



Appeal Decisions

Site visit made on 16 February 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 March 2021

Appeal A: APP/R2520/C/20/3259949

Appeal B: APP/R2520/C/20/3259950

Land adjoining 4 Fothergill Wood, Witham St Hughs, Lincoln, LN6 9GS

- 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 appeals A & B are made by Mrs Kirstie Bykowski and Mr David Bykowski respectively against an enforcement notice issued by North Kesteven District Council.
 - The enforcement notice, numbered ENF/596592, was issued on 21 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land; from use as a woodland and area of designated open space, to residential use associated with the dwelling '4 Fothergill Wood', and this material change of use is assisted by the siting of a wooden building, currently in use as a games room for benefit of the occupants of the property '4 Fothergill Wood', in addition to the provision of hardstanding and post and rail fencing.
 - The requirements of the notice are (a) Remove the wooden building, and all associated fixtures and fittings, from the Land; (b) Remove all hardstanding from the Land; (c) Reinstate ground levels on the Land to match levels on land immediately adjacent, and lay to lawn using grass seed; and (d) Cease to use the Land for residential purposes.
 - The period for compliance with the requirements is 8 weeks.
 - Appeals A and B are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. In respect of Appeal A only, the appeal on ground (a) and the application for planning permission deemed to have been made also falls to be considered.
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Decision

1. The appeal is allowed on ground (f), and it is directed that the enforcement notice be varied: by the deletion of the words in requirement (c) "Reinstate ground levels on the Land to match levels on land immediately adjacent, and lay to lawn using grass seed" and the substitution with the following words: "Restore the Land to its condition before the development took place". Subject to this variation the enforcement notice is upheld.

Ground (b)

2. An appeal on ground (b) is on the basis that the matters stated in the notice have not occurred, and can often be related to ground (c) that if those matters did occur they do not constitute a breach of planning control. The appellants accept that the wooden building has been sited on the Land and is being used for purposes ancillary to the residential use of 4 Fothergill Wood but do not accept that there has been a material change of use. The appellants' case is

that the Land was previously part of ancillary land on an RAF housing estate to be used in conjunction with that housing.

3. The Council's case is that the Land was woodland and an area of designated open space. They say this is evidenced by: its designation as such pursuant to a planning permission and legal agreement relating to a different development (05/0233/OUT and 08/0549/RESM); the fact that it is included within a woodland tree preservation order (The Witham St Hughs TPO N745 2017); and the fact that it was open for public access until the appellants undertook the development.
4. The inclusion within the woodland tree preservation order is not conclusive in itself, as tree preservation orders can apply equally to private land. Likewise, the legal status with regards to the section 106 agreement is unclear as I was not provided with evidence by the parties as to whether the relevant planning permission, N/76/0549/08, was implemented to bring into effect the planning obligation (and in any event any such breach would be a separate matter to this appeal). However, the relevance of the section 106 agreement, and the planning statement submitted with planning permission 05/0233/OUT is to show that the intention was for the Land to be included within the remaining open space following the infill development on the existing RAF estate.
5. The appellants have not shown, on the balance of probabilities, that the Land had a residential use prior to the development. It has not been shown that the Land was part of a residential unit at any time previously, and the description provided by the appellants of it being used in conjunction with the residential use when the area was an RAF housing estate appears consistent with the use as open space. It is also clear that at the date immediately prior to the development it was not included within the curtilage of a dwellinghouse and that by this time it was open for access by the general public, which is a materially different use to that of a garden use ancillary to residential.
6. The appellants have therefore not succeeded in showing that the development either did not occur as a matter of fact, or that if it did occur that it was not a breach of planning control. The change of use from open space to residential use associated with the dwelling is material and would require planning permission. The appeal on ground (b) therefore fails.

Ground (a) and the application for deemed planning permission

7. The main issue in the ground (a) appeal is the effect of the development on the character and appearance of the area, having particular regard to open space and design.
8. The houses in the vicinity are generally built of red brick with tiled roofs and white window frames. The built element of the development, namely the wooden summerhouse with associated hardstanding and fencing, is situated opposite the dwellinghouse at 4 Fothergill Wood, on the northwest corner of a rectangular area of wooded open space. The summerhouse is predominantly constructed from light-coloured wood which is clearly visible from Nettleton Drive to the south and the small road leading to Cheshire Lane to the northeast. The perception is that the summerhouse is located in the corner of the fairly regularly-shaped woodland area. As the site visit was undertaken during the winter, there was very little foliage and the summerhouse appeared prominent and incongruous in the woodland setting within the residential

estate. It is accepted that the summerhouse would appear less prominent when the trees are in leaf (as shown in some of the submitted photographs), but it would still be visible and the materials used, the light-coloured wood and the very dark window and door frames, do not match or complement either the other buildings in the vicinity or the natural colours of the woodland area. Whilst the design of the building may have been appropriate within a private garden it is sited on a visually prominent location which is not within the curtilage of a dwellinghouse and causes material harm to the character and appearance of the area as a result.

9. The change of use of the open space to a residential use associated with 4 Fothergill Wood causes material harm by the extension of the built environment into the woodland space which is not in character with the area and is contrary to development plan policies LP17 and LP20 of the Central Lincolnshire Plan April 2017 which are intended to protect the setting of settlements and green infrastructure. The design of the building does not respect the landscape character or relate well to its setting which is contrary to the design principles of Policy LP26 of the Central Lincolnshire Plan and paragraph 127 of the National Planning Policy Framework 2019.

Conclusion on Ground (a) and the application for deemed planning permission

10. Overall, I conclude that the development is harmful to the character and appearance of the area. It is contrary to the development plan as set out above and since there are not material planning considerations to outweigh this conflict, I conclude that the appeal on this ground should be dismissed and planning permission refused.

Ground (f)

11. The basis of an appeal on this ground is that the steps required exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity. Requirements (a), (b) and (d) do no more than remedy the breach of planning control i.e. to cease the residential use and restore the land.
12. However, in relation to requirement (c), the appellants' case is that they have not altered the level of the ground and that it was an area of poor-quality scrub prior to the works associated with the development, and they have provided corroborative photographs. The Council have not disputed this and requirement (c) therefore seems to require more than the restoration of the land to its condition before the breach. I therefore direct that requirement (c) should be varied to require that the Land is restored to its condition before development took place, and the appeal on this ground succeeds to that limited extent.

Ground (g)

13. The appellants' appeal on this ground was partly on the basis that it would not be possible to plant grass seed during October and November but this is no longer an issue in light of the date when the notice will take effect and the variation to the requirements as set out previously. The appellant also stated that 26 weeks would be a more appropriate time-period for compliance during a pandemic but has not provided details as to why this would be the case in this particular instance.

14. Having regard to the harm being caused to the character and appearance of the area and the works required, and in the absence of any additional information to the contrary, the time period of 8 weeks is proportionate in the circumstances and the appeal on this ground does not succeed.

Zoë Franks

INSPECTOR