

Appeal Decision

Site visit made on 7 November 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 November 2016

Appeal A: APP/C3105/C/16/3153443 &

Appeal B: APP/C3105/C/16/3153444

**Land at Field Farm, Stratton Audley Road, Stoke Lyne, Oxfordshire
OX27 8RL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Gordon Jones & Mrs Kathleen Jones against an enforcement notice issued by Cherwell District Council.
 - The notice was issued on 24 May 2016.
 - The breach of planning control as alleged in the notice is
 - (1) On 3 August 2012 planning permission (11/01682/F) was granted on appeal for the temporary stationing of a mobile home (an Eco-Pod) and associated decking on the Land for an essential worker for a period of three years. The reasons for granting this permission were: (1) to safeguard against fires on the site and (2) in order to improve security against theft and arson. The temporary permission expired on 3 August 2015. The mobile home (Eco-Pod) along with the stilts it rests on and associated decking and steps are still present on the Land, in breach of the condition to planning permission and contrary to planning control.
 - (2) There is a significant amount of hardstanding laid on the Land in the field to the south-west of the mobile home where vehicles have been parking and manoeuvring (shown hatched on the plan attached to the notice). This has been laid without the benefit of planning permission and contrary to planning control.
 - (3) Three additional structures have been erected on the land; a structure abutting the decking, and a garden shed and open shed structure erected within the woods to the west of the mobile home which house a generator and other associated items. The structures have been erected without planning permission and contrary to planning control.
 - (4) A satellite dish has been erected/attached to the northern boundary fence of the Land without planning permission and contrary to planning control.
 - The requirements of the notice are:
 - (1) Remove the mobile home (Eco-Pod), including the associated decking, stilts and access steps from the Land;
 - (2) Remove from the Land the three additional structures (the structure abutting the decking, and the garden shed and open shed structure which contains a generator located within the wooded area on the site's western boundary);
 - (3) Remove from the Land all the hardstanding upon which vehicles are accessing the Eco-Pod and parking on, and re-seed the area with an appropriate grass seed to make good;
 - (4) Remove from the Land the satellite dish; and
 - (5) Remove from the Land all materials (including building materials) equipment, installations, and constructions brought onto the Land in connection with the unauthorised use of the Land.
 - The period for compliance with the requirements is Eight weeks.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) (3153443 only), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with correction and variation.

Procedural matters and background

1. The appeal site is a roughly diamond shaped field enclosed to the north and to the east by Bainton crossroads. The southern part of the field accommodates various buildings and structures which have been used for the manufacture of heat logs and heat pellets. Whilst the information about the activities is inconsistent, (the appellants describe the approved use as a biodiesel manufacturing plant), it appears common ground that the processes involve the use of equipment for drying and recycling wood products for use as fuel.
2. The remainder of the site, to the north of the plant, comprises an open field and the structures and development subject of the enforcement notice.
3. The permission for the Eco-Pod and associated structures was granted on appeal¹ in 2012 (the 2012 appeal). This was in association with the operation of the wood processing plant and weight was given to the need to have an on-site presence because of the combination of two factors. "These are the need for frequent safety checks of the machinery in the evenings and at night, and the significant risk of fire breaking out at the enterprise"² The 2012 appeal is a material consideration, which in the light of the judgment in *Thrasyvoulou*³, carries considerable weight in this appeal.
4. There was a catastrophic fire at the wood processing plant in March 2012, which followed an earlier outbreak in 2010, and it is common ground that the plant has not been in operation since 2012 because the appellants have been unable to secure insurance cover. Hence for the past 4 years or so there has been no processing on the site.
5. The appeals have been made by two separate appellants and with the exception of the appeal on ground (a) are identical other than in respect of the identity of the appellant. Accordingly I consider both appeals together.

The appeals on Ground (d)

6. This ground of appeal is made in respect of part only of the alleged breach of planning control namely the hardstanding laid on the Land (Section 3 (2)).
7. The appellants do not dispute that the hardstanding adjacent and to the south of the Eco-Pod is used for the parking and manoeuvring of vehicles; nor do they claim that this area has been constructed or laid during the period of four years before that date the notice was issued. What they say is that the access way roughly parallel to the northern boundary of the site has existed since some time after they bought the field about 25 years ago and all they have done is gradually to raise its level. These operations they say were granted permission by Oxfordshire County Council and the Environment Agency respectively.
8. In an appeal under ground (d), the burden of proof rests firmly with appellants to demonstrate their case on the balance of probabilities. No such evidence has been forthcoming to corroborate the claims made by the appellants, which

¹ APP/C3105/A/12/2170866 & APP/C3105/A/12/2170866

² Para 26 of the 2012 appeal

³ *Thrasyvoulou v Secretary of State of the Environment* [1990] 2 A.C 273

thus remain unsupported assertions. By contrast, the Council have submitted aerial photographs of the site taken in about 1999, in 2004/5, in 2009 and in about 2014/15. These show that although there has been some kind of track leading west from the access to the highway, its route, width and alignment have varied widely and the texture of the surface is by no means consistent. In particular the tracks shown on the 2009 and the 2014/15 aerial photographs are in completely different alignments and exhibit entirely different surface characteristics. I accept there may have been some kind of informal agricultural track near the northern side of the field, probably in connection with the use of the land for pig breeding. But, in the absence of any evidence from the appellants to demonstrate otherwise, I find, on the balance of probabilities, that the present line and hard surfaced character of the access track now in use has not existed for more than four years prior to the date the notice was issued.

9. This conclusion is supported by appellants' Design and Access Statement included as part of the planning application leading to one of the 2012 appeals. In it Mr Jones said that a track would be created from the highway access to the mobile home and a small parking area laid down. That was a voluntary statement made some four years ago by one of the present appellants and relates directly to what is now one matter subject of the enforcement notice; therefore, in the absence of any contrary evidence, I have no reason to doubt its veracity. That statement strongly points to the access track, in its current alignment and physical characteristics, and the hardstanding, both having been constructed after the date of the 2012 permissions (3 August) and hence less than four years prior to the issue of the enforcement notice before me. Accordingly it reinforces my conclusion that, on the balance of probabilities, the track and hardstanding were both constructed less than four years prior to 24 May 2016, the date of issue of the notice.
10. In addition, the implementation of the 2012 permissions for the siting of the Eco-Pod and associated works opened a new chapter in the planning history of the field. Condition (6) of the 2012 permissions required that, when the Eco-Pod ceased to be occupied by the appellants' son or three years after the date of the permissions (whichever occurred first), the access track and all other materials brought onto the land in connection with the permitted use shall be removed from the land and the land restored to its previous condition in accordance with a scheme to be approved by the Council. As the allegation states, although the permissions expired on 3 August 2015, the mobile home, stilts, decking and steps remain on the land. Though the access track is not specifically mentioned in this part of the allegation, it nonetheless is caught as part of the hardstanding laid without the benefit of planning permission referred to in paragraph 3(2).
11. The allegation refers to an area to the south-west of the mobile home in use for parking and manoeuvring shown hatched on the plan attached to the notice. However that hatching also includes the access way from the parking area immediately inside the entrance gates and situated to the south-east of the Eco-Pod. Accordingly the allegation needs to be corrected to describe the hatched area as lying to the south of the mobile home. I am satisfied that no injustice would be caused by the correction of this typographical error and it does not have any material effect on the evidence before me.

12. I thus conclude, by reason of the appellants own evidence, that the hardstanding shown hatched on the plan attached to the Notice has not become immune from enforcement action due to the passage of time. Consequently the appeals on Ground (d) fail.

The appeal on Ground (a) (Appeal A only)

Main Issues

13. The main issues in this appeal are

- (a) whether or not it is essential for a worker to live permanently on the appeal site; and
- (b) the effect of the development on the rural character and appearance of the area.

Need to live on site

14. The Inspector in the 2012 appeal found that there was a need for a permanent on-site presence to support the operation of the wood processing or production of pellets or logs for fuel. At that stage, it appears that the plant may have been in production, albeit that insurance cover was only provided on a month by month basis. However it is agreed that since 2012 the processing of wood products has ceased. Consequently, the residential occupation of the Eco-Pod has not, as a matter of fact, been in conjunction with the production of fuel.
15. The appellant says that there is an ongoing legal dispute with the insurers and that this has, in effect, prevented the resumption of processing. Whilst he says that this long running legal dispute is close to resolution there is no actual evidence of this before me. Consequently, in terms of the need for frequent safety checks, and the likelihood of an outbreak of fire resulting from the processing, there is no current risk. This significantly reduces the justification for an on-site presence. Whilst I note that this presence may reduce the possibility of theft, from my observations on site, and in particular the size and weight of the equipment, its specialist nature and the locked access gates, I consider that this risk is unlikely to be high. Consequently I consider that the possibility of theft in itself is not sufficient to justify a permanent on-site presence. In terms of arson, for similar reasons, I come to the same conclusions.
16. Saved Policy H18 of the Cherwell Local Plan 1996 (CLP) significantly predates the publication of the National Planning Policy Framework (the Framework) but I find the aims of this policy to be broadly consistent with the Framework, because this also says that isolated homes in the countryside should be avoided except in certain circumstances. Both CLP H18 and paragraph 55 of the Framework say that housing which enables a rural worker to live permanently at or near their place of work can be justified if there is an essential need. But the circumstances are now different to those at the time of the previous appeal which led to the 2012 permission so that there is no such demonstrable essential need. Consequently this issue weighs heavily against permission.

Character and appearance

17. The appellant has provided little or no evidence in respect of the impact of the development on the character and appearance of the countryside. Moreover it

appears that the extent of the development has increased significantly since 2012 by reason of the creation of the hardstanding and parking area to the south of the Eco-Pod. I saw that the northern part of the field in and around the residential unit is overtly domestic, by reason of the Eco-Pod itself, various sheds and domestic structures, the creation of what appears to be a water feature, and high panel fencing adjacent to the northern field boundary. When considered cumulatively and together and by reason of fact and degree the development is incongruous in this otherwise unspoiled rural location. For these reasons I see no reason to depart from the conclusions reached in the 2012 appeal that the Eco-Pod is a large isolated man-made object.

18. Of the policies relied upon by the Council I find that Policy EDS13 of the Cherwell Local Plan 2011-2031, Part 1 adopted July 2015 (CLP 15), to be the most relevant to this issue. This says, amongst other matters, that proposals should not cause undue visual intrusion into the open countryside. The development is relatively well screened from public viewpoints and though this mitigates its harmful impact it remains an incongruous domestic intrusion in open countryside. Thus this issue also weighs against permission.

Conclusions on Ground (a)

19. There has been a change of circumstances since the 2012 appeal because there is no longer an essential need for an on-site residential presence. In these circumstances the harm to the character and appearance of the countryside is not outweighed. Consequently the appeal on Ground (a) fails.

The appeals on Ground (g)

20. The appellants say that they have not been able to produce heat-logs and pellets for fuel because of ongoing legal issues and the inability of the business to secure insurance cover. Consequently the business has been 'mothballed' since 2012 however it is suggested that the court case should resolve issues shortly. In their grounds of appeal, dated 29 June 2016, the appellants said that the court case would be heard in the next 8-12 months. However there is no cogent evidence to demonstrate that this dispute, already ongoing for over 4 years, will be resolved in the short term.
21. Notwithstanding this, the appellants' son will be made homeless once the notice comes into effect, and given seasonal considerations the compliance period is unreasonably short. Whilst I accept that the appellants have known for over a year that the temporary planning permission has expired, they are entitled to hope that their appeal and the court case would be successful. In these circumstances I consider that a reasonable balance between competing private and public interest would be to increase the period for compliance to 6 months. This should give the appellants' time to resolve their son's housing issue and perhaps also their court case. To this limited extent the appeal on ground (g) succeeds and I shall vary the requirements accordingly.

Formal Decisions

Appeal A: APP/C3105/C/16/3153443

22. It is directed that the allegation in Section 3 (2) of the Notice is corrected by:
the deletion of the words "south-west" in the second line and the substitution of the word "south";

and Section 6 of the Notice varied by:

the deletion of the words "Eight weeks" and their substitution by the words "Six months".

23. Subject to this correction and variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended and the enforcement notice as varied is upheld.

Appeal B: APP/C3105/C/16/3153444

24. It is directed that the allegation in Section 3 (2) of the Notice is corrected by:

the deletion of the words "south-west" in the second line and the substitution of the word "south";

and Section 6 of the Notice varied by:

the deletion of the words "Eight weeks" and their substitution by the words "Six months".

25. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Sukie Tamplin

INSPECTOR