



Appeal Decision

Site visit made on 9 January 2024

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/R3325/C/23/3318156

Land At Willetts and Pauls Copse, Chilworthy Lane, Peasmarsh, Ilminster, Somerset TA10 0SH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Kerry Bale against an enforcement notice issued by South Somerset District Council.
- The notice was issued on 2 February 2023.
- The breach of planning control as alleged in the notice is: Without planning permission (1) the material change of use of the land from forestry to a mixed use of forestry and domestic leisure use by the siting of a trailer mounted timber structure, wooden compost toilet and importation and deposit of hardcore, and (2) the unauthorised operational development consisting of a wooden compost toilet building, structures used for the storage of items such as a tractor, quad bike and wood chipper and other associated equipment and the laying of a hardstanding area.
- The requirements of the notice are to:
 - i. remove the mobile wooden structure, wooden compost toilet building and other wooden structures from the land; and
 - ii. remove all building related materials including all construction timber, aggregates, hard-surfacing, glass double glazing units, plastics, machinery and domestic paraphernalia (this list is not exhaustive, and all unauthorised materials) must be removed from the land; and
 - iii. cease using the land for any purpose other than the authorised forestry use.
- The period for compliance with the requirements is: two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) 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.

Summary of Decision: The Appeal succeeds in part. The Notice is upheld with corrections, as set out in the Formal Decision below.

Preliminary matters

1. The notice identifies various forms of operational development, including "structures used for the storage of items". I saw at my site visit that there is a single timber structure on the Appeal Site that is used for storage, and I note that this is the basis on which both parties have made their written representations, describing it as a "wooden implement store". There is also a timber tree house on the Appeal Site which, for the avoidance of doubt, is not attacked by the Notice and so is not a subject of this appeal.
2. The report by the Council's Tree Officer, which was appended to the Council's Statement of Case, identifies two areas of hardstanding within the Appeal Site: one at the entrance, and one functioning as a base for the trailer-mounted

structure. However, the breach of planning control alleged at paragraph 3(2) of the Notice refers to "...the laying of a hard standing area" in the singular, and at paragraph 4 the Council's reasons for issuing the Notice refer to "the hard-standing area", also in the singular. The Plan attached to the Notice serves only to identify the extent of the Land, and is not annotated to show the location of any of the alleged operational development. In my judgement the only reasonable interpretation of the Notice is that it addresses a single "hard standing area", which is the area at the entrance to the Appeal Site. That is the basis on which the parties have presented their respective cases. I shall also proceed on that basis.

The appeal on ground (b)

3. The ground of appeal is that the matters alleged by the Notice have not occurred. The Appellant's case is that the trailer-mounted structure and wooden compost toilet are used for the purpose of forestry. She and her husband, the co-owner of the Appeal Site, work in the woodland at weekends: they use the trailer-mounted structure for rest periods, and as a place for the children to play. A Statutory Declaration provided by the Appellant's husband states that the trailer-mounted structure and wooden compost toilet were brought to the Appeal Site in June 2021 "to provide facilities when we were working on the Property in accordance with good forestry practice."
4. I do not doubt that the Appellant and her husband are committed to the upkeep of the woodland. But I have not been provided with any information about the nature and extent of the work they carry out there at weekends, or the amount of time they spend on it. Further, a Planning Contravention Notice issued by the Council in 2022 explained that it is an offence knowingly or recklessly to give information, in response to that notice, which is false or misleading in a material particular. The Appellant's response to that PCN stated that the use of the land was "recreational – i.e. walking, spending time there when we aren't working, enjoying family time where the children can play." It also stated that the trailer-mounted structure was used as "somewhere to get warm, have something to eat and drink whilst using the woodland recreationally."
5. I saw at my site visit that the trailer-mounted structure, which is a two-storey timber cabin with a pitched roof, is sited in a clearing that has been laid to grass and is enclosed by a wooden fence. Other domestic paraphernalia, such as gas bottles, and outdoor seating beneath a canopy, stands alongside the structure. This part of the Appeal Site is very different in character to the surrounding land; it has the appearance of a well-kept domestic garden, rather than ancient woodland.
6. Drawing all of this together, I conclude that while it is likely that the work carried out by the Appellant and her husband at weekends can be classed as forestry, the Appellant's own evidence shows that they are also using the Appeal Site for recreational leisure purposes. The appeal on ground (b) therefore fails.

The appeal on ground (c)

7. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. The Appellant's case on this ground is that no

material change of use has taken place, and the structures and hardstanding alleged by the Notice can be considered Permitted Development.

8. It is fair to note that a mobile structure sited on the land, and used solely for purposes connected with the lawful use of the Appeal Site for forestry, would not require planning permission. However, in this case, the accommodation provided by trailer-mounted structure goes beyond providing a rest area for those engaged in forestry work, as it is also used by the Appellant and her family for leisure purposes. The siting of this mobile structure within a lawn-like clearing, and the construction of the wooden compost toilet nearby, have facilitated the acknowledged recreational use of the land. The character of this use is distinct from the lawful use of the land for forestry, and is not merely ancillary to that lawful use. I conclude that the Appeal Site now has a mixed use for forestry and domestic leisure, and this change of use was material.
9. Turning to the question of Permitted Development rights, the Town and Country Planning (General Permitted Development) Order 1995 as amended ("the GPDO") classes certain forms of development, when carried out on land used for the purposes of forestry, as Permitted Development - provided that it is "reasonably necessary for those purposes". A further proviso is that the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to various specified matters: the development must not begin until the local planning authority confirms that prior approval is either given or is not required, or else fails to respond within 28 days.¹
10. In this case, no applications for prior approval were made before the development began. Since the development does not comply with the relevant conditions of the GPDO, it cannot be classed as Permitted Development. The Appellant has drawn my attention to a barn erected on an existing area of hardstanding in nearby Clay Copse which, like the Appeal Site, is designated as Ancient Woodland². That barn is a great deal larger than the structures on the Appeal Site, but the important difference is that an application was duly made for prior approval and, in accordance with the requirements of the GPDO, the Council issued a notice confirming that prior approval was not required. The barn was therefore Permitted Development.
11. The Appellant contends that had a prior approval request been submitted for the development here at issue, it would likely have been granted. But whether or not that is the case, the fact remains that it is not possible to apply the GPDO retrospectively. The wooden compost toilet, the wooden implement store and the hardstanding at the entrance cannot now constitute Permitted Development. I conclude that the development alleged by the notice does constitute a breach of planning control, so the appeal on ground (c) fails.

The appeal on ground (d)

12. The ground of appeal is that by the time the Notice was issued, it was too late for the Council to take enforcement action. The Appellant contends that the wooden implement store was constructed by the previous owners in 2018, and that the hardstanding was laid by the County Council or Town Council, to facilitate the delivery of waste during use as a landfill site between 1969 and

¹ Conditions set out at Paragraph E.2 of Class E, Part 6, Schedule 2 to the GPDO.

² Ref 15/01944/AGN

1970. For operational development of this type, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.³ To succeed on this ground, then, the Appellant would need to demonstrate that the wooden implement store and the hardstanding had been substantially completed by 1 February 2019.

13. The Appellant has provided a Statutory Declaration made by Mr K J Robbins, who farms the land to the north-east of the Appeal Site. He states that he has been familiar with the Appeal Site for over fifty years, and throughout that time there has been hardstanding at the entrance; the wooden implement store was added by the previous owners, shortly after their purchase of the Appeal Site in December 2017. There is also a Statutory Declaration from Ms N A Thompson, who states that she has accessed the Appeal Site and walked her dogs on and around it for at least the last ten years. She states that there has been hardstanding at the entrance throughout the time she has known the Appeal Site, and that the wooden implement store was added by the previous owners, shortly after their purchase in December 2017.
14. The Appellant has also provided a copy of the Estate Agent's particulars, which were compiled prior to her purchase of the Appeal Site in March 2021. These describe, among other things, "a stoned hard standing for parking" and "a home built shelter". The photographs included in the particulars do not show the hard standing, but one of them provides a view of the wooden implement store, in the same position as it was at the time of my site visit.
15. The Council has not provided any information that contradicts, or otherwise undermines, the Appellant's evidence concerning the wooden implement store. The photograph in the Estate Agent's particulars establishes that it was already in place before the Appellant and her husband bought the Appeal Site in 2021, and the sworn evidence of Mr Robbins and Ms Thompson is that it was constructed "shortly after" the previous owners bought the Appeal Site in 2017. I conclude that on the balance of probabilities, it is more likely than not that construction of the implement store was completed prior to 1 February 2019.
16. As to the hardstanding at the entrance, the Council has provided "street view" images of the Appeal Site, dated May 2009 and March 2011, taken from Google Maps. The surface of the area of land inside the gate is not visible in these images. The gate, and the area beyond, appears somewhat overgrown with vegetation (particularly in the 2009 image), but this is not inconsistent with the Appellant's contention that the hardstanding was laid to facilitate the use of part of the Appeal Site for landfill, which then ceased in 1970.
17. The Council has also provided photographs, taken at its Officer's visit in 2021, of the area inside the gate showing recently laid aggregate. The Appellant does not dispute laying the aggregate, but the sworn evidence of both Mr Robbins and Ms Thompson, by reference to a plan showing an area at the entrance roughly equivalent to that visible on the ground, is that hardstanding was already present in this area. This is corroborated by the Estate Agent's particulars, which indicate that a "stoned hard standing for parking" was present before the Appellant bought the site.

³ S.171B(1) of the 1990 Act (as amended).

18. Taking all of this evidence into account I accept that, on the balance of probabilities, hardstanding at the entrance to the Appeal Site was in place before the relevant date of 1 February 2019. Since the Appellant's aggregate was laid on top of what was originally there it constitutes improvement to an existing area of hardstanding, rather than the construction of a new one, and so does not amount to development.
19. For these reasons, I conclude that the four-year period for taking enforcement action against the wooden implement store and the hardstanding had expired before the notice was issued. The appeal on ground (d) succeeds in this respect, and I shall correct the notice to remove references to those forms of development.

The appeal on ground (a)

20. The ground of appeal is that planning permission should be granted, in whole or part, for the matters alleged by the notice. The main issue is the effect of the development on the natural environment and character of the Appeal Site, which is designated Ancient Woodland, and is also the subject of a Tree Preservation Order. Paragraph 186 of the Government's *National Planning Policy Framework* (NPPF) advises that "development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists."
21. The Appellant contends that significant portions of the woodland have been previously despoiled by tipping, the detritus of which is evident on site, and that since the woodland has been subject to previous significant and harmful human disturbance its credentials as Ancient Woodland are questionable. However, Natural England and the Forestry Commission's "standing advice" for planning authorities⁴ explains that the existing condition of the Ancient Woodland is not a reason to give planning permission for development: a woodland in poor condition can be improved with good management. The NPPF's definition of Ancient Woodland includes areas where the former native tree cover has been felled and replaced by planted trees, as is the case here on the former landfill area within Paul's Copse.
22. The Appellant has explained that the siting of the trailer-mounted structure and the wooden compost toilet did not involve the felling of any trees, and has submitted a professional Tree Vitality Assessment which concludes there are no key indicators of physiological stress observed within the trees immediately adjacent to the compost toilet or the trailer-mounted structure. But it is important to be clear that it is not only the trees that are necessary to a woodland eco-system.
23. Much of the value of Ancient Woodland lies in its "unimproved" soil, ground flora and understorey shrub, and it is these crucial components which have been adversely affected by the development here at issue. The undisputed evidence of the Council is that the clearing in which the trailer-mounted structure is now sited was cleared and planted with rye grass, with a level area cut and filled using a digger, and hard surfacing laid. This has resulted in the compacting of soil, and the loss of a considerable area of native shrub and

⁴ *Ancient woodland, ancient trees and veteran trees: protecting them from development* (2018) Forestry Commission and Natural England

ground flora. The construction of the wooden compost toilet has had less of an impact, as it is mounted on timber bearers, but has still resulted in some compaction of soil and the preclusion of re-growth.

24. The Appellant has suggested that permission could be granted for the continued use of the Appeal Site for forestry and leisure/amenity use at weekends only. While it may be possible to impose a condition limiting the times of any leisure use, the problem is the *nature* of such use, and the difficulties of ensuring it does not adversely affect the Ancient Woodland. Granting permission for an element of "domestic leisure" would encompass activities akin to those carried out in residential gardens, many of which would be harmful to the woodland eco-system: for example, the trampling of ground at outdoor family gatherings, and the use of outdoor seating and play equipment.
25. The Appellant has also suggested that since the development here at issue could be replaced using Permitted Development Rights, there is little point in requiring its removal. However, as discussed above, the relevant Permitted Development Rights are limited to operational development that is "reasonably necessary" for the purposes of forestry. On the basis of the evidence currently before me, I am not satisfied that the development here at issue meets that requirement. While it will of course remain open to the Appellant to make a prior approval application for development that can be shown to be "reasonably necessary", that application would need to be determined on its merits.
26. I conclude that the material change of use of the land from forestry to a mixed use of forestry and domestic leisure use, facilitated by the siting of a trailer-mounted timber structure and wooden compost toilet, is detrimental to the eco-system and character of this designated Ancient Woodland. No "wholly exceptional reasons" have been identified that would justify the development. It conflicts with the objective of Policy EQ4 of the South Somerset Local Plan 2006-2028, which states that development will not be allowed to proceed unless it can be demonstrated that it will not result in any adverse impact on the integrity of national and international wildlife and landscape designations. It is also at odds with Local Plan Policy EQ6, which seeks to protect and enhance the district's woods and forests and protect Ancient Woodland.
27. In summary, the material change of use and associated operational development is contrary to the provisions of the adopted Local Plan, and there are no other material considerations of sufficient weight to overcome this conflict with Development Plan policy. Nor are there any conditions which could be imposed to make the development acceptable in planning terms. The appeal on ground (a) fails, and the deemed application for planning permission is refused.

The appeal on ground (g)

28. The ground of appeal is that the period specified for compliance with the requirements of the Notice falls short of what should reasonably be allowed. The requirements originally included the removal of the wooden implement store and the hardstanding at the entrance to the Appeal Site, but as a consequence of the success of the appeal on ground (d), those elements will be deleted. The remaining requirements are to remove the trailer-mounted structure and wooden compost toilet, together with building materials and domestic paraphernalia, and to cease the unauthorised use of the land for

domestic leisure. In my judgment, a period of two months should be ample time to comply with these remaining requirements, which are straightforward and do not require any specialist expertise or equipment. The appeal on ground (g) fails.

Conclusion

29. For the reasons given above I conclude that the appeal on ground (d) in respect of the wooden implement store and hardstanding should succeed, because at the date the Notice was issued, the time for taking enforcement action against them had expired. The appeal on grounds (b), (c), (a) and (g) fail. I shall correct the Notice to reflect the success of the appeal on ground (d), prior to upholding it, and refuse to grant planning permission on the deemed planning application.

Formal Decision

30. It is directed that the Notice is corrected by

- at paragraph 3(1), deleting the comma after the words "...timber structure" and replacing it with the word "and" ; then deleting the words "and importation and deposit of hardcore";
- at paragraph 3(2), deleting the words "structures used for the storage of items such as a tractor, quad bike and wood chipper and other associated equipment and the laying of a hard standing area";
- at paragraph 5(i), deleting the comma after the phrase "mobile wooden structure" and replacing it with the word "and"; then deleting the words "and other wooden structures"; and
- at paragraph 5(ii), deleting the words "aggregates, hard-surfacing".

Subject to these corrections 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.

Jessica Graham

INSPECTOR