernery" and along the route of the public footpath.
- 1.2 The site has agricultural land on two of its sides, to the north and west. To the south is the Stockbridge Road and to the east is New Road. The New Road frontage comprises a countryside hedge between the commercial property at the junction of New Road/Stockbridge Road and The Fernery to the north east of the site.

2. History

- 2.1 09/01578/FULLS- Part Retrospective application for erection of post and rail fence to north, west and south boundaries of the site. PERMISSION subject to conditions
- 2.2 09/02039/FULLS- Erection of post and rail fence around plots 3 & 4, formation of entrance to each plot and erection of 5-bar gate to each entrance. REFUSED for the following reasons:
1. *The proposal is contrary to policies DES01, DES07 and DES08 of the Test Valley Borough Local Plan 2006 in that the introduction of the fencing within an arable field will detract from the openness of the landscape to the detriment of local visual amenity and the introduction of additional accesses will result in the loss of sections of a long agricultural hedgerow to the detriment of the hedgerow as a landscape feature and the character of New Road, Timsbury.*
 2. *The proposal is contrary to policy SET03 of the Test Valley Borough Local Plan 2006, as there is no overriding justification for the development. The proposal would seriously erode the open character of this countryside location contrary to policy DES01 of the Test Valley Borough Local Plan 2006.*
- 2.3 10/00148/FULLS- Erection of post and wire fencing to eastern boundary of site. PERMISSION subject to conditions.
- 2.4 12/00608/FULLS- Erection of wooden post and rail fencing, erection of electric fencing, access via gate from A3057 (retrospective) WITHDRAWN
- 2.5 12/02026/FULLS- Two mobile horse field shelters- PERMISSION
- 2.6 12/02244/FULLS- Access via an existing gate from A3057 (retrospective) Permission

- 2.7 12/02245/FULLS- Erection of wooden post and rail fencing and rotation of electric fencing (Retrospective) PERMISSION
- 2.8 15/01848/FULLS- Erection of 3 four bedroom earth shelter dwellings including bunds, solar panels, access and landscaping WITHDRAWN
- 2.9 16/01912/FULLS- 5 bar access gate (retrospective) WITHDRAWN
- 2.10 16/02673/FULLS- 5 bar access gate (retrospective) WITHDRAWN
- 2.11 16/03004/FULLS- Access, gate and boundary fencing (part retrospective) REFUSED & ALLOWED AT APPEAL
- 2.12 17/01644/FULLS- Three single storey, four bedroom, earth-shelter dwellings. REFUSED for the following reasons:
1. The site is situated in a countryside location as defined by the Test Valley Borough Revised Local Plan 2016. The applicant has failed to demonstrate that there is an essential need for the proposed development to be located in the countryside contrary to policy COM2 of the Test Valley Borough Revised Local Plan 2016. In addition, both the number of units proposed (3), together with the merits of the development fail to satisfy paragraph 55 of the NPPF which is capable of comprising a significant material consideration. There are therefore no other material planning considerations of sufficient weight that would indicate that planning permission should be granted contrary to the development plan. The proposals are therefore contrary to policy COM2 of the Test Valley Borough Revised Local Plan 2016 and guidance contained in the National Planning Policy Framework 2012.
 2. The proposed development would result in the creation of large, unnatural raised landforms on this gently sloping periphery valley floor site which would be visible from surrounding public vantage points and would be an alien feature in the surrounding landscape. The proposed development would also introduce built form on the northern side of the A3057 which would be at odds with the existing character and appearance of this part of Timsbury. The proposals would therefore adversely impact on both the character and appearance of the surrounding area and surrounding landscape character contrary to policies E1 and E2 of the Test Valley Borough Revised Local Plan 2016 and guidance contained within the National Planning Policy Framework 2012.
 3. The site lies within close proximity to the New Forest SPA which is designated for its conservation importance. In the absence of a legal agreement, the application has failed to secure the required mitigation measures, in accordance with the Council's adopted 'New Forest SPA Mitigation - Interim Framework'. As such, it is not possible to conclude that the development would not have an in-combination likely significant effect on the interest features of this designated site, as a result of increased recreational pressure. The proposed development is therefore contrary to the Council's adopted 'New Forest SPA Mitigation - Interim Framework', Policy E5 of the adopted Test Valley Borough Revised Local Plan (2016) and the Conservation of Habitats and Species Regulations 2010 (as amended).
 4. Insufficient information has been submitted to demonstrate that the proposals would not harm the health or retention of existing trees which are of amenity and landscape value contrary to policy E2 of the Test Valley Borough Revised Local Plan 2016.

APPEAL DISMISSED

3. Background

3.1 The Officer report setting out the circumstances and justification for the Article 4 Direction in 2009 states at Para 3.1:

Information has been received that this area of land is being offered for sale by Barnard Marcus at auction on 10th February 2009 in 21 individual plots. A plan of the site on the marketing agents website (www.timsburyland.co.uk) shows the land to be subdivided into 21 plots, 15 long narrow plots stretching north to south away from Stockbridge Road and six smaller plots fronting New Road however there is no indication of how the each plot would be accessed.

3.2 It was also reported at Para 3.2:

A number of phone calls have been received from prospective purchasers and nearby residents with regard to the sale of the land for residential purposes.

3.3 Within Section 5 it states:

5.1 The land in question is undeveloped, used for arable farming and is generally open in character. The field has not yet been subdivided into the 21 plots shown in the marketing agents sale particulars.

3.4 *5.2 At present Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended, permits any means of enclosure to be erected subject to certain height limits. There is no control over the siting or materials and no justification is required for the erection of fences under Permitted Development Rights.*

3.5 *5.3 Part 4, Class B allows for a range of temporary uses under the familiar 28 and 14 day rules. The sub-division of the land means that the impact of temporary uses may be multiplied by the number of plots.*

3.6 *5.4 Part 5 allows the use of land as a caravan site subject to certain criteria. Again, sub-division of the land means that the impact of the land use as a caravan site would be multiplied by the number of plots.*

3.7 *5.5 It is considered that the marketing of the land represents a real and specific threat as purchasers will want to demarcate the land they have purchased, as shown on the plan produced by Barnard Marcus, by the erection of fences. The erection of fences of potentially different heights, styles and materials would significantly detract from the open, rural character of this area of countryside. In addition exercise of Parts 4 and 5 of Permitted Development Rights referred to above on each of the plots would also detract from the character of the area.*

3.8 Within section 6 of the report the following 2 recommendations were made:

- 1. That a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995, withdrawing permitted development rights under Part 2, Class A and Part 4, Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, on the land indicated on the attached plan*

2. *That a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995, withdrawing permitted development rights under Part 5, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, on the land indicated on the attached plan*

3.9 For the reasons set out in the report two Article 4(1) Directions were made and are still in effect today. These Article (1) directions related to:

Part 2, Class A- The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Part 4, Class B- The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes referred to in paragraph B2 and the provision on the land of any moveable structure for the purpose of the permitted use.

Part 5 Class A- The use of the land, other than a building, as a caravan site in the circumstances referred to in Paragraph A.2.

3.10 It should be noted that Article 4(1) directions made under the 1995 Order are given continuing effect by virtue of s17(2)(b) and s23, Interpretation Act 1978. Such directions will, however, need to be construed in accordance with any modifications in the 2015 & 2020 Orders.

4. Landownership

4.1 The Article 4(1) directions were originally made on the basis that the land had been divided into 21 plots and these were to be sold at Auction.

4.2 The most recent review of the Article 4(1) directions was undertaken in April 2018. During that review a Land Registry search was undertaken across the land and revealed a total of 13 separate Titles.

4.3 A recent Land Registry search shows that approximately 10 acres consisting of 4 of the original plots fronting onto Stockbridge Road (A3057) are under the same ownership.

4.4 There is no change in ownership with regards to the smaller plots fronting onto New Road or the remaining three plots fronting onto A3057.

5. Current Description of Land Affected by Article 4 Direction

5.1 A site visit has been undertaken. As per the site visit undertaken in March 2018 the site has been viewed from New Road, the A3057 (including associated footway) and the public footpath that runs across the land.

5.2 The Council's most recent aerial photograph of the site has also been reviewed and is consistent with the circumstances observed whilst undertaking the most recent visit to the site. Section 6 of the most recent review stated the following:

5.3 *Para 6.2- It is evident when viewed from public vantage points off New Road and the footpath that runs diagonally across the fields, that the land that runs alongside New Road has been the subject of extensive planting of shrubs and trees. A high proportion of this planting was of the evergreen/conifer Type. This planting is established, relatively consistent in their overall height (being approx.. 1.2-1.6m tall). Nevertheless the way they*

are planted along straight lines including marking 90-degree corners means there is clearly some attempt to parcel land by providing physical enclosure. There is also a single line of planting that runs on a broadly NNE alignment from a position off Stockbridge Road (A3057) to a position approximately 40m west of the property known as "The Fernery". For all intents and purposes this appears to provide a definite edge to the land that has been defined by small plots (to the east) compared to the wider expanse of field (and the individual Title 'plots') that exists to the west of this line.

- 5.4 Para 6.3- *Views from the Stockbridge Road (A3057) across the site are quite extensive in that the absence of vegetation along the roadside, and at times the carriageway's elevated position above the land, mean that little could take place on the land without some appreciation of change. The land fronting the A3057 remains substantially free of structures and formal enclosure and planting - which is a contrast to the land to the east that fronts New Road. This position remains unchanged from when the Article 4 Direction was put in place.*
- 5.5 Para 6.4- *The topography of this land is similar to the land either side of the A3057 for at least 3 miles north of this point - on the approaches into Timsbury. The general feeling of openness and spaciousness exists along the valley floor on both sides of the A3057 is a key characteristic of this very rural setting.*
- 5.6 Taking into consideration the photographs and observation in 2018 and the site visit undertaken and photos taken in 2021, it is considered that the condition of the land, other than trees having matured further has not altered in any significant way.

6. Assessment

6.1 Legal Position

The GPDO 1995 - the subject matter of the Article 4 Direction from 2009, has been superseded by a more recent version. That said, s17(2)(b) and s23, Interpretation Act 1978, allow these provisions to be applied to later versions of the GPDO. In this respect there are similar provisions in the GPDO 2020 that provide for Permitted Development rights for those operational and material changes of use of land which the Article 4 Direction limits (Part 2, Class A continues to relate to Minor operations - including gates, fences, walls etc, Part 4, Class B continues to relate to temporary uses of land, and Part 5, Class A continues to relate to use of land as a caravan site). In this respect the legal basis of control has not changed as a consequence of the GPDO 2015 and then the GPDO 2020 coming into effect as a replacement of the 1995 Order.

6.2 Planning history

The land in question has a significant amount of planning history since the Article 4(1) Directions was imposed. This has meant that the Council has retained control over those developments via a planning application. In reviewing the site history above, it is clear that most planning applications have been submitted as a direct consequence of the Direction. However, there have been no further applications for this type of development since 2016, some five years ago.

- 6.3 It is also noted that a number of planning applications have been submitted and/or determined that seek permission for some form of formal enclosure to the land. In this respect the concerns expressed about the demand placed on the land by the need for subdivision/enclosure, was correct. It is still the case that means of enclosure could affect the character and appearance of the site. However, the planning history above and the fact that

many plots of land have been subdivided by the planting of landscaping may have resulted in a reduction in pressure for the subdivision of the land. The matters above do offer some credence to the request for the Article 4(1) direction to be withdrawn.

6.4 Land Ownership

A review of landownership across the site reveals 13 separate Titles at this time. This is numerically less than the number shown on the initial auction details which stated 21. This appears to be principally explained by the position that there are larger plots that front Stockbridge Road than that advertised. As set out in Para 4.3 above, this has recently changed again with one land owner now has control of 4 the large plots fronting onto A3057. As one individual owns such a large area of land it does reduce the threat and concerns that large areas of the field will be subdivided. One landowner owning such a large proportion of the site further reduces the threat of the land being divided into small areas in a regular pattern.

It is therefore considered that the threat of sub-division, by means of enclosure (comprising development) has been reduced as one landowner now owns a large proportion of the site. This is a fundamental change in the consideration of the appropriateness of Article 4(1) directions being retained. This change in circumstance adds weight to the request for the Article 4(1) direction to be withdrawn.

7. **Conclusion**

- 7.1 The Planning Practice Guidance states that restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.
- 7.2 When originally imposed and through subsequent reviews there was a real threat to the land and the subdivision of it would have on the character and appearance of the area and thus exceptional circumstances did exist to withdraw, and continue to withdraw, permitted development rights by virtue of the Article 4(1) directions.
- 7.3 It is acknowledged that the land towards the eastern end of the site (fronting New Road) has had some additional vegetation planted since the Article 4(1) Direction has been in place. Such planting is not controlled by the Direction as it does not constitute "development" for the purposes of the Planning Act. The satellite photographs show this planting to be regimented and are clearly a means of demarcating land/plot ownership. However, when viewed from public vantage points within and around the site the planting provides cover and looks more akin to an infant copse and woodland rather than a regimented means of enclosure. Rather than harming the character of the area it complements and strengthens the rural character of the area. There is a risk that this planting could be removed and replaced with fencing but there is no indication that this would be the case and therefore the exceptional circumstances for removing permitted development rights has been reduced.
- 7.4 Added to this is the change in landownership and the fact that one individual now controls a large area of the most prominent frontage and thus reducing the likelihood of the land being subdivided into small plots to identify individual plot ownership and to prevent trespass onto each individual plot.
- 7.5 For the reasons set out above it is considered that the exceptional circumstances which previously existed have been reduced and no longer tip the balance to warrant the continuation of the Article 4(1) Directions and they should be withdrawn.

8. Recommendation

- 8.1 Instruct legal to withdraw the Directions under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995, withdrawing permitted development rights under Schedule 2, Part 2, Class A, Schedule 2, Part 4, Class B and Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) Order 1995, on the land indicated on the attached plan.**
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