



Appeal Decision

Site visit made on 16 July 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 01 October 2020

Appeal Ref: APP/B2355/C/19/3241431

Land on the north east side of Edge Cote, Chapel Hill, Rawtenstall

- 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 Daniel Entwistle against an enforcement notice issued by Rossendale Borough Council.
 - The enforcement notice was issued on 18 October 2019
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the material change of use of the Land from woodland, to a private recreational and bushcraft facility, facilitated by the felling of approximately 100 trees, associated enclosure and erection of a cabin and various timber structures.
 - The requirements of the notice are
 - i. Cease the use of the Land as a private recreational and bush craft facility
 - ii. Demolish all the timber buildings and structures on the Land
 - iii. Remove all tarpaulin from the Land
 - iv. Remove all netting and plastic from the Land
 - v. Remove all waste and other miscellaneous materials from the Land
 - vi. Remove all items necessary to comply with requirements i -v from the Land
 - vii. Leave the Land to regenerate as a natural woodland floor.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied as follows:
 - (1) Deleting the alleged breach in full and replacing it with "the material change of use of the Land from woodland, to a recreational and bush craft facility, facilitated by the felling of trees, associated enclosure and erection of a cabin and various timber structures."
 - (2) Deleting the word "private" from the first requirement.
 - (3) Deleting the requirements numbered iii to vii in the notice and replacing them with "iii. Remove from the Land all tarpaulin, netting and plastic together with all resultant materials arising from the demolition of the timber buildings and structures."
2. Subject to the variations, the enforcement notice is upheld and the appeal is dismissed.

Procedural Matters

3. It is not for the Inspector to challenge an appellant's locus standi or the validity of an appeal. That said, however, there is concern about the validity of the appeal and I will address this first. The appellant completed the appeal form on the basis that he had an interest in the appeal site. He states that he has carried out activities at the appeal site for several years and has referred to receiving awards for his work. When asked for details of consent to be on the appeal site, the appellant did state that the owner of the land had passed away. However, during the later stages of the appeal process, a letter addressed "to whom it may concern" was submitted from the owner of the appeal site via a third party. The owner appears to be at a different address to that provided on Land Registry information that was used by the Council for service. The owner did not refer directly to the enforcement notice but stated that the appellant did not have permission to fell trees, erect buildings or carry out activities on his land.
4. Nevertheless, the evidence does suggest that the appellant has been using the land for a substantial amount of time and is materially affected by the notice. Having regard to all the representations, the Council correctly served the occupier of the land to which it relates. There is no dispute that the alleged breach does relate to activities carried out by the appellant. On balance, it would be in the interests of all parties if the appeal were to proceed to be determined as no prejudice is caused to any party.
5. The appellant has chosen not to appeal under Section 174(2)(a) of the Act which is that planning permission should be granted for the matters stated in the notice. I am therefore unable to consider the planning merits of the development, as the appeal is proceeding on the limited grounds of appeals (b) and (c).
6. The wording of the notice contains matters which I need to address with a view to using my powers to correct the notice provided that any correction would not cause injustice to any party. The notice alleges a material change of use from woodland to a private recreational and bush craft facility facilitated by the felling of approximately 100 trees, associated enclosure and erection of a cabin and various timber structures. As drafted, the notice contains some repetitive and superfluous words. For example, use of the words "without the benefit of planning permission" and "private". It is also imprecise to say approximately 100 trees have been felled. These words are unnecessary when describing the alleged breach of planning control. To make the allegation precise, it should simply describe the breach as follows "the material change of use of the Land from woodland, to a recreational and bush craft facility, facilitated by the felling of trees, associated enclosure and erection of a cabin and various timber structures."
7. The requirement at (vi) states "Remove all items necessary to comply with requirements i-v from the Land." However, each requirement at (ii)-(v) requires the removal of specific items from the land. A separate general requirement to remove all items to comply with the requirement to cease at (i) therefore appears unnecessary and is also uncertain in its requirements as to what is to be removed. Requirement (v) refers to the removal of all waste and all other miscellaneous materials which would also appear unnecessary having

regard to the preceding requirements and is also uncertain particularly the reference to "all other miscellaneous items."

8. A requirement at (vii) to "Leave the land to regenerate as a natural woodland floor" is essentially a negative requirement and goes beyond the scope of the notice falling outside the scope of Sections 173(4)(a) of the Act in remedying the breach as it is not discontinuing any use of the land or restoring the land to its condition before the breach took place. Removing the timber structures and ceasing the use of the land for recreational purposes and as a bush craft facility would remedy the breach. I have therefore deleted requirements (vi) and (vii) from the notice. I do not consider that their deletion would cause any injustice to any party.

The appeal under ground (b)

9. This ground of appeal is that, as a matter of fact, the breach of planning control as corrected has not occurred. The breach alleged is the change of use of the land to a recreational and bush craft facility and the erection of structures in connection with that use.
10. The appeal site was previously part of dense woodland in an isolated area on the top of a hill where woodland and countryside prevail. The Council became aware of the site in April 2019 when there was a grass fire and the fire service attended. At that point, the fire service described the site as a wooded area with around 60 felled trees and a log cabin and burner, leaning structures covered with tarpaulin and a penned area.
11. The appellant does not dispute that the appeal site had been cleared by felling a number of trees and construction of timber structures in a defined area with a boundary of felled trees within the wider woodland. Photographs show the extent of the appeal site and the Wildcraft HQ structure with an entrance and a seating area and the tarpaulin covered area also provides seating. At my site visit, I observed an area that had been used for fires close to the tarpaulin covered area. The evidence presented points to the likelihood that the appeal site was used for recreational and bushcraft facility, which had been facilitated by the felling of trees, associated enclosure and erection of a cabin and various timber structures. By the time of my visit, a number of the structures had either been removed or partially removed. However, for the purpose of the appeal, I am assessing the period leading up to the issuing of the notice.
12. Additionally, the extracts provided by the appellant of the social media page refer to a range of events that take place at the appeal site. Again, this evidence supports the Council's argument that the site and structures were used for recreational use. My assessment of the evidence presented is that the matters alleged, as corrected, had in fact occurred at the time when the notice was issued on a balance of probabilities. The appeal under ground (b) therefore fails.

The appeal under ground (c)

13. An appeal under ground (c) is that the matters alleged, as corrected, in the notice do not constitute a breach of planning control. The onus of proof is on the appellant to show that there has not been a breach. Section 55(1) of the Act provides a definition of development which includes a material change of use. Section 57 of the Act then states that planning permission is required for

development subject to listed exceptions. However, Section 55(2)(e) of the Act does state that the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied with land so used is excluded from the definition of development.

14. A boundary made up of felled trees surrounds the cleared area and separates the buildings and seating areas from the wider area of dense trees. The main timber cabin shown in the Council's photographs has a sign across its entrance with the words "Wildcraft HQ."
15. The appellant however indicates that the structures are for agricultural and forestry purposes. The appellant also argues that the structures would be permissible on grounds of their use for shelter, office or storage in connection with forestry purposes. Whilst forestry buildings such as a tool shed or store may fall within permitted development rights, it is the case that any building must be used for the purposes of forestry and not for example primarily for leisure or educational facilities. The appellant has referred to various events including researching the land and documenting wildcraft under the name "Doc Wildcraft" and the ARK (Acts of Restorative Kindness Projects).
16. The information provided does not clearly show the structures on the land are required for the purposes of forestry as opposed to for example wider leisure and educational uses. However, irrespective of the use of the structures, whilst The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended states that the erection of a building reasonably necessary for forestry purposes would constitute permitted development, this would nevertheless still require the Council's determination as to whether prior approval was required for such development. There is no information before me to indicate that such an application was made and an application cannot be made retrospectively. Whilst Section 55(2)(e) excludes land and building used for forestry from the definition of development, again to fall within the exclusion the use would need to be forestry work and not for other purposes.
17. Drawing all the above points together, I find that the use of the appeal site for recreational and bushcraft facility, which has been facilitated by the felling of trees, associated enclosure and erection of a cabin and various timber structures, results in a significant change to the physical layout of the site. This type of use has potential on and off-site effects. The definable character of the use of the appeal site has clearly changed from dense woodland to recreational use facilitated by the erection of structures. This change falls within the scope of s55(1) of the Act. Express planning permission is required for the change in the use of the appeal site and it has not been obtained. The appeal under ground (c) therefore fails.

Other matters

18. The appellant has referred to work carried out in the woodland which he describes as maintenance for which he has won awards. Nevertheless, the issue before me is whether a material change of use with associated structures has occurred at the appeal site.
19. The notice does not prevent the carrying out of forestry work or maintenance at the appeal site and the felling of trees by themselves is not a planning matter unless the trees are the subject of Tree Preservation Orders. It would, however, be a matter for the appellant to ensure that he has the owner's

written consent to carry out any future forestry work and that any appropriate consents were obtained from the Forestry Commission.

Conclusion

20. For the reasons given, I therefore conclude that the appeal fails and I have upheld the enforcement notice as varied above.

E. Griffin

INSPECTOR