
Appeal Decisions

Site visit made on 5 May 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 7 June 2022

Appeal A Ref : APP/L3815/C/21/3280100

Appeal B Ref: APP/L3815/C/21/3280101

Appeal C Ref: APP/L3815/C/21/3280102

Appeal D Ref: APP/L3815/C/21/3280103

Land at Jubilee Wood, Bridle Lane, Woodmancote, Hambrook, West Sussex, PO18 8UL

- Appeals A, B, C and D are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mark Molica-Franco, Appeal B is made by Gavin Huband, Appeal C is made by Emma Huband and Appeal D is made by Colin Booth against an enforcement notice (EN1) issued by Chichester District Council.
- The notice was issued on 7 July 2021.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to use as a residential caravan/mobile home site.
- The requirements of the notice are (i) cease the use of the land as a residential caravan/mobile home site, (ii) remove the caravan/mobile home from the land, (iii) remove the motor home, motor cars and trailers from the land, and (iv) remove the storage container buildings (in the approximate positions shown on the plan attached to the notice) from the land.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: the appeals are dismissed and the enforcement notice upheld

Appeal E Ref : APP/L3815/C/21/3280086

Appeal F Ref : APP/L3815/C/21/3280087

Appeal G Ref : APP/L3815/C/21/3280088

Appeal H Ref : APP/L3815/C/21/3280191

Land at Jubilee Wood, Bridle Lane, Woodmancote, Hambrook, West Sussex, PO18 8UL

- Appeals E, F, G and H are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal E is made by Mark Molica-Franco, Appeal F by Gavin Huband, Appeal G by Emma Huband and Appeal H by Colin Booth against an enforcement notice (EN2) issued by Chichester District Council.
- The notice was issued on 7 July 2021.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a use for recreational purposes.
- The requirements of the notice are (i) cease the use of the land for recreational purposes, (ii) remove the circular wooden seating structures, wheeled metal carriage, pizza oven, half steel drum BBQs, trestle tables, wooden tables, benches, chairs,

flotation buoys, 4x4 directional sign, tyres, rope, folding picnic table, hammock, punch-bag, slide, swings, wind twisting hanging decorations, orange plastic mesh safety fencing, wooden boards, plastic sheeting, gorilla statue and tarpaulin from the land, (iii) remove the storage container buildings and wooden playhouse structure (in the approximate positions shown on the plan attached to the notice) from the land, and (iv) remove all motor vehicles from the land.

- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: the appeals are dismissed and the enforcement notice upheld

Appeal A, B, C and D

1. Appeals A, B, C and D comprise the same grounds of appeal lodged by different Appellants. As each is identical I shall address them collectively. The appeals concern an Enforcement Notice (EN1) which cites the alleged breach of planning control as without planning permission the material change of use of the land to use as a residential caravan/mobile home site.

Ground (c) appeals

2. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development as set out in section 55 of the 1990 Act (as amended) includes 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 building or other land. In this case the notice alleges a material change in the use of the land to a use as a residential caravan/mobile home site.
3. To be successful on this ground of appeal it must be shown that either there is a planning permission in place for the use of the land alleged to be being carried out, or that one is not required because for example, the works constitute permitted development. The merits of the case do not fall to be considered under this ground. The onus rests upon the Appellants to show that there has not been a breach of planning control.
4. The Appellants argue that there has been no breach of planning control because none of the structures on site have footings and are therefore not permanent. But it is the use of the land that is attacked by the notice and it is established law that a notice may require the removal of items that facilitate an unauthorised use.
5. The Council says that the lawful use of the land is forestry and this is not disputed. The site is an area of protected woodland. As a matter of fact a mobile home has been stationed on the site. There is insufficient evidence before me to conclude with any certainty that the mobile home is not in permanent residential use and I saw at my site visit that it is inhabited. I note the Appellants' response to a Planning Contravention Notice in 2019 which refers to temporary occupation of the mobile home to secure the land against theft and criminal damage pending determination of a planning application for a change of use of the land. But that application has been determined and

permission was refused removing any justification for temporary occupation. The evidence before me is that occupation has continued.

6. The Appellants say that the storage containers house essential equipment to help maintain the land. I saw at my site visit that the containers were mainly used for the provision of toilet facilities and storage, including bicycles and some woodland machinery. Overall it seems to me that their purpose is to facilitate the residential use of the land.
7. The Appellants make representations about the provision of feeders for local wildlife. They provide an ecology report and tree protection report and draw my attention to sustainable development and policies in the Chichester Local Plan. I do not doubt the Appellants' objectives to encourage wildlife and improve the woodland environment but these matters concerns the merits of the activity enforced against. These issues would be relevant if I was considering a ground (a) appeal and deemed planning application or an application for planning permission. But there is no such appeal before me and I must confine my deliberations to whether or not a breach of planning control has occurred. I note that an application for planning permission for a change of use to tourism and leisure facilities has been refused.
8. The Appellants describe maintenance of the site and the need for security. But this ground of appeal concerns whether there has been a breach of planning control and the planning merits are not within my remit to consider. There is no argument that permitted development rights cover the use or that permission exists.
9. From my inspection and all written submissions I conclude that there has been a material change of use of the land to use as a residential caravan/mobile home site. There is no planning permission in place for this change of use and there is no evidence before me that the current use is ancillary to the authorised forestry use of the land or benefits from permitted development rights and so I conclude that a breach of planning control has occurred.
10. For the reasons given above I conclude that Appeals A,B,C and D should not succeed on ground (c).

Appeals E,F,G and H

Preliminary Matters

11. Appeals E, F, G and H comprise the same grounds of appeal lodged by different Appellants. As each is identical I shall address them collectively. The appeals concern an Enforcement Notice (EN2) which cites the alleged breach of planning control as without planning permission the material change of use of the land to a use for recreational purposes.
12. The requirements of the notice refer to various items including seating, swings and decorations that were not present at the time of my site visit. There is no dispute that these items have been removed. I shall determine the appeals based on the items present at the time of issue of the notice and specified in it.

Ground (c) appeals

13. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development as set out in section 55 of the 1990 Act (as amended) includes 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 building or other land. In this case the notice alleges a material change in the use of the land to a use for recreational purposes.
14. To be successful on this ground of appeal it must be shown that either there is a planning permission in place for the use of the land alleged to be being carried out, or that one is not required because for example, the works constitute permitted development. The merits of the case do not fall to be considered under this ground. The onus rests upon the Appellants to show that there has not been a breach of planning control.
15. I saw at the site visit that areas of the site have been laid out for gatherings and activities with informal seating arrangements. There is no dispute that at the time of issue of the notice other recreational items were present, including a children's playhouse and sensory play area. The Appellants say that the various items have no footings and are not permanent. But the notice attacks a change of use and the items listed in the notice facilitate a recreational use. As a matter of fact and degree on the evidence before me I conclude that a change of use from forestry to recreational use has occurred.
16. As with Appeal A, B, C and D the Appellants refer to various matters including wildlife and their desire to protect the woodland but there is no planning application before me.
17. From my inspection and all written submissions I conclude that there has been a material change of the use of the land to a use for recreational purposes. There is no planning permission in place for this and there is no evidence before me that it is ancillary to the authorised forestry use of the land or benefits from permitted development rights and so I conclude that a breach of planning control has occurred.
18. For the reasons given above I conclude that Appeals E,F,G and H should not succeed on ground (c).

Appeals E,F,G and H

Ground (d) appeals

Main Issue

19. The main issue is whether the wheeled metal carriage enforced against is immune from enforcement.

Reasons

20. In an appeal against an enforcement notice on ground (d) the burden of proving the relevant facts sits with the Appellants and the relevant test of the evidence is the balance of probability. In order to be immune from enforcement action the onus is upon the Appellants to show that the use alleged occurred 10

years prior to the issue of the notice and that the use has been continuous since that date for ten years or in the case of operational development that the structure has been in place for four years prior to the issue of the notice. In this case the notice concerns a material change of use and the Appellants argue that the wheeled metal carriage cited in the notice as one of the items to be removed is immune from enforcement. There is no argument before me that the unauthorised change of use is immune from enforcement.

21. The Appellants argue that the wheeled metal carriage is lawful because it has been on the site for over ten years. The onus of proof rests on the Appellants and they say that they have images of the carriage dated about 7 years ago. But these are not before me in evidence and therefore I cannot take them into account. In contrast the Council provide historic aerial photographs which do not appear to show the carriage. The Appellants have not satisfied the burden of proof that rests upon them in this ground of appeal. I cannot conclude on the evidence before me that the wheeled metal carriage is immune from enforcement action.
22. In any event an enforcement notice may require the removal of buildings or works for the purpose of remedying the breach of planning control. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use even if such works on their own might not constitute development or be immune from enforcement so that the land can be restored to its condition before the change of use took place.
23. There is no argument before me that the carriage does not facilitate the unauthorised change of use and I saw at my site visit that it is a feature that contributes to the recreational use of the site. Its removal would contribute to restoring the land to its condition before the change of use took place.
24. Taking all of the evidence into account, I consider that on the balance of probability the wheeled metal carriage facilitates the unauthorised change of use. Regardless of whether or not on its own it might constitute development or be immune from enforcement it facilitates the unauthorised use and its removal satisfied the purpose of the notice in restoring the land to its condition before the breach of planning control took place.
25. The appeals on ground (d) therefore fail and the enforcement notice is upheld.

Formal Decisions

Appeal A Ref APP/L3815/C/21/3280100

26. The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref APP/L3815/C/21/3280101

27. The appeal is dismissed and the enforcement notice is upheld.

Appeal C Ref APP/L3815/C/21/3280102

28. The appeal is dismissed and the enforcement notice is upheld.

Appeal D Ref APP/L3815/C/21/3280103

29. The appeal is dismissed and the enforcement notice is upheld.

Appeal E Ref APP/L3815/C/21/3280086

30. The appeal is dismissed and the enforcement notice is upheld.

Appeal F Ref APP/L3815/C/21/3280087

31. The appeal is dismissed and the enforcement notice is upheld.

Appeal G Ref APP/L3815/C/21/3280088

32. The appeal is dismissed and the enforcement notice is upheld.

Appeal H Ref APP/L3815/C/21/3280191

33. The appeal is dismissed and the enforcement notice is upheld.

S. Prail

Inspector