



Appeal Decisions

Inquiry Held on 29, 30 November and 1 December 2022

Site visit made on 1 December 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal A: APP/L3815/C/21/3280877

Land South of Racton View, Marlpit Lane, Westbourne, West Sussex

- 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 Adam Barton against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 13 July 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a two storey dwellinghouse.
 - The requirements of the notice are: (i) Demolish the said two storey dwellinghouse; (ii) Demolish the timber storage building and outbuilding; (iii) Break up the faux rockery structure, wooden decking, hardstanding and access road; (iv) On completion remove all resulting debris from the Land; (v) Remove all residential items from the Land including washing lines, barbeques, outdoor furniture and play equipment.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Appeal B: APP/L3815/C/22/3292115

- The enforcement notice was issued on 17 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a residential use.
 - The requirements of the notice are: (i) Cease the use of the Land for residential purposes; (ii) Demolish the two storey dwellinghouse; (iii) Demolish the timber storage building and outbuilding; (iv) Break up the faux rockery, wooden decking area, hardstanding and access road; (v) On completion remove all resulting debris, personal belongings and furniture from the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/L3815/C/21/3280874

- The enforcement notice was issued on 13 July 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a timber dwellinghouse (West).
- The requirements of the notice are: (i) Demolish the said timber dwellinghouse (West) and remove the resulting debris from the Land; (ii) Remove all residential items from the Land, including barbeques and outdoor furniture.
- The period for compliance with the requirements is 12 months.

- The appeal is proceeding on the grounds set out in section 174(2) (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal D: APP/L3815/C/22/3292116

- The enforcement notice was issued on 17 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a residential use.
 - The requirements of the notice are: (i) Cease the use of the Land for residential purposes; (ii) Demolish the building "timber dwellinghouse West" and remove all resulting debris from the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Appeal E: APP/L3815/C/21/3280875

- The enforcement notice was issued on 13 July 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a timber dwellinghouse (East).
 - The requirements of the notice are: (i) Demolish the said timber dwellinghouse (East) and remove the resulting debris from the Land; (ii) Remove all residential items from the Land, including barbeques and outdoor furniture.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal F: APP/L3815/C/22/3292117

- The enforcement notice was issued on 17 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a residential use.
 - The requirements of the notice are: (i) Cease the use of the Land for residential purposes; (ii) Demolish the building "timber dwellinghouse East" and remove all resulting debris from the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notices are upheld.

Appeals C, D, E and F

2. The appeals are dismissed and the enforcement notices are upheld with correction.

Preliminary Matters

3. The Council has issued 6 enforcement notices, in 2 batches, in relation to 3 residential properties. I shall refer to these as the two-storey dwelling (Appeals A and B), west dwelling (Appeals C and D) and east dwelling (Appeals E and F) accordingly.

4. Amended plans were received, dated 28 November 2022, to correctly identify the planning units in respect of the east and west dwellings. This is agreed by the parties. I will therefore correct the notices to this effect.
5. During the Inquiry, the appellant withdrew the ground (b) and (f) appeals in respect of the two-storey dwelling and the ground (f) appeals in respect of the west and east dwellings.
6. Whilst I accept there are different ways to draft notices enforcing against alleged breaches of planning control, the Council's approach in this case has the potential to cause legal and practical issues. I therefore raised concerns during the Inquiry, in part owing to the different statutory time limits for immunity arising from s.171B subsections (1), (2) and (3) of the Act. I therefore advised the parties should be cognisant of the various options open to me to vary or quash the notices and address me as such during their closing submissions.
7. I also raised whether the first batch of notices (Appeals A, C and E) connote use and whether the second batch of notices (Appeals B, D and F) were issued in the alternative. The appellant considers they do relate to use and that the second batch of notices have been issued in the alternative. The Council's position is notices have not been issued in the alternative, and that the first batch is directed against operational development with the second batch against material change of use.
8. The reasons given for issuing the first batch of notices, and indeed some cited policies, refer to land use, which would appear to undermine the Council's position. However, in the banner heading the notices are clearly annotated as ones which attack a building operation. This is then supported by the second batch of notices clearly annotated as attacking a material change of use.
9. I am then not convinced that given the way the notices have been drafted, and co-exist, had there been a ground (a) appeal only in respect of the first batch of notices the result, if allowed, would have been to permit the use of the buildings as dwellings.
10. Accordingly, in considering the notices in the round I am satisfied there has been a batch of operational development notices and a batch of material change of use notices, which are then directed against each property. I will therefore consider the practical effects of the notices in my overall conclusion, following assessment of the various grounds of appeal.

The ground (b) appeals – Appeals B, C, D, E and F

11. For the ground (b) appeals to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the breaches of planning control alleged in the notices have not occurred as a matter of fact.

Appeals C and E

12. These appeals relate to the operational development notices issued in respect of the east and west dwellings, which allege the erection of those respective dwellings.

13. The appellant purchased the site in January 2013, which he stated was overgrown and impenetrable. He did not discover the existence of two buildings until 2015, which it is contended were then converted to the east and west dwellings in 2017. The appellant also contends the buildings were previously used for storage, having contained old tools and that he would occasionally put items in them.
14. A neighbouring landowner, Mr Middleton, provided a statutory declaration that the two buildings were present when the appellant purchased the site and that he previously used them to skin rabbits and store some tools. Mr Middleton however did not attend the Inquiry, and his statutory declaration leaves a number of unanswered questions, not least why he would be using adjacent land for the activities he briefly described. Furthermore, why there was no mention of the buildings to the appellant in the approximate 2-year period between the appellant's purchase of the site and him discovering them. There were also strikingly detailed accounts of other matters which could not then be tested. There is some inevitability therefore that I afford his evidence very little weight.
15. Having visited the site, whilst I appreciate it has since been cleared of brambles and other such undergrowth, I consider the notion that the buildings were never mentioned and then discovered by the appellant to be somewhat implausible. Even if they were simply discovered, there is little documentary evidence as to the extent of any storage use. Moreover, there is then very little evidence that the buildings I inspected were the same buildings as those purportedly discovered. I say that, given there is no photographic evidence of the buildings from the 2015 period, and no invoices to demonstrate works were undertaken to convert existing buildings. They therefore could be different buildings, or the same buildings relocated to a different location, noting how small they are. Either way, there is a lack of precise and unambiguous evidence concerning the prior existence of these buildings and any use to which they were put.
16. Mr Hasledine, who is a close friend of the appellants, set out that he was aware of the buildings and that they were full of tools and junk. This was however only from February 2016, not when they were supposedly discovered, and he was principally concerned with other matters at the site.
17. There is therefore a distinct lack of documentary evidence concerning the prior existence and use of the two buildings. The appellant's account of simply discovering them casts significant doubt in my mind, particularly given the absence of Mr Middleton. Accordingly, the appellant has not demonstrated on the balance of probabilities that there has not been the erection of the east and west dwellings and thus I find as a matter of fact and degree that the breaches of planning control alleged in the notices have occurred.

Appeals B, D and F

18. These appeals relate to the material change of use notices issued in respect of the 3 properties, alleging the material change of use of the land to a residential use.
19. The thrust of the appellant's case is that by issuing the second batch of notices the Council is undermining the statutory scheme, in that they are seeking to

apply the 10-year rule. It is therefore contended these notices do not identify the breaches of planning control correctly.

20. However, s.171B(2) of the Act only applies to the change of use of a building to a single dwelling or to a breach of a condition which prevents a change of use of a building to a single dwelling. If a building is erected unlawfully and used as a single dwellinghouse from the outset, which has been the case here for all 3 properties, no change of use of a building has occurred, and so s171B(2) is not relevant. The implication is that the time limit for enforcement action against the use is then ten years under s171B(3)¹ and relates to the land. This is therefore the true nature of the development and thus the breach of planning control.
21. This is also reaffirmed as the notices are attacking a wider planning unit, not just a building. The appellant's planning agent confirmed that the plans (including those amended) correctly identified the respective planning units. I find the operational development undertaken is then integral to that residential use, without which, the residential use could not subsist. It is then not disputed that a residential use of the land identified is taking place. It is also not contended that the land was in any form of prior residential use, because it was a woodland and therefore had an agricultural/forestry use. The real target of the notices is accordingly the existence of the residential use.
22. The appellant has therefore not demonstrated on the balance of probabilities, that there has not been the material changes of use of the land to residential use. Thus, I find as a matter of fact and degree that the breaches of planning control alleged in the notices have occurred.
23. The appeals on ground (b) therefore fail.

The ground (d) appeals – Appeals A, C and E

24. This ground of appeal is that at the date when the notices were issued, it was too late to take enforcement action against the matters stated in them. The burden of proof again lies with the appellant. As such, the appellant needs to demonstrate, on the balance of probabilities, that the erection of the 3 dwellings were substantially complete more than 4 years prior to the issue of the notices, the salient date being 13 July 2017.
25. The Planning Practice Guidance (the Guidance) sets out an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate, which is also the equivalent of ground (d) in an enforcement appeal. The Guidance says: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability". Those sentiments apply equally to an Inspector at appeal stage.
26. The appellant's evidence is that the erection of the two-storey dwelling came about following an agreement in 2015 between the appellant and Mr Hasledine to construct a building for Mr Hasledine's business, Buns to Banquets, which he

¹ Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15

- would then rent. Mr Terry, a builder instructed by the appellant and who has since undertaken further work with and on behalf of the appellant, undertook the build which commenced in January 2016 and which was completed by him, to first fix stage, on 26 February.
27. In that intervening period, it is said that Mr Hasledine's business was running into financial difficulties and so he advised the appellant he would no longer be able to afford to rent the building, although he did move some items into it.
28. It is said this prompted the appellant to change his plans and Mr Terry undertook a second phase of works, commencing on 20 March, to take the building to a habitable standard, so it could be occupied by the appellant. This has then been the case since 1 June 2016.
29. In respect of the east and west dwellings the appellant's evidence comes principally from Mr Willcoxson-Staines, who says he has occupied the east dwelling since 3 March 2017. He is also a friend of the appellants. A Mr Knight is said to have lived in the west dwelling from 5 March 2017 until the summer of 2022, but there is no evidence from him before the Inquiry.
30. I appreciate the evidence is that most of the appellant's transactions are cash-based. This however proves to be problematic as he has not provided invoices for the works undertaken or materials used in the construction of the dwellings. Moreover, the appellant is also unable to provide utility bills or evidence of correspondence or accounts linking him to the two-storey dwelling. It also goes further than this, because there is then no documentary evidence from the occupiers of the east or west dwellings either.
31. In addition, witnesses' evidence all points to a prior storage use of the two-storey dwelling. That notion fell away during oral evidence but it pervades through the written evidence of the appellant, Mr Hasledine, Mr Terry and Mr Middleton, sometimes with strikingly detailed accounts. For all of those witnesses to put forward the same case with regards to storage use which clearly had no merit, reduces my confidence in that evidence being their own personal recollections of the dwellings.
32. Accordingly, reference in Mr Terry's second quote to convert an existing timber framed storage building into a dwelling was unexplained. There was no compelling reason given during his oral evidence as to why reference to a storage use was made. Moreover, the first quote lists the use of the rooms, when there was otherwise no need to do so. I can therefore only afford these quotations, and the dates cited on them, very limited weight.
33. Whilst I am in no doubt that Mr Terry constructed the dwelling and that Mr Hasledine's business suffered financial difficulties, there is again no documentary evidence in the form of their accounts. Indeed, Mr Hasledine's business was not dissolved until November 2018.
34. As noted by the appellant, dates and documents can be falsified. However, I did not find his account of having multiple digital cameras at his disposal to be compelling reason for the different format and position of date stamps on the photos he provided. The appellant also stated that the photographs before the Inquiry had been scanned in for the purposes of compiling his declarations. This meant that original hard copies existed. It was then confirmed these were

not before the Inquiry. The date on video stills was then labelled by the appellants planning agent, with the date as directed by the appellant, rather than being originals before the Inquiry. Again, there is some inevitability that I reduce the weight I give to this evidence given I am unable to compare them to the originals.

35. In light of the absence of documentary evidence, the presence of formal tenancy agreements for the east and west dwellings, when no rent was being paid, is a stark contrast, particularly when there is no other documentary evidence to link either occupier to these dwellings. Mr Willcoxson-Staines was unable to explain why he was living in the property rent free and accepted he could understand the problem with his claim of occupancy, given the lack of documentation.
36. Drawing all of this evidence together I am not satisfied, for the reasons set out, that it is sufficiently precise and unambiguous and this reduces the weight that can be afforded to the evidence of the appellant and his witnesses.
37. In terms of other documentary evidence, a number of aerial photographs have been provided. The two-storey dwelling is a significant size, being some 12m in length and 9m in width. Even though the pitch of the roof is relatively low, it is still of considerable overall height. The roof of the building is accordingly plainly visible in an aerial photograph dated 14 September 2019.
38. However, in an aerial photo dated 26 June 2018 there is no evidence of the building whatsoever. Whilst the evidence is that the building was constructed in close proximity of surrounding trees, Mr Terry conceded that when he was constructing the roof and was therefore on it, it was possible to see the sky. The inference here is that conversely an aerial photograph would reveal at least part of the roof of the two-storey dwelling, particularly as it was of significant size. The appellant says he removed branches from around the dwelling in October 2018, to improve living conditions, which is why it is then visible in the 2019 photograph. A ground-level photo is also provided, said to be from 2017, which shows the dwelling with foliage around it. However, it does not show the full extent of the roof and therefore does not assist the appellant to demonstrate that it would not have been visible from above.
39. During my site visit I was also struck by the relative immaturity of the trees at the site. I am therefore unable to reconcile the absolute clarity to which the two-storey dwelling is evident in the 2019 aerial photo, versus its complete absence in 2018. Whilst the trees are in close proximity of the building, the concession of Mr Terry remains telling in this regard.
40. It remains the case that the appellant's evidence needs to be sufficiently precise and unambiguous to demonstrate his case on the balance of probabilities. The precision of the appellant's evidence is undermined by the lack of documentary evidence, which has cast significant doubt in my mind. This reduces the weight that can be afforded to the evidence in respect of all 3 dwellings. Accordingly, as a matter of fact and degree, the appellant has not demonstrated on the balance of probabilities that at the time the notices were issued it was too late to take enforcement action against the matters stated in the 3 notices.
41. The appeals on ground (d) therefore fail.

Overall Conclusion

42. I have found there has been the erection of 3 dwellings and the material change of use of land to a residential use in respect of 3 planning units. It was then not too late to take enforcement action against the erection of the dwellings.
43. The Council has issued 6 notices, the effect of which could have led to legal and practical issues. However, in light of my findings, the notices, whilst in-part duplicitous, can peacefully co-exist.
44. For the reasons given above, I conclude that the appeals should not succeed and I shall uphold the enforcement notices subject to correction where necessary to account for the substitution of amended plans.

Formal Decisions

Appeal A

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

Appeal B

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

Appeal C

47. It is directed that the enforcement notice be corrected by the substitution of the plan titled Enforcement Notice Plan WE/54 dated 28 November 2022 for the plan attached to the enforcement notice.
48. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal D

49. It is directed that the enforcement notice be corrected by the substitution of the plan titled Enforcement Notice Plan WE/58 dated 28 November 2022 for the plan attached to the enforcement notice.
50. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal E

51. It is directed that the enforcement notice be corrected by the substitution of the plan titled Enforcement Notice Plan WE/53 dated 28 November 2022 for the plan attached to the enforcement notice.
52. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal F

53. It is directed that the enforcement notice be corrected by the substitution of the plan titled Enforcement Notice Plan WE/59 dated 28 November 2022 for the plan attached to the enforcement notice.
54. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Emma Dring, of Counsel, instructed by Mr Stephen Jupp

She called	Mr Tom Willcoxson-Staines	Occupier of east dwelling
	Mr Robert Terry	Owner of UK Construction Group
	Mr Alex Hasledine	Director of Buns to Banquets (now dissolved)
	Mr Adam Barton	Appellant
	Mr Stephen Jupp	Planning Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Fraser, of Counsel, instructed by Chichester District Council

He Called	Ms Tara Lang	Senior Enforcement Officer (Stroud District Council, formerly of Chichester DC)
	Ms Shona Archer	Planning Enforcement Manager

DOCUMENTS:

1. Signed Statement of Common Ground
2. Email chain between the Council and appellant
3. Appellant's revised floor plan for the two-storey dwelling
4. Agreed alternative notice plans in respect of Appeals C, D, E and F
5. Appellant's opening submissions
6. Council's opening submissions
7. Email from Chichester District Cllr
8. Street view image
9. Data for 2018 aerial image
10. Council's closing submissions incl. response to Inspector's questions
11. Appellant's closing submissions incl. response to Inspector's questions