



Appeal Decisions

Site visit made on 17 May 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2022

Appeal A Ref: APP/Y2620/C/21/3271912

Appeal B Ref: APP/Y2620/C/21/3272038

Land at Tuddenham Wood, Land South East of Holt Road, Kettlestone, NR21 0BB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr P Morrison and Appeal B by Mrs S Morrison against an enforcement notice issued by North Norfolk District Council.
- The notice, numbered ENF/19/0094, was issued on 26 February 2021.
- The breach of planning control as alleged in the notice is without planning permission
 - (i) operational development consisting of the erection of a wooden cabin
 - (ii) material change of use of the Land for residential purposes.
- The requirements of the notice are to:
 - (i) Permanently remove the cabin from the Land
 - (ii) Permanently remove all paraphernalia which has no relationship to the woodland maintenance.
- The period for compliance with the requirement is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal C Ref: APP/Y2620/W/22/3293922

Forty Acre Plantation, Kettlestone, Fakenham, Norfolk, NR21 0BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs P and S Morrison against the decision of North Norfolk District Council.
- The application Ref PF/21/0522, dated 23 February 2021, was refused by notice dated 1 September 2021.
- The development proposed is Retention of cabin (retrospective)

Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:
 - The deletion of (3) (i) and (3) (ii) (the Allegation) and substitution by the words 'the erection of a cabin for residential use'
 - The deletion of (5) (ii)
 - The substitution of the plan annexed to this decision for the plan attached to the enforcement notice

Subject to the corrections, Appeals A and B are dismissed and the enforcement notice is upheld.

Appeal C

2. I have revised the description of development to define the use of the cabin more precisely as described in the application form. The revised description is as follows:

‘Erection of a cabin to store equipment for the work required in association with the surrounding woodland management, including clearing and planting’

Subject to this revised description, Appeal C is dismissed.

Preliminary Matters

Appeals A and B – The Notice

The Allegation and the Requirements

3. I have a responsibility to ensure that the notice is correct and to use my powers of variation and correction under section 176 of the Act, if necessary.
4. As served, the breach of planning control specified in the notice includes the material change of use of the Land for residential purposes. The ‘Land’ is identified on the plan attached to the notice as being the location of the cabin and the surrounding woodland plot. The requirements do not include cessation of the use of the land. In the absence of a specific requirement to cease residential use, if the notice is complied with, planning permission would be granted for the residential use of the site, by virtue of paragraph 173(11) of the Planning Act 1990.
5. This issue was raised with the Council. The Council accepts that the notice does not state that the residential use shall cease but its view is that compliance with the requirements to remove the cabin and any paraphernalia not associated with woodland maintenance would ensure the cessation of residential use.
6. Both parties’ arguments refer to the cabin and there is limited reference to the other parts of the woodland plot (Tuddenham Wood). Neither party has referred to the use of the land which falls beyond the cabin for residential use in their submissions notwithstanding that this would be the outcome of compliance with the notice as drafted. It seems to me that a pragmatic approach in this case is to narrow the terms of the notice to relate to the erection of a cabin for residential use only. This would also align with the Council’s reasons for issuing the notice which refer to a 4 year immunity period.
7. Comments have been invited from the parties in respect to changes to the notice to refer to ‘the erection of a cabin for residential use’ and consequential changes to the requirements to relate to the removal of the cabin from the land only. The Council has confirmed that it is content with the amendments.
8. The appellants’ reply aligns with the Council’s view that a residential use of the site would not arise from compliance with the notice. The appellants also reiterate their view that the current use of the site is not and cannot be reasonably considered residential use. However, they conclude that beyond this point they have no objection to the proposed amendment.

9. The appellants also consider that raising this issue could amount to pre-judgement of the matter. However, the implications of paragraph 173(11) are a matter of law, and it is necessary for me to raise this point, without prejudice to the final outcome of the appeal.
10. The appellants question whether it is within the power of a Planning Inspector to amend the enforcement notice and it has been confirmed to them that the Inspector has a duty to get the notice in order and the powers to do so.
11. Taking account of the comments of both parties, I remain of the view that it is necessary to correct the notice so that the allegation refers to the erection of a cabin for residential purposes to ensure that the notice is in order. Furthermore, the consequential change to the requirements so that it aligns with the allegation as corrected is required.
12. I shall exercise my powers and correct the notice accordingly.

The Plan

13. The Council has confirmed that the plan which was served with the notice is incorrect because it identifies Snoring Wood not Tuddenham Wood which is the subject of the notice. The description of the land to which the notice relates is correct and refers to Land at Tuddenham Wood.
14. A revised site plan has been submitted which identifies the extent of Tuddenham Wood and the position of the cabin marked 'A'.
15. Only the appellants were served with the notice, and it was addressed to their home address. They have been able to submit the appeal and the inaccuracy of the notice plan does not affect the grounds of appeal or their appeal submissions. The appellants have been consulted on the matter of substituting the enforcement notice plan and they confirmed that the revised plan is correct and have no objection to the proposed amendment.
16. On this basis I can correct the notice by the deletion of the inaccurate plan and its substitution with the revised plan, without causing injustice to the parties.

Appeal C

17. The application form describes the development as the retention of a cabin (retrospective). Neither 'retention' nor 'retrospective' are acts of development, thus the development is 'Erection of a cabin'. Although not referred to in the description of development, the application form specifies that the cabin is used to store equipment for the work required in association with the surrounding woodland management, including clearing and planting. Consequently, I shall amend the description of development to describe more accurately what the application relates to as follows:

 'Erection of a cabin to store equipment for the work required in association with the surrounding woodland management, including clearing and planting'.
18. The covering letter submitted by the appellants refers to the cabin presently providing shelter and occasional overnight accommodation. However, this purpose is not set out on the application form and the appellants have expressed a willingness to comply with a planning condition to preclude residential use. Consequently, I have not considered any use of the cabin for

overnight accommodation or other residential use in my determination of Appeal C.

Appeals A and B - Ground (b)

19. An appeal under ground (b) is that the matters to which the notice relates have not occurred. As corrected, the matters are the erection of a cabin for residential purposes. Ground (b) is a legal ground of appeal, and the onus of proof lies with the appellants. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
20. There is no dispute between the parties that the cabin has been erected. However, the appellants say that the cabin is not in residential use and that its use is in connection with the management of the surrounding woodland. This is an argument more appropriately dealt with under ground (c) and I have addressed it below.
21. The Council has not provided any evidence about the use of the cabin and relies on the comment from the appellants that it has been used to sleep in overnight. During my site visit I observed that the interior of the cabin includes a sitting area with wood burner, kitchen units and a kitchen sink and fridge, a sleeping area including a mattress stored on a wall and an enclosed space accommodating what appeared to be a chemical toilet. Attached to the cabin was a decking area partially covered by a roof overhang and there was an open air field kitchen to one side.
22. The appellants observe that the absence of any ordinary facilities associated with day to day living make it clear that there is no intention to reside in the cabin. However, contrary to the views of the appellants, whilst not in the same ways as most houses, the cabin provides all the facilities required for a private domestic existence. The cabin is thus capable of being used for residential use and on that basis the breach has occurred as a matter of fact. Any evidence to demonstrate that the cabin is not being used in that way is a matter to be addressed under ground (c).
23. For the reasons set out above, the appeal under ground (b) fails

Appeals A and B – Ground (c)

24. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. Again, this is a legal ground of appeal, and the onus of proof lies with the appellants. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
25. In order to achieve success on ground (c) the appellants must show, in respect of the cabin and its use that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.
26. The appellants accept that the erection of the cabin is development and that prior approval or planning permission should have been obtained before it was built. Their arguments under ground (c) are in respect of the use of the cabin which they argue does not constitute a change of use because it is at a level which is ancillary to the woodland use of the site.

27. There is no dispute between the parties that the planning unit in this case is Tuddenham Wood and that the primary use of Tuddenham Wood is as woodland. The appellants have referred to *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 in this respect.
28. An ancillary use is one which is likely to be part and parcel of a main use. In this case the primary use of the site is woodland, and the residential use cannot be described as in the same use or part and parcel of the woodland use. The erection of a cabin for residential purposes is not normally found in an area of woodland and does not constitute an ancillary use in this case.
29. An alternative approach, which relates more directly to the appellants' arguments, is to consider whether the residential use is incidental to the primary use as woodland. An incidental use is one which is functionally related to the primary use. However, caselaw¹ has established that the functional relationship should be one which is normally found and not based on the personal choice of the user. In this case it is the choice of the appellants to spend the night in the cabin as opposed to using accommodation in the area. On this basis the residential use does not constitute an incidental use.
30. The appellants refer to the duration of occupation of the cabin for residential purposes. However, as I have concluded that the use is neither ancillary nor incidental this information is not determinative. Even if a de minimis argument was being advanced, in this case the use of the cabin for sleeping accommodation for on average 27 nights of the year, would not constitute a negligible or de minimis use of the cabin.
31. Any de minimis use of the cabin as residential accommodation is also undermined by the facilities available in the cabin and the absence of its use for storage of equipment. Both of these aspects result in it being reasonable to assume a potential for frequent use as residential accommodation.
32. The appellants refer to caselaw to support their argument. Some of these cases relate to circumstances where a primary use has been established and another use is introduced as an ancillary or incidental use, which I have already addressed. The appellants also opine, with reference to case law, that in this case the use of the cabin as overnight accommodation is allied to the use of wider the site as woodland and that there is no change in the overall character of the land.
33. It will be seen from the foregoing that I have not found the residential use to be part and parcel of the primary woodland use. In terms of any change in the character of the site, this issue is not determinative in the consideration of whether a use is ancillary or incidental to a primary use.
34. In any event, the level of facilities provided by the cabin are such that it is reasonable to assume that the residential use has an impact on the character of the woodland, in terms of noise, cooking smells and the potential for activities such as drying clothes and sitting out. It does not follow that the appellants' argument that the cabin takes up a very small proportion of the woodland as a whole would result in no impact on the character of the woodland.

¹ *Harrods v SSETR* [2002] JPL 1258

35. In response to the Council's concerns about the presence of an aerial and flue giving the cabin a residential appearance, the appellants argue that taking shelter in a cabin with a radio and heating is comparable to spending the night in a car. This analogy is of limited value in the light of the extensive other facilities provided by the cabin. Furthermore, on the basis of the site visit, the cabin does not appear to be functioning as a storage and preparation unit which for time to time is used as an overnight shelter. The facilities available allow a more intensive residential use and also go beyond what would normally be associated with 'camping out'.
36. Drawing all of these strands together I find that the residential use of the cabin is neither ancillary nor incidental to the primary use as woodland. The current use of the cabin is development for which planning permission is required, planning permission has not been granted and consequently the matters alleged in the notice constitute a breach of planning control.
37. For the reasons set out above, the appeal on ground (c) fails.

Appeals A and B – Ground (f)

38. I have amended the notice such that the only requirement is the removal of the cabin. The appellants argue that this requirement is excessive to meet the objections of the Council in terms of the size and design of the cabin. They say that the cabin could be reduced in size and/or its design modified to make a timber structure more sensitive to its woodland surroundings. There are no plans or other information to support the contention that such changes would address the concerns of the Council.
39. The Appeal Form refers to an appeal under ground (f) being appropriate where the requirements of the notice are excessive and lesser steps would overcome objections. However, in terms of the Act an appeal under ground (f) is in respect of whether the requirements exceed what is necessary to remedy the breach, where the purpose of the notice is to remedy a breach of planning control as is the case here.
40. The breach, as amended, is the erection of a cabin for residential use and the requirement is to remove the cabin. A lesser step, even if there were full details available, would not achieve this. Furthermore, as there is no appeal under ground (a) and the purpose of the notice is to remedy a breach of planning control, any lesser step that would not remedy the breach cannot be accepted through a ground (f) appeal.
41. It has not been shown that the requirements exceed what is necessary to remedy the breach of planning control. For these reasons the appeal fails on ground (f).

Appeals A and B – Ground (g)

42. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that the compliance period of 6 months is too short because it allows insufficient time to relocate the tools which are stored in the cabin and remove the cabin. The Covid restrictions, the health of one of the appellants and the distance between the appellants' home and the site are all raised as factors to be considered. The appellants consider that 18 months would be more realistic also citing their intentions to relocate to Norfolk.

43. On the basis of the evidence, in particular the site visit, it does not appear that there are significant numbers of tools and machinery which requires relocation from the cabin. The Covid restrictions have now eased considerably, and the travel restrictions referred to by the appellants have been lifted. It follows that the Covid restrictions are no longer grounds for extending the compliance period.
44. There is insufficient information before me to justify an extension of the compliance period on the grounds of ill health and no details of the timescale for the appellants' house move. Thus, an extension of the compliance period has not been shown to be necessary on these grounds either.
45. For the reasons set out above, I find that the 6-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should fail.

Appeal C

Main Issues

46. I have amended the description of development to read 'erection of a cabin to store equipment for the work required in association with the surrounding woodland management, including clearing and planting'
47. Therefore, the main issues are:

Whether the site is a suitable location for the cabin, having regard to local plan policy for development in the countryside

The effect of the cabin on:

- the character and appearance of the site and the surrounding area
- the effect of the use of the access serving the cabin on the safety of users of and the free flow of traffic on The Street

Reasons

Location of the site/local plan policy

48. The Council's spatial hierarchy is set out in Policy SS1 of the North Norfolk Local Development Strategy Core Strategy (2008) (the Core Strategy) and establishes that the majority of new development in North Norfolk will take place in towns and larger villages. The appeal site does not fall within any of the settlements listed in Policy SS1 and is therefore within land designated as countryside.
49. Policy SS2 of the Core Strategy limits development in the countryside to that which requires a rural location and states that proposals which do not fall within a list of acceptable forms of development should not be permitted. This includes development for purposes relating to forestry, within which the woodland surrounding the site would fall.
50. The appellants set out in their application that the cabin is to be used to store equipment required for woodland management. Policy SS2 allows forestry development in the countryside where it requires a rural location, and it is reasonable to assume that the erection of a store for the equipment necessary

to manage Tuddenham Wood, which is in a rural location, falls into that category of development.

51. The appellants refer to the tools which would be stored in the cabin as including chainsaws, strimmers, wood chippers and brush cutters which would not fit in a shed. They also refer to the value of these items which necessitates the need for secure storage. The type of tools referred to are reasonably necessary for the tasks which the appellants describe as being in the course of being carried out in the woodland.
52. The Council argue that it has not been demonstrated that the store is essential to the proper functioning of an agricultural or forestry enterprise. However, that is not the test which is set by Policy S22 which requires agriculture or forestry development to be limited to that which requires a rural location. On the basis of the evidence before me I am satisfied that the principle of the development complies with the requirements of Policy SS2.
53. I conclude that the site is a suitable location for the cabin, having regard to local plan policy for development in the countryside.

Character and appearance

54. Tuddenham Wood is part of a larger area of woodland which has been subdivided into large plots. Access to the area is via a locked gate such that there is no public access. However, the driveway serving the plots would be used by multiple people to access their land.
55. The trees are densely packed and there is no evidence before me to counter the appellants observation that the woodland has not been properly managed for some time. There are other structures in the wider woodland as described by the appellants and evidenced in their photograph of a structure in Parfit Wood. The appellants also refer to a cabin on the adjacent plot, Snoring Wood. Despite the presence of other structures, the character of the site and surrounding land is overtly natural, and the trees dominate views in all directions.
56. The cabin which is the subject of the appeal has been constructed in an open area within the wood. The appellants' photographs indicate that trees have been removed in the area where the cabin stands and there is open space around the structure. The cabin and the area around it are at odds with the dense woodland in the rest of Tuddenham Wood and the surrounding woodland.
57. The cabin is a substantial structure and although constructed of timber, its design, scale, and massing are such that it is a dominant feature in this part of the woodland. It is also clearly a man-made structure which is at odds with its natural surroundings.
58. There is limited information before me regarding the size and appearance of structures on other plots nor is it clear whether these developments are lawful. In one case, Snoring Wood, the Council has confirmed that a notice has been served and the building is to be removed. Thus, on the basis of the evidence, the cabin has not been shown to be similar in scale and form to other buildings in the area.

59. The appellants argue that the size of the cabin reflects its use as a storage and maintenance facility. However, on the basis of the description of the tools and equipment which is used on the site, the need for a cabin of the size which has been erected is not demonstrated. It is reasonable to assume that a much smaller building would be adequate to meet the needs of the appellants. Thus, the scale of the building and its adverse impact on the character of the area has not been justified.
60. The appellants draw attention to the management work which they have undertaken and the benefits to biodiversity which have arisen as a result. However, it has not been shown that these improvements could not have been achieved through the provision of a smaller storage facility which would have a reduced effect on the character and appearance of the site and surrounding area. Thus, these benefits do not outweigh the harm which I have identified.
61. I conclude that the development has a harmful effect on the character and appearance of the site and the surrounding area. The erection of the cabin for residential use is therefore contrary to policies EN2 and EN4 of the Core Strategy. These policies jointly require development to protect, conserve or where possible enhance the special qualities and local characteristics of the area and high quality design and distinctiveness.
62. For the same reasons the development is contrary to the North Norfolk Design Guide 2008 which seeks to ensure that development protects the character of the landscape.

Access

63. There are three reasons for refusal relating to access to the site on the Council's Decision notice. The Council's concerns relate to intensification of use of the access track, inadequate visibility splays where the access meets The Street and the appellants not having control of sufficient land to enable the visibility splays to be improved.
64. The Highway Authority has provided a statement to supplement the comments which it provided to the Council prior to the application being determined. The Highway Authority refers to the appellants' description of the development and specifically to the use of the cabin for overnight stays. However, as stated previously that aspect of use of the cabin can be prevented by an appropriately worded planning condition and my focus is on the use of the cabin for storing equipment which is what the planning application was for.
65. The Highway Authority also refer to the potential for the approval of a cabin or holiday unit setting a precedent for similar development on other plots. As such a form of development is not the subject of this appeal this comment attracts limited weight.
66. The Highway Authority also refer to the subdivision of the larger woodland area into smaller plots. This change would be likely to increase the number of comings and goings to the woodland and have a cumulative effect on the amount of traffic using The Street and the access drive. However, the need for planning permission for subdivision of the land is also not a matter before me.

67. The objections from the Highway Authority are predicated on the development resulting in an increase in traffic using the access track, The Street, and a junction where visibility is poor. The Highway Authority accept that the erection of a cabin does not generate vehicular traffic, its concerns are based on assumptions regarding the use of the building. The Highway Authority's traffic generation figure of 3 vehicular movements per day is based on the development of a holiday unit. However, the cabin which is the subject of Appeal C is not proposed to be used as a holiday unit.
68. It has not been shown that the use of the cabin for storage, for which the appellants have sought planning permission, would generate any additional traffic. On this basis there is no evidence to support the assumptions upon which the Highway Authority raise objection to the development.
69. I conclude that the erection of the cabin and its use for storage would not have a harmful effect on the safety of users of and the free flow of traffic on The Street and it has not been shown to justify improvements to the visibility splays or the access track.
70. The development is therefore in accordance with Policy CT5 of the Core Strategy which requires amongst other things that the expected nature and volume of traffic generated can be accommodated without detriment to amenity or highway safety. The development also accords with the National Planning Policy Framework which requires the provision of safe and suitable access for all users.

Other Matters

71. The appellants would accept a temporary planning permission for the cabin which they say would give them the opportunity to relocate to Norfolk and remove the cabin. However, as I have noted in respect of Appeals A and B there is no certainty regarding the appellants timescale for relocation. Consequently, the presence of the cabin would result in a continuation of the harm to the character and appearance of the site and the surrounding area, without clear justification.
72. The appellants have also suggested that a planning condition or legal agreement to prevent the use of the cabin as a dwelling could be imposed or entered into. Whilst such a restriction would be useful in defining the terms of the consent, it would not address the harm which I have found in terms of the adverse impact of the cabin on the character and appearance of the site and the surrounding area.
73. I have not found that the material considerations in this case outweigh the harm which I have identified or lead me to conclude that Appeal C should be determined other than in accordance with the development plan.

Conclusion

74. Although the site is an appropriate location for a storage cabin and the development would not have a harmful effect on amenity and highway safety on The Street, the cabin is harmful to the character and appearance of the site and the surrounding area. Consequently, the development is contrary to the development plan, and other material considerations are not of such weight as to indicate that permission should be granted in this instance.

75. For the reasons set out above Appeal C is dismissed.

Sarah Dyer

Inspector



Plan

This is the plan referred to in my decision dated: 24 June 2022

by Sarah Dyer BA BTP MRTPI MCMi

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Appeal B Ref: APP/Y2620/C/21/3272038

**Land at Tuddenham Wood, Land South East of Holt Road, Kettlestone,
NR21 0BB**

Not to scale

ENF/19/0094 Enforcement Site Plan

