



Appeal Decision

Site visit made on 8 November 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/D3830/C/21/3278426

Land on the east side of Yew Tree Cottage, Wallage Lane, Rowfant, West Sussex RH10 4NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Ms Maranda Lampson against an enforcement notice issued by Mid Sussex District Council.
- The notice was issued on 8 June 2021.
- The breach of planning control as alleged in the notice is: 1. Without planning permission, the erection on the Land of: a) a building in the approximate position shown hatched green on the Plan ("the Building"); b) a shed in the approximate position shown marked A in green on the Plan ("the Shed"); c) decking in the approximate position shown marked B in green on the Plan ("the Decking"); and d) a means of enclosure in the approximate position shown marked C in green on the Plan ("the Enclosure"). 2. Without planning permission, the material change of use of the Land to residential use including use as holiday accommodation. ("the Unauthorised Development").
- The requirements of the notice are: i) Cease the use of the Land and the Building for residential use, including use as holiday accommodation. ii) Dismantle and demolish the Building including any footings or foundations and permanently disconnect the Building from all services including electricity, mains water and gas and cap and remove all associated foul drainage systems. iii) Remove from the Land all residential paraphernalia including but not limited to all bins, chairs, tables and barbeques. iv) Remove from the Land the Shed, Decking and Enclosure. v) Restore the Land to its condition before the breach of planning control described at paragraph 3 above took place by infilling with soil and earth and reseeding with grass. vi) Remove from the Land all equipment, materials, paraphernalia, waste and debris arising from compliance with requirement ii) to iv) above.
- The periods for compliance with the requirements are: 3 months after the notice comes into effect for requirement i) and 6 months after the notice comes into effect for requirements ii) to vi).
- The appeal is proceeding on the grounds set out in sections 174(2)(b), (c), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part but is otherwise dismissed and the enforcement notice is upheld with a correction and variations in the terms set out in the Formal Decision.

Preliminary Matters

1. The notice identifies five alleged breaches of planning control, with those which constitute operational development being defined as 'the Building', 'the Shed', 'the Decking' and 'the Enclosure'. I have referred to these forms of development in these terms throughout this decision.
2. As part of the appellant's ground (f) arguments it has been claimed that the notice is invalid because its requirements are not precise or clear, and to

change the requirements would necessitate so much alteration as to create a new enforcement notice and cause injustice to the appellant. I have the power under section 176(1) of the Act to correct any defect, error or misdescription in the notice or to vary the terms of the notice if I am satisfied this will not cause injustice to the main parties.

3. The third requirement of the notice requires the removal from the appeal site of all residential paraphernalia including but not limited to all bins, chairs, tables, and barbeques. The appellant has queried what the term 'including but not limited' means, suggesting it introduces uncertainty. That term, in that context, means all of those items mentioned in addition to any other residential paraphernalia. There is no uncertainty in this requirement, and it does not require variation.
4. The fifth requirement of the notice requires the appeal site to be restored to its condition before the breach of planning control took place, by infilling with soil and earth and reseeding with grass. It has been claimed that there is no record of the levels of the site before development took place, and as such the appellant would be unable to demonstrate that this requirement has been complied with. It is clear that small areas of land would need to be infilled as set out in the fifth requirement. This would not be an onerous or ambiguous task following compliance with the notice's other requirements. Taking the whole of the notice into account, any recipient of the notice would not be unclear as to what is required to be done to comply with the fifth requirement.
5. The sixth requirement of the notice requires 'all equipment, materials, paraphernalia, waste and debris arising from compliance with requirement i) to iv) above' to be removed from the land. There is a typing error, in that 'requirement' should read 'requirements', and I shall vary the notice accordingly. There is no ambiguity over what 'waste and debris' comprises, as it will encompass all waste and debris exclusively resulting from compliance with requirements i) to iv), rather than any waste or debris resulting from any other activities.
6. The notice is reasonably precise and clear and it is not incapable of being corrected or varied without causing injustice to the main parties. The notice is not invalid and its correction and variation in the terms set out in the Formal Decision do not cause any injustice to any parties.
7. I have been referred to the personal circumstances of the appellant and those of their late mother, who previously resided in Yew Tree Cottage. These have no bearing on the appeals lodged under grounds (b), (c) and (d), which I have assessed based on the evidence provided, because these are legal grounds of appeal.

Ground (b)

8. To be successful under this ground the appellant will need to demonstrate that any breach of planning control which may be constituted by the matters stated in the notice has not occurred. I saw the Building, the Shed and the Decking during my site visit and the appellant has not suggested that these do not exist. It has not been claimed that the appeal site is not used for residential purposes, including holiday accommodation.

9. The Enclosure does not appear to be in the exact position shown on the plan attached to the notice. The notice refers to it being in the 'approximate position shown marked C in green' on that plan. I saw the enclosure was located in that approximate position, to an extent that any person required to comply with the notice would be able to identify it with reasonable ease.
10. It has not been demonstrated that any of the alleged breaches of planning control referred to in the notice have not taken place. The appeal under ground (b) must therefore fail.

Ground (c)

11. To be successful under this ground the appellant will need to demonstrate that any breach of planning control which may be constituted by the matters stated in the notice does not constitute a breach of planning control.
12. The appeal site is an area of woodland. Section 57(1) of the Act explains that planning permission is required for the carrying out of any development of land. Section 55(1) of the Act defines development, which includes any material change in the use of land. Section 55(2)(d) of the Act explains that the use of any land within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse shall not be taken to involve development requiring planning permission. Section 55(2)(e) of the Act confirms that the same applies to the use of any land for the purposes of forestry (including afforestation). The Act does not provide a definition of curtilage.
13. It is claimed that the appeal site has formed part of the residential curtilage of Yew Tree Cottage for at least 57 years. To support this claim, it is stated that the land forming the appeal site now falls under the same ownership of Yew Tree Cottage. This was not the case prior to the appellant's relatively recent purchase of Yew Tree Cottage, but the appellant has explained that she and her family have used the woodland forming the appeal site for playing, camping, barbeques, general recreation and the cutting and selling of logs since she was a child, and she has always considered the woodland to be part of the family home. Aside from these brief descriptions, no detailed or corroboratory evidence has been provided to confirm how the land has been used prior to the notice being issued.
14. The evidence demonstrates that Yew Tree Cottage and the appeal site previously formed separate parcels of land under different ownerships, possibly within the ownership of different family members. The appeal site comprises a substantial area of thick woodland, most of which is separated from the modest garden serving Yew Tree Cottage by a stream. The stream can be crossed by a simple plank bridge and the western bank of the stream climbs up to a fenced off area, with a gap in the fence leading to Yew Tree Cottage. The appeal site is not therefore an integral part of the parcel of land associated with Yew Tree Cottage and is clearly physically separate from the dwellinghouse and its curtilage. It does not form part of the curtilage of Yew Tree Cottage, even if the dwellinghouse and the appeal site now fall under the same ownership.
15. On the basis of the evidence presented, it would be reasonable to conclude the appeal site, which was previously under separate ownership to Yew Tree Cottage, either had nil lawful use or had a lawful use for the purposes of forestry prior to it first being used for residential purposes. The residential use

of the land, which includes the use of the Building as living accommodation, would have constituted a material change of use from either a nil or forestry use of the land. There is no evidence before me which suggests that change of use was not material, did not require planning permission, or otherwise benefited from planning permission.

16. Taking the above into account, the Building, Shed, and Decking have been erected on land outside the residential curtilage of Yew Tree Cottage. It has not been demonstrated that they benefit from any of the provisions set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
17. I have not been presented with height measurements of the Enclosure, but it was clear during my site visit that no part of it exceeds 2 metres in height above ground level. The Enclosure is located some distance from the highway, within thick woodland. A cleared gap through the trees leads to the Enclosure from the highway access. On account of its height and physical separation from the highway, the Enclosure would be capable of according with the criteria set out at Class A, Part 2 of Schedule 2 of the GPDO.
18. I have not been provided with any explanation of the purpose the Enclosure serves, but it appears to demarcate the end of a turning or parking area for vehicles associated with the Building and the residential use of the appeal site. Rather than forming a breach of planning control in its own right, the Enclosure appears to be a result of, and a facilitator of, the unauthorised material change of use of the land.
19. The Enclosure does not constitute a breach of planning control and I shall correct the notice by deleting reference to it at Section 3 of the notice. This does not change the effect of requirement (iv) of the notice, which requires the removal of the Enclosure from the appeal site, because the Enclosure is associated with the unauthorised material change of use of the land. The wording of requirement (iv) will need to be varied to define the Enclosure.
20. The appeal under ground (c) therefore succeeds in part, insofar as the Enclosure does not constitute a breach of planning control.

Ground (d)

21. To be successful under this ground the appellant must demonstrate that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. No claims in respect of the ground (d) appeal have been made for the Building or the Decking.
22. Visually, the Shed appeared to be of some age, with a dilapidated roof. The appellant has claimed it has been in place for more than 10 years. No evidence has been provided to support this claim. Although the Shed appears old, I have no way of identifying how old it is. In the absence of any evidence other than its visual appearance, it has not been demonstrated on the balance of probabilities that it existed for more than 4 years prior to the notice being issued. I cannot therefore conclude that it is exempt from planning control under the provisions of section 171B(1) of the Act.
23. As referred to above, it is claimed the appeal site has been used by the appellant and her family in association with Yew Tree Cottage for at least 57

years for various recreational activities and the cutting and selling of logs, as part of the family home. Those claims are supported by brief, undetailed descriptions which lack sufficient precision and unambiguity to be afforded any significant weight when considering whether the appeal site has been used for residential purposes for a sufficient period of time to be exempt from enforcement action under the provisions of section 171B of the Act.

24. It has not therefore been demonstrated, on the balance of probabilities, that no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice at the time the notice was issued.

25. The appeal under ground (d) must therefore fail.

Ground (f)

26. The first reason explaining why the Council considered it expedient to issue the notice, at Section 5 of the notice, explains that the other reasons are for the purposes of remedying an injury to amenity. However, reading the notice as a whole, it is clear from its requirements that its purpose is to remedy the breaches of planning control. Therefore, to be successful under this ground the appellant must demonstrate that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice.

27. It has been suggested that the requirements to remove all foul drainage systems associated with the Building and to restore the land to its condition before the breach of planning control took place are excessive because all drainage is underground and the Council may not know whether these requirements have been complied with. The Building relies on a drainage system with pipes leading underground and a raised manhole cover nearby. All aspects of that drainage system have facilitated the breach of planning control and it would be reasonable, not excessive, to require their complete removal from the land to remedy the breach of planning control. Furthermore, so long as any part of that drainage system remains in place, it would be possible that the Council could identify it.

28. There has been an unauthorised material change of use of the land resulting in residential paraphernalia being placed on the land and the Enclosure being erected. The term 'residential paraphernalia' includes a wide range of items, all of which would be associated with the breach of planning control. The removal of these items and the Enclosure from the land would be necessary and reasonable to remedy the breach of planning control.

29. The appeal under ground (f) therefore fails.

Ground (g)

30. To be successful under this ground the appellant must demonstrate that the periods of time specified in the notice for any of its requirements to be complied with fall short of what should reasonably be allowed.

31. The appellant has explained their personal circumstances and those of their late mother. Since the erection of the Building, the appellant has purchased Yew Tree Cottage, which is in need of having urgent works carried out. The

appellant intends to live in the Building for the duration of those works and has requested that the period of compliance specified in the notice should be extended to 12 months to allow for those works to be completed and for finances to be arranged.

32. No evidence has been presented which demonstrates that Yew Tree Cottage is incapable of being lived in and it has not been claimed that the appellant would have no other place to reside. Very limited details have been provided of the appellant's financial situation following the purchase of Yew Tree Cottage.
33. The periods of time specified in the notice are reasonable for its requirements to be complied with. No evidence has been presented which convinces me any periods of time longer than those specified in the notice should be allowed for its requirements to be complied with.
34. The appeal under ground (g) therefore fails.

Overall Conclusion

35. For the reasons given above, I conclude that the appeals under grounds (b), (d), (f) and (g) should not succeed and the appeal under ground (c) should succeed in part. I shall uphold the enforcement notice with a correction and variations.

Formal Decision

36. It is directed that the enforcement notice is corrected and varied by:
- (a) Deletion of the words 'and d) a means of enclosure in the approximate position shown marked C in green on the Plan ("the Enclosure")' at Section 3;
 - (b) Deletion of the word 'Enclosure' at requirement iv) of Section 5 and its substitution with the words 'the means of enclosure in the approximate position shown marked C on the Plan'; and
 - (c) Deletion of the word 'requirement' at requirement vi) of Section 5 and its substitution with the word 'requirements'.
37. Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR