
Appeal Decision

Hearing Held on 7 January 2020

Site visit made on 7 January 2020

by Simon Hand MA

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

Decision date: 14th January 2020

Appeal Ref: APP/L3815/C/18/3208260

Land West of Junction with Dangstein Road and Borden Lane, Borden, Milland, West Sussex, "Smugglers Copse", GU31 5BZ

- 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 Ms Gillie McNicol against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered ML/25, was issued on 19 June 2018.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the land to mixed use comprising camping, education and training courses and manufacture of wood products.
 - The requirements of the notice are (i) Cease the use of the land for camping, education and training courses and for the manufacture of wood products; (ii) Remove the metal corrugated sheeting, plastic corrugated sheeting, wooden planks, metal oil drums, caged plastic container, photovoltaic panel, vans and spare wheels from the land; (iii) Remove from the land, the two touring caravans; (iv) Dismantle the 'round house' used as a central communal structure, the outside kitchen, the pizza oven, the framing bed and structural canopy, the structure used as a 'workshop', the old toilet structure used as a general store and the wood store, the enclosed wooden podium, and (v) Remove from the land all the resulting debris from the structures dismantled in (iv) above including the removal of the associated wooden tables, chairs, work surfaces, benches and clay oven.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by adding in "forestry" between "comprising" and "camping" in the allegation and varied by deleting reference to "the old toilet structure used as a general store" from requirement (iv). Subject to this correction and variation the appeal is dismissed and 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.

Costs Application

2. An application for an award of costs was made at the hearing and is the subject of a separate decision letter.

Background to the Appeal

3. The appellant purchased a block of woodland that was formally part of the Dangstein estate in 2009. It covers about 10.5ha and is predominantly coppiced sweet chestnut. The Land is bordered by a bridleway, part of the serpent trail to the north and east, Dangstein road to the south and a public footpath to the west. A forest track runs through the site on a west-east alignment and carries on beyond the appeal site to further woods in different ownership beyond to the west. Part of the western edge footpath passes through a small ravine which is a noted site for rare briophytes. The whole site falls within a larger area identified as a Site of Nature Conservation Interest by the County Council and is a replanted ancient woodland.
4. The appellant, with the help of a forester, Richard Bates, has been actively managing and coppicing the land, which had previously been left to its own devices, using hand tools in a low impact manner, and selling various by-products such as fences, gates and timber framed buildings. Also, since 2012, Mr Bates has also been running occasional courses in woodland type skills such as chair making or timber framing.
5. A similar undertaking, but on a larger scale, at Laundry Cottage¹ on the other side of the road from the appeal site, was recently granted planning permission following an appeal in October 2019, and a number of issues are common to both appeals. Both parties made reference to that decision in this appeal.
6. It was agreed that the notice should be corrected to include 'forestry' within the mixed use allegation, and this would not prejudice either party. There is a hut on site currently used for storage and for Mr Bates as a seasonal woodland worker. This is the only structure that is of a robust construction, albeit it is still a simple wooden hut. The Council accept that a working forest requires some form of shelter and the hut is not included in the notice and so not affected by this appeal.

The Appeal on Ground (c)

7. This ground is that the matters alleged do not need planning permission. In this case it is argued the forestry products are ancillary to the use of the land for forestry purposes and the educational courses are permitted development by virtue of Class B of Part 4, Schedule 2 of the General Permitted Development (England) Order 2015.
8. It was accepted by the appellant that the reasoning in the Laundry Cottage appeal as to what constituted ancillary timber production was relevant here. In that appeal the Inspector held that it was the amount of 'processing' that occurred that was important to determine whether a wood product was 'consequential on' the coppicing of trees as a crop. In this appeal Mr Bates is producing benches, small timber round-wood frames, field gates, hurdles and a yurt frame as well as shingles or shakes, pea sticks, fence posts, bean poles and so on.
9. Following on from the Laundry Cottage decision, it is my view that the latter items, the shingles/shakes, pea sticks, fence posts, bean poles and so on are all clearly ancillary products, they require little or no processing, and are consequential on the coppicing process. However, the other items, gates,

¹ APP/Y9507/C/18/3199595 & 3194790.

hurdles, the yurt and timber framed buildings do require considerable added value in terms of processing, whether in a low impact, hand tool fashion or not. I consider that even the occasional production of such items because they requires some processing is not ancillary to forestry and so is not permitted development.

10. The second element of the ground (c) appeal concerned the educational courses. Again, there was no dispute about the length of time taken up by these courses, which was a maximum of 19 days in 2013. Since 2017, when the Council began investigating the alleged breaches the number of courses has tailed off. Mr Bates said that he had run two, one-day course this autumn involving two people on each course, making a chair and a stool. This is a very low key activity that falls well within the 28 days a year allowed by Class B of Part 4, which covers temporary uses of land. However, the Council argue that it falls outside Class B because B.1(b) says that development is not permitted if *"the land in question is a building or is within the curtilage of a building"*. In this case, the Council say, a number of timber structures are involved in the courses and the outdoor elements are within the curtilages of these buildings.
11. As I saw on the site visit, within the wood is a small area known as 'the camp' that contains a number of buildings or structures made out of the wood's own timber products. The exception was a touring caravan used by Mr Bates in his seasonal forestry worker role. Also tarpaulins or a parachute were used to roof some of the timber frames that had been erected. These were only brought into use when required for a course, otherwise they remained as simple framed structures. There was no argument from the appellant that the structures were not buildings for the purposes of the GPDO, and I think it is commonsense that they must be. In which case, whether or not they can be said to have a curtilage is irrelevant, as at least some of the courses rely on the use of the buildings and buildings are excluded from the permitted development rights which are concerned only with the use of the land.
12. While not all the courses would necessarily use a building, for example a one day course on making spoons held in the summer might be entirely outdoor based, it is clear that some have. The appellant suggests the buildings are actually part of the lawful forestry use and the occasional use for educational activities is simply co-incidental and does not impinge on the rights granted by Class B. The buildings comprise a timber framed 'roundhouse' communal hut, a compost toilet, an old compost toilet now used as a store, the framing bed, a wood store and a workshop. The notice also includes a 'dance podium' and an outside kitchen which have already been removed.
13. A number of these buildings were constructed as part of the courses in timber framing, and it is clear the number of buildings can fluctuate as old ones are dismantled and replaced by new, possibly in a different location and for a different purpose and of a different size. This is in keeping with the low key, low impact philosophy underlying the use of the site as a whole. However, it is clear that not all these buildings are genuinely necessary for or ancillary to forestry activities. I have already found the making of timber frames is not permitted development, and so the framing bed cannot be said to be related to a lawful forestry activity. The roundhouse is obviously used for more than forestry activities and various of the other structures, the compost toilet for example, have shared uses. The permitted development rights granted by Class B specifically exclude the use of buildings and insofar as the courses use

these buildings, they cannot be permitted development. I have no evidence to determine which if any courses are entirely outdoors based, so I can only find the use of the site for educational purposes as a whole is not permitted development.

14. A secondary issue is whether the activities of wood product manufacture and educational courses amount to a material change of use. They might not be permitted development, but if, in volume terms they amount to such a small scale activity that they are not material, then they would not amount to development requiring planning permission.
15. In this case the appellant's figures for timber products are 15-16 days spent on each year for the last four years. Activity in previous years is less. This is a very low level of activity. The figures for educational courses over the same period is only 6 in 2017, 1 in 2019 (up to July) and it seems a further 2 in the autumn of 2019. However, this dip in activity follows on from the issue of a PCN by the Council and visits from the enforcement team in 2016 when it became clear to the appellant that the Council were concerned about the activities in question. Certainly educational courses had been running at a higher level, about 15 days a year up to then. The courses require people to travel to the site, with 2-3 cars per course it would seem, and in many cases camping on the site overnight. Although this too is a low level of activity, taken together there is a pattern of regular courses and timber product manufacture that amounts to more than an occasional or de minimis use of the land and does, just, suggest the material change of use as alleged has been made. Therefore the appeal on ground (c) fails.

The Appeal on Ground (d)

16. This appeal concerns only three of the structures mentioned above, the compost toilet, the framing bed and the old toilet/store. There is no dispute the three structures have been on site for more than 4 years and so, for that reason are immune from enforcement. However, the Council argue they are integral to the material change of use of the land and if the notice is upheld on that basis these structures can be removed regardless of whether they are lawful or not. There are a number of court cases that have defined this principle, the key one for this appeal being *Bowring*², where it was held that if the operational development installed as part of the material change of use is to be removed, it must be integral too or part and parcel of the use alleged. It is not sufficient if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased.
17. In this case the framing bed can only be used for the production of timber frames or also as part of a timber framing course, which I have found above not to be ancillary to forestry. The compost toilet and the store could both be used by a forestry worker, going about lawful forestry tasks. I have little evidence concerning the uses these two structures have actually been put to. Mr Bates statement says the store was used in a framing course in 2012, but it is clearly a general small storage structure. I think one has to be careful when applying this principle too liberally and in my view it is far from clear these two structures are integral to the unlawful activities subject to the notice.

² *Bowring v SSCLG & Waltham Forest BC* [2013] EWHC 1115

18. The appeal on ground (d) succeeds for the old toilet/store but fails for the framing bed. I note that in fact the compost toilet is not specifically included in the allegation or requirements, but for the avoidance of doubt I consider that it has gained immunity from enforcement by way of the passage of time.

The Appeal on Ground (a)

19. It was agreed the Milland Parish Neighbourhood Plan (2016-2030) and the South Down National Park Local Plan (2019) form the development plan for the purposes of this appeal. The site is an SNCI and so policy EN1 of the Milland NP requires an Ecological Impact Assessment if there is likely to be an adverse effect on the site. No EIA has been provided, but the appellant argues the Woodland Management Plan effectively covers the same ground and with a high level of detail. I agree that it is difficult to see what would be gained by the production of a further EIA.
20. Policy SD4 of the SDNP local plan deals with the protection and enhancement of the landscape, SD7 seeks to preserve and enhance relative tranquillity and SD23 encourages sustainable tourism within certain parameters. The site also lies in an area classified as the Dark Sky Core and the SDNP Partnership Management Plan has a policy to protect and enhance tranquillity and dark night skies. However, the main thrust of all these policies is to encourage development that promotes the understanding and enjoyment of the special qualities of the park as long as those qualities are not harmed. Small scale forestry activities and low impact educational courses involving the hands-on manipulation of woodland products is very much within the ethos of the National Park and it is this that the appellant is promoting on the appeal site. The issue is therefore whether in the process the very special qualities that the appellant seeks to promote are also being undermined.
21. The site lies in an area designated as being of intermediate tranquillity for policy purposes. As I experienced myself, apart from the noise of a helicopter, it was very quiet and peaceful and the preservation of this tranquillity is important.
22. The manufacture of wood products by a single person, using hand tools and wood sourced solely from the coppiced woodlands is clearly something that the SDNP would support. At the level it is being carried out at the present it clearly causes no harm. However an unfettered permission might well have much more serious consequences. The woodland could be more intensively managed and production of timber products could be significantly stepped up. I am aware also that a certain amount of raw timber could be imported to be worked on. More machinery and more workers would lead to more noise and disturbance and also visits by lorries taking away finished products. I am not suggesting this is the intention of the appellant, but there is no guarantee she will remain the owner so any future use would need to be controlled by conditions.
23. The use of the site for educational purposes, on a small scale and for small groups of people also, in my view, clearly sits within the second purpose of the National Park, to promote the understanding and enjoyment of its special qualities. Again, the current level of use is very low. Even with 15 days of courses a year which is the level before 2017, there is no reason why this could not be carried out without causing any harm. However, these courses have certain associated activities and effects that also need consideration. Most

- people will arrive by car, which will need to park on site. Those on multi-day courses will also need to either stay locally or on the site. In the past people have tended to rough camp in the woodland wherever there is a flat area sufficiently clear of trees. This might be fine for a couple of tents a couple of times a year, but less so if numbers are to grow as is proposed.
24. The people attending the courses also need toilet facilities – the current single compost toilet (even with two adjacent seats) may not be enough, and there is no running water in the camp, although there is a tap 100m away. With more people staying there will need to be at least some rudimentary washing facilities for basic hygiene purposes, and they will also need to be fed. There is a pizza oven on the site and a small communal pizza gathering in the evening has been the norm in the past. Again this will expand given more people and more courses.
25. Finally, it has been the practice for the timber making course to produce a structure that is then used on the site. The Council were concerned about the proliferation of such structures throughout the woodland, especially as more framing courses are envisaged.
26. The appellant has suggested a number of conditions to deal with these issues. They accepted there should be a limit on any lighting, which would satisfy the dark skies problem. They also agreed the management plan for the woodland could be conditioned to ensure environmental and habitat concerns were met. I accept these would overcome any problems in these areas. A condition is also suggested limiting the production of non-ancillary woodland products. It is envisaged this would include only wood sourced from the site and only hand tools and chainsaws shall be used. Again I agree this is a necessary condition which would help restrain the potential disturbance from this activity. It is also envisaged production would only take place on 60 days a year. Some limit to production is clearly required.
27. As to the educational courses it was suggested these too are limited to 60 days a year and to 10 participants a day. Cumulatively, with the timber production, this would amount to 120 days of activity a year and up to 600 people on the site attending courses. The appellant accepted this was not what they envisaged and suggested refining the condition along the lines of a maximum of 8 participants on 1 day courses and 4 on timber framing courses, no more than 10 courses a year up to a maximum of 60 days. I think this is the right way to approach the problem, but it is quite unsatisfactory to make up these conditions on the hoof. What about the courses that are more than 1 day but aren't framing courses?
28. There is also the issue with the associated impacts discussed above of camping and parking. I was shown various spaces in the woodland where cars could park and it was suggested a condition could require enough spaces to be identified and marked out in some way. This may be possible, but I have no evidence as to how many or where they might be. It was suggested that no facilities were envisaged for camping, but I find this hard to believe. It suggests to me that this element has been insufficiently considered.
29. As to the proliferation of structures, the appellant agreed this was not envisaged, and was happy to have a condition restricting the numbers, but again no condition was put before me. Something akin to a site management plan. In my view the implications of success on ground (a) have not been

properly thought through, particularly as this is development within a national park subject to the highest standards of protection in national as well as local policy.

30. Mr Campion who represented third parties, suggested the lack of a s78 application was the problem and I agree. A properly thought out proposal with evidence as to numbers and frequency of the different types of activity and conditions to control that, as well as provide certainty as to the impacts on the site of parking, camping and the potential proliferation of structures would all be necessary to allow a reasoned determination by the Council as well as proper consultation and reassurance for neighbours. I have no doubt that given the evidence I heard that a proposal for some level of intensification above the current low level use could be acceptable and would sit comfortably within the national park, but I am not satisfied that I have evidence to suggest what that should be. Consequently, I find the development proposed would be likely to be contrary to policies SD4 and SD7. I am not sure that SD23 is relevant, but if it is, then it would be contrary to that as well. The Appeal on ground (a) fails.

Conclusions

31. The appeal on ground (c) fails, but on ground (d) it succeeds for the compost toilet and old compost toilet store. I shall vary the requirements to delete the removal of the old compost toilet/store. The appeal on ground (a) fails and I shall refuse to grant planning permission for the matters alleged. I shall correct the notice to include forestry within the mixed use. Subject to that correction and the variation of the requirements I shall dismiss the appeal and uphold the notice.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

James Shorten – agent
Gillie McNicol – appellant
Richard Bates – woodland worker

FOR THE LOCAL PLANNING AUTHORITY:

Shona Archer – Chichester DC
Steven Pattie – Chichester DC

INTERESTED PERSONS:

David Campion
Colin Stopher – Milland PC

DOCUMENTS

- 1 Richard Bates, statutory declaration
- 2 Tranquillity map
- 3 Rights of Way map
- 4 Dark Skies map