

Appeal Decision

Site visit made on 30 March 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 16 May 2017

Appeal Ref: APP/X1545/C/16/3161041

**Land at Tolleshunt Wood within Chantry Wood, Witham Road,
Wickham Bishops, Essex CM8 3NQ**

- 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 Guy Dehn against an enforcement notice issued by Maldon District Council.
 - The notice was issued on 20 September 2016 under ref. ENF/15/00093/02.
 - The breach of planning control as alleged in the notice is "The unauthorised operational development to erect a building, its approximate location marked with an "X" on the attached plan (Annex 2)."
 - The requirements of the notice are to "Demolish the unauthorised building and remove any resulting materials, detritus and/or debris from the land."
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely the erection of a building on land at Tolleshunt Wood within Chantry Wood, Witham Road, Wickham Bishops, Essex CM8 3NQ referred to in the notice, subject to the condition that the building hereby permitted shall only be used for purposes ancillary to the maintenance of the woodland within which the building is located and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Applications for costs

2. An application for costs was made by the Council against Mr Guy Dehn who in turn made such an application against the Council. These applications are the subject of separate decisions.
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The enforcement notice

3. The Council acknowledges that the reasons for issuing the notice should not have referred to a change of use or to any cumulative effect. However, this incorrect specification does not render the notice as a nullity or invalid. It has not prevented the appellant from presenting a well-made case on ground (a), that planning permission ought to be granted for what is alleged in the notice. The purpose of this section of the notice (reasons and development plan policies) has passed by the time of this appeal decision. As such there is no need for me to formally correct the defects in that part of the notice.

The appeal site and its surroundings

4. The appeal concerns a timber shed associated with a private woodland known as Tolleshunt Wood. This wooded area extends to about 1.4 ha, contains many mature trees including oaks and hornbeams and is surrounded by other areas of private woodland. The timber shed was measured by the parties at the site visit and was found to be 4.27 m long by 3.34 m wide. Its floor is set above ground level by about 44 cm. When the appellant purchased Tolleshunt Wood in 2014, it included a dilapidated forester's hut which had been present for well over a decade according to the appellant or even well over 20 years according to the former owner (Woodlands.co.uk).

The appeal on ground (c)

5. The appeal on ground (c) is that the matter stated in the notice which gives rise to the alleged breach of planning control, if it occurred, did not constitute a breach of planning control. This might be because no development was involved or because planning permission has already been granted or because it is permitted development. The burden of proof in a legal ground of appeal like this rests on the appellant. The relevant test of the evidence is on the balance of probabilities.
6. The gist of the appellant's case is that no development was involved in the creation of the subject building. More specifically, the claim is made that building operations to repair the dilapidated forester's hut have taken place and those operations have not materially affected the external appearance of the building. As such, it is argued that the operational development alleged in the notice is not development as defined in section 55(2) (a) of the 1990 Act as amended.
7. In deciding whether development requiring planning permission has occurred the starting point is to consider the meaning of "development" within the context of the planning acts because these provide the key primary legislation, as opposed to the advice in the Planning Practice Guidance which inevitably offers a more succinct summary. Section 55(1) of the 1990 Act as amended defines "development" as "*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*"
8. The appeal development concerns "*building operations*". For the purposes of the Act these are widely defined so as to include "(a) *demolition of buildings;* (b) *rebuilding;* (c) *structural alterations of or additions to buildings;* and (d)

other operations normally undertaken by a person carrying on business as a builder."

9. Section 55(2) excludes from the definition of "development" a number of operations and uses. The first of these, in section 55(2) (a), refers to "*...the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building...*". Another exclusion at section 55(2) (e) is of little relevance as it relates to the use of land and buildings for agriculture or forestry and not to building operations as such.
10. The fundamental question must be whether the works carried out could truly be described as works for the maintenance, improvement or other alteration of a building or whether what has been constructed amounts to a new building.
11. The dilapidated forester's hut had a broken roof and a floor that was beyond salvage. By early April 2015 Mr Tony Turner (the local craftsman employed by the appellant) advised that the walls to the hut had so deteriorated they could not be used and that "only the door, the 2x2s, work bench and fittings could be retained for and used in the actual repairs." New foundations were laid a metre or two away from the hut to facilitate the replacement of the floor. At the same time the new floor was raised off the ground so that small mammals would gain passage. To accommodate some lining for energy efficiency, the hut's external dimensions increased from 4 m by 3 m to 4.27 m by 3.34 m. There have been minor changes to the arrangement of the windows and there are now two door openings, one of which contains double doors.
12. I do not doubt that the appellant attempted to ensure that all that could be used in the building's repair was used but the appellant was starting from a position where he noted that "In July 2014, the hut was in an extremely poor condition, such that most of its elements were beyond repair and required replacement." The appellant certainly has an arguable case that the resulting building is not materially different in external appearance to the hut that existed in 2014 or early 2015. However, having regard to all the available evidence, I find, as a matter of fact and degree, that the building operations involved were sufficiently extensive as to constitute the rebuilding of the hut and were not simply confined to the maintenance, improvement or other alteration/repair of an existing structure. Those operations do not fall within any of the exclusions from the definition of development. They required planning permission. No such planning permission has been obtained.
13. Neither the two Court cases nor the appeal decision raised in the original ground (c) appeal statement provides support for what has occurred. They do not relate to a situation, as here, where effectively a building has been replaced. I note that a third party – Richard Sceats – says that the appellant "should be commended for demolishing the old hut and replacing it with a much more pleasing structure". Whilst extensive works were permitted under another appeal (ref. APP/R0660/X/11/2153863), the basic structure of the building there was sound. The Inspector recorded that "The concrete floor, the timber frame and all areas of brickwork and blockwork would be retained and all of these structural elements could, and would probably, remain in place whilst the proposed works are being carried out."

14. I have had regard to all other matters raised under ground (c) but I conclude on the balance of probabilities that the operational development alleged in the notice amounts to a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

15. Reading the reasons given in the notice for its issue, as subsequently clarified by the Council, I consider that the main issue in deciding if planning permission ought to be granted is the effect of the building upon the character and appearance of the area.
16. The development plan includes the Maldon District Replacement Local Plan (RLP). I am satisfied from studying the accompanying proposals map that the site lies within a Special Landscape Area. The relevant cited RLP policies are S2 (Development outside development boundaries), CC6 (Landscape Protection), CC7 (Special Landscape Areas) and BE1 (Design of New Development and Landscaping). Insofar as the issues in this appeal are concerned, these policies are broadly consistent with the National Planning Policy Framework (the Framework).
17. The emerging Maldon District Local Development Plan (LDP) is at a relatively advanced stage in its progress towards adoption but the cited relevant policies (S1, S8 and D1) do not fundamentally change the approach from those in the adopted RLP. Like the Framework, they are material considerations, as are the Landscape Character Assessment (Appendix 1 of the Council's statement), the local Article 4 Direction removing some permitted development rights and the Tree Preservation Order.
18. Policy E4 of the LDP covers agricultural and rural diversification but falls within a chapter titled Economic Prosperity. It is more to do with initiatives for employment generation around land-based rural businesses and is of little assistance to the appellant.
19. With a footprint of about 14.26 sq. m, the hut is not especially sizeable. I saw that it contained, amongst other things, a selection of hand tools, a workbench, wellingtons, tea-making facilities, woodland guides and books, a squirrel catcher, axes, fence posts and a small table and chair. I read that the hut allows the appellant, who lives in London well away from the site, to maintain, care for and enjoy the woodland and to store the equipment he needs to do this. I saw nothing to suggest the building is put to any other purpose. It is not oversized for the purposes it is used for or the wood it relates to.
20. The building is sited in the southern corner of the wood. Even though that part of the wood is closest to Witham Road, the separation distance between the hut and that public road is approximately 100 m. The intervening landscape is given over to woodland. If observers are determined and concentrating hard during the winter or early spring months, it would be possible to catch a glimpse of the building from the road. The building clearly has only a very negligible visual impact from any public viewpoints.
21. It is only the owners of other woods within Chantry Wood that are able to gain clear views of the hut. All of the owners who have responded to the appeal raise no objections. There are good reasons for their stance. As well as its reasonable size and siting well away from public vantage points, I did not find

- the building to have an overly residential character or appearance. The design is based on a rather simple construction consisting of horizontally-laid, green-stained timber panels for the walls and felt for the pitched roof. I do not take exception to the boarded windows or to the doors. The outdoor decking is restricted to the entrance points of the building and such provision is not unreasonable given the raised floor level. When viewed in the round, the timber hut is not of keeping with its wooded setting.
22. The appellant says that no tools or equipment are stored outside and that he manages and works the plot on each visit. I could not see how the building poses a threat to protected trees. New trees have been planted by the appellant.
23. The Council attempts to exclude the previous forester's hut from being a material consideration. As a matter of planning judgement, I do not subscribe to that approach. The evidence points to that building being immune from enforcement action through the passage of time. Indeed, it may have been in place for well over twenty years. It was an established part of the forest scene and it was only removed around the same time as the existing hut was erected. Photographs clearly record its appearance. The appellant has faithfully tried to create a forester's hut that is not materially different in size, position, design, materials and appearance to that former hut. He has succeeded in that achievement and at the same time there has been a visual improvement upon the dilapidated nature of the former construction that could still have persisted for a considerable period of time without intervention.
24. I noted the planning history for and the building in Old Pond Wood. I reach a neutral view upon it; this adjacent development does not provide a strong case in favour or against the appeal building which I have assessed on its own merits.
25. I have taken into account all other matters raised, including the support for the development from third parties. I find nothing to alter my conclusion on the main issue that the building does not materially harm the character and appearance of the area. There is respect for the relevant development plan policies and their counterparts in the LDP.
26. To reflect the use to which the building is being put and because other uses may raise different planning considerations, I have attached a condition, similar to the one suggested by the Council, restricting the building's use to purposes ancillary to the maintenance of the woodland within which the building is located.
27. I conclude that the appeal on ground (a) and the deemed planning application should succeed. Conditional planning permission has been granted. As the enforcement notice will be quashed, ground (f) no longer falls to be considered.

Andrew Dale

INSPECTOR