



Appeal Decisions

Inquiry Held on 26 - 27 November 2019

Site visit made on 28 November 2019

by Katie Peerless Dip Arch RIBA

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

Decision date: 17 January 2020

2 Appeals at Land at Coast Road, West Mersea, Colchester, Essex

Appeal A: APP/A1530/C/17/3192101

Appeal B: APP/A1530/C/17/3192307

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (TCPA) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Simon Cutts (WM Wyatt Ltd) (Appeal A) and Mr Roger Cook (Appeal B) against an enforcement notice issued by Colchester Borough Council.
 - The enforcement notice, numbered ENF 4290, was issued on 1 December 2017
 - The breach of planning control as alleged in the notice is the placing of a concrete platform/structure onto protected saltmarsh (the Activity).
 - The requirements of the notice are: Cease the Activity on the Land as specified in the enforcement notice and remove the platform/structure from the RAMSAR, SSSI, SPA and Coastal Protection Belt areas (indicated on the plan attached to the enforcement notice)
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) (Appeal B only), (c) and (d) (Appeal A only) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are 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.

Application for costs

2. At the Inquiry, an application for costs was made by the Appellants against Colchester Borough Council. This application will be the subject of a separate Decision.

Main Issues

3. I consider the main issues in this case are:
 - on ground (b): whether the alleged breach of control has taken place as a matter of fact and, if so,
 - on ground (c): whether planning permission is required to authorise the development because the 'hull/structure' is not a boat and if it is:
 - on ground (d): whether the development is immune from enforcement action through the passage of time.

If these grounds of appeal fail then:

On ground (a): the effect of the development on: (i) the ecology of the SSSI, the SPA and the Ramsar site; (ii) the character and appearance of the West Mersea Conservation Area.

The site and surroundings

4. The appeal site is a 'mud berth' in the Blackwater Estuary close to Coast Road, in West Mersea. The wider surroundings include the West Mersea Conservation Area (CA) in which the appeal site is located. The CA was designated for the historic interest of the moorings amongst the saltmarsh creeks and their use by houseboats.
5. The mud berth is one of many in this part of the estuary and there are numerous houseboats and other vessels, in varying states of repair, surrounding the appeal site. On shore, there is residential development on the north side of Coast Road, outside the CA, and a boatyard and associated maritime operations on the south.
6. The rectangular concrete floating 'hull' (according to the Appellants) or 'structure' (according to the Council) which is the subject of the notice is positioned on the mud flats between Saltwind (which is the subject of other Decisions with links to this one¹) and a houseboat, both of which are at the end of timber jetties. There is no jetty to the hull/structure. The Appellants claim that this is a boat and therefore authorised to be moored in this location. It rests on the mud when the tide is not high enough to float it and is tethered by ropes and anchor chains.

Reasons

Grounds (b) and (c)

7. The Appellants' case is that the wording of the enforcement notice does not accurately describe the item enforced against which, as noted above, they consider to be the hull of a boat.
8. It seems to me that there is no confusion about what is being enforced against or any doubt that, however described, the 'hull/structure' has, as a matter of fact, been placed in the mud berth as alleged. However, I have the power to correct the notice, if found to be inaccurate, provided there would be no prejudice to either party.
9. It is, of course, crucial to the Appellants' case that the 'hull/structure' is considered to be other than described in the allegations of the notice but this is more properly considered under the appeal on ground (c). If, when that ground has been considered, it appears that the unit has not been accurately described and is not the development alleged to have taken place, the wording can be amended, without prejudice to either party, even if the notice were subsequently to be quashed.
10. Ground (c) is pleaded because, as noted above, the Appellants consider that the item referred to in the notice is a boat or floating vessel and planning permission is therefore not needed to moor it at the appeal site.

¹ Refs: APP/A1530/C/18/3218452, 3 and 4

11. Although the Council accepted that the unit does float, it submits that this is not the determinative issue and that there are many structures that float but are nonetheless considered to be development covered by s55(1) of the TCPA. S55 defines 'development' (which requires planning permission) as, amongst other things, the carrying out of 'other operations in, on over or under land'.
12. The Council refers to a court judgement² and a number of appeal decisions that confirm that it is possible to have a building that floats and submits that, because the platform/structure has no features that would normally be found on a boat, it should be considered as a building. They note that it was constructed off site before it was brought onto the berth and it is submitted that this is a building operation that amounts to operational development that requires a grant of planning permission to authorise it.
13. The *Sussex Investments* case confirms, amongst other things, that whether a floating structure requires planning permission to authorise it is a matter of fact and degree. I have, in the parallel Decisions, found that a nearby unit, 'Saltwind', which is constructed on a similar base is a houseboat but, in this case, I take the view that the unfinished structure is not a boat. The reasons for this are because the 'hull' has no features other than its ability to float that would classify it as such. It has no steering gear, means of propulsion, facilities for occupants or crew, obvious bow or stern and no 'boat-like' shape.
14. Of course, it may be that in the future, works could be carried out to the unit to turn it into a boat but at present the owner (one of the Appellants) confirmed that he has no definite plans for it and I am of the opinion that what has currently been placed on the appeal site would not, as a matter of fact and degree be recognised by an ordinary observer as a boat or even as a vessel.
15. I consider that the unit is, at present, a structure that has been placed on the land (at low tide) and over the land (when there is enough water below it for it to float). Considering it against the tests of size, permanence and attachment to the land as set in the case of *Skerrits of Nottingham Limited v SSETR (No2) [2000]*, I find that the concrete structure is similar to a pontoon or platform which, at present, is permanently located on the site, is of a significant size and is attached either by its weight (at low tide) or its anchors (when afloat). It therefore falls within the category of operational development, for which planning permission is required. The appeals on grounds (b) and (c), therefore fail.

Ground (d)

16. The appeal on ground (d), is that, even if the mooring of the platform does constitute operational development, it is too late to take enforcement action. The Appellants say that the use of the Land for mooring boats and floating structures, which includes any marine vessels or crafts, has taken place for over 100 years; this is clearly a use which has become lawful.
17. However, I have concluded in previous paragraphs, that the structure is not a vessel or a craft that would normally have permission to be moored on the appeal site. It has no current use and is nothing more than a large piece of concrete waiting to be given some purpose through further building works. Historic aerial photographs confirm that the structure has been on the site for less than 4 years and its placing in this position can therefore still be enforced against. The appeal on ground (d) consequently fails.

² *Sussex Investments Limited v Secretary of State for the Environment and Another [1997]*

Ground (a)

18. The Council consider that planning permission for the structure should not be granted, citing the impact on the CA and possible harm to the ecology of the SSSI, SPA and Ramsar site. The Appellants consider that the structure preserves the character and appearance of the CA and that the area of mud on which the structure is sited is very small in comparison to the expanse of the wider estuary and any harm caused by platform is negligible in comparison with the number of boats and craft already lawfully moored there.
19. Although the area on which the platform rests may be small, it will nonetheless, just through its presence, be having some harmful impact on the ecology of the area. In that respect it conflicts with the purposes of the designations that cover the site.
20. Also, and in my view most importantly, the appearance of the structure, which resembles an abandoned, half-finished construction project, causes harm to the character of the CA. It does not resemble the other boats and houseboats in the vicinity and, in my judgement, detracts from the qualities that provide the CA with its character and interest. There is no indication on how long the platform might remain on the site and, if planning permission were to be granted, the harm identified above could continue indefinitely.
21. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons set out above, I find that the development fails to do this. I was given no reasons that persuade me that the retention of the platform in this location would be justified if it was found to require planning permission or that it would provide any public benefits that could outweigh the identified harm. I consequently conclude that the appeal on ground (a) should fail.

Conclusions

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANTS:

Stephen Hopkins	Solicitor, Holmes and Hill LLP
He called	
Mr Simon Cutts	WM Wyatt Limited, joint Appellant
Mr Barry Jones	Joint Appellant
Dr Jon Huckle BSc (Hons) MSc DPhil CIEEM	Huckle Ecology
Mr Anthony Collins MRTPI MRICS MCIT MILT MEWI	Collins and Coward Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Marsden	Of Counsel
He called	
Mrs Janice Lewis	Enforcement officer Colchester Borough Council
Mrs Fiona Bradley BRP MRTPI	For Colchester Borough Council
Simon Cairns BSc (Hons) Dip TP Dip Bldg Cons (RICS) MRTPI IHBC	Colchester Borough Council
Neil Harvey BSc CIEEM	For Colchester Borough Council

INTERESTED PERSONS:

Robert Pomery BA (Hons) Dip TP MRTPI	Pomery Planning Consultants, for local residents
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DOCUMENTS

- 1 Statement of Common Ground
- 2 Notes and photographs of jetty
- 3 Mr Gosling's letter and measurements
- 4 Notes of Mr Pomery's statement
- 5 Tide Tables
- 6 Original list of conditions (later withdrawn)
- 7 Bundle of Authorities submitted by the Council
- 8 Notes of Mr Marsden's closing statement
- 9 Notes of Mr Hopkins' closing statement
- 10 Appellants' costs application
- 11 Plans showing approved jetty details 2006