
Appeal Decision

Site visit made on 6 December 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 21 December 2016

Appeal Ref : APP/H2265/C/16/3146435

Land off A229 Bluebell Hill, West of Maidstone Road, Chatham, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Stephen Tindame against an enforcement notice issued by Tonbridge and Malling Borough Council.
- The notice was issued on 12 February 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a raised building set amongst trees.
- The requirement of the notice is to remove the raised building and all arisings from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

1. The Appellant argues that the alleged breach is de minimus as the raised building sits within a much bigger woodland. I find the alleged breach to be material and determine this appeal accordingly.

Ground (b) appeal

2. This ground of appeal is that the breach of planning control has not occurred as a matter of fact. The burden of proof rests on the Appellant and the test of evidence is the balance of probabilities.
3. I saw at the site visit that the raised building exists as a matter of fact and accordingly the ground (b) appeal fails.
4. The Appellant's arguments about whether the building comprises development are more pertinent to a ground (c) appeal and I deal with them accordingly.

Ground (c) appeal

5. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.
6. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in

- section 55(1) of the 1990 Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land.
7. The notice concerns a raised shed like structure in an elevated position amongst trees. It is described by the Council as resembling a tree house. The Appellant's case is that the building is permitted development as it is used for agricultural or forestry purposes. He also questions whether it can reasonably be regarded as a structure.
 8. In determining whether the alleged breach constitutes a building (as defined in section 336(1) of the Act) or a building operation or other operation within the meaning of section 55 of the Act I have had regard to its size, degree of permanence and physical attachment.
 9. The structure is wooden of simple design with walls and a roof and of modest size. It is located above ground level in the branches of trees within a large woodland area. At my site visit I saw no physical staircase or ladder providing access from ground level and no connections to any facilities such as electricity or water. The Appellant says that its elevated position on stilts is to deter intruders. It does not have foundations or rest on the ground but is raised in an elevated position amongst tree branches and supported by thin metal upright poles which are securely fixed in the ground. The degree of attachment to the ground via the metal poles is more than minimal. It appears to be robustly in place with a firm degree of stability and has the appearance of permanence. There is nothing before me to suggest that it has ever been moved from its current position and there is no reason for me to question the Appellant when he says that he installed it in 2015. As a matter of fact and degree I find that it can reasonably be regarded as a building or other operation for the purpose of the 1990 Act. Therefore its installation constitutes operational development within the meaning of section 55 of the Act.
 10. Permitted development rights exist, subject to specific conditions and limitations, for certain buildings reasonably necessary for the purposes of agriculture or forestry on agricultural land. The Appellant refers to his intention for the building to be used to store tools, seeds, plants and other useful things in relation to growing vegetables for his own use. But growing vegetables for domestic use does not comprise agriculture or forestry. He also refers to storing tools necessary for forestry and agriculture purposes but there is no supporting evidence before me. He argues that the Council has not engaged enough in discussion with him about his future intentions for the site but in this ground of appeal he must provide sufficient evidence to justify his case. I am not persuaded on the evidence before me that the building is reasonably necessary for the purposes of agriculture and forestry and the burden of proof which rests on the Appellant has not been discharged.
 11. In any event the permitted development rights under part 6 of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO) only apply if various conditions and limitations are met. I cannot on the information before me conclude that the conditions are met. For example, one of the conditions is that before beginning development an application to determine the need for prior approval is made. There is nothing before me to suggest that such an application has been made in this case.
 12. Under this ground of appeal the onus of proof is on the Appellant to show that there has not been a breach of planning control. On the evidence before me

the Appellant has not discharged the burden of proof. He comments that the Council has not proven its case beyond reasonable doubt but the burden of proof rests upon the Appellant and the test is on the balance of probabilities.

13. For the reasons given above I conclude that the appeal should not succeed on ground (c).

Ground (a) appeal and deemed application

Main Issue

14. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area, having particular regard to its location within an Area of Outstanding Beauty (AONB).

Character and appearance

15. The appeal site is located in a large area of woodland. It is crossed by a public right of way. There is an industrial site nearby as well as a football pitch, stables and residential housing. It is located outside settlement boundaries as defined in the development plan.
16. The Appellant draws attention to the questionnaire submitted in the course of the appeal which refers to the site as not within an Area of Outstanding Natural Beauty. Confirmation has been sought from the Council during the course of this appeal and they have confirmed that the questionnaire contains an error and that the site is within an AONB, an area classified as Ancient Woodland and a Local Wildlife site. There is nothing before me to suggest otherwise.
17. The development plan (including the Tonbridge and Malling Local Development Framework Core Strategy (the Core Strategy)) mirrors the National Planning Policy Framework (the Framework) in recognising that development should respect its surrounding and that great weight is to be given to conserving landscape and scenic beauty in an AONB. Policy CP14 of the Core Strategy states that in the countryside development will be restricted to identified descriptions of development. The descriptors include development that is necessary for the purposes of agriculture or forestry, including essential housing for farm or forestry workers, or any other development for which a rural location is essential. Policy CP24 of the Core Strategy states that all development must be well designed, of high quality and designed to respect the site and its surroundings. The Appellant suggests that these policies are not designed to be applied to a construction like the one the subject of this appeal but I find nothing to suggest that they are not relevant.
18. As explained under the ground (c) appeal I am not persuaded on the evidence before me that the development is necessary for the purposes of agriculture or forestry. There is also nothing before me to suggest that a rural location is essential for the development. It therefore does not accord with policy CP14 of the Core Strategy.
19. Furthermore the domestic shed like appearance of the building is out of keeping in its woodland setting. It siting above ground level contributes to its visual prominence. The Appellant suggests that it blends well in the woodland area but I find its appearance out of keeping and prominent. I find that it causes harm to the character and appearance of the surrounding woodland area and adversely affects the landscape and scenic beauty of the AONB. It

fails to accord with relevant policies in the development plan, including policies CP14 and CP24 of the Core Strategy.

20. I note that the Appellant refers to other structures. But these are not widespread and not characteristic of the surrounding woodland area. He also refers to the benefits to wildlife who shelter in the structure and will share the vegetables grown. But these matters do not outweigh my conclusion on the main issue. I note the absence of objection by neighbours but this is not determinative of the absence of harm.
21. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. No conditions are suggested by either party and I do not consider that any conditions could overcome the identified harm.
22. For the reasons given above I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

23. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector