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## Appeal Decisions

Site visit made on 2 March 2023

**by Richard S Jones BA(Hons), BTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 May 2023**

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**Appeal A Ref: APP/L3815/C/21/3283324**

**Appeal B Ref: APP/L3815/C/21/3283325**

**Land at Manor Copse Farm, Oak Lane, Shillinglee, Plaistow, West Sussex GU8 4SQ**

- Appeal A is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Paul Hayward against an enforcement notice issued by Chichester District Council.
  - Appeal B is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Sam Hayward against the same enforcement notice issued by Chichester District Council.
  - The notice, numbered PS/70, was issued on 25 August 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a building in the approximate position shown on the attached plan.
  - The requirements of the notice are to demolish the said building and remove the resulting debris from the Land.
  - The period for compliance with the requirements is three months.
  - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (e) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
  - Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (e) 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 have lapsed.
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### Decisions

#### Appeal A

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act as amended (the 1990 Act).

#### Appeal B

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

### Preliminary Matters

3. In the appeal form, the appellants have set out the same arguments under all of the grounds of appeal. To avoid repetition, I shall set that out here:

*'The building in question has existed for more than 4 years and is in the garden of The Coach House, it is not a part of Manor Copse Farm, it is used as a*

*pottery studio, the land has never been designated forestry land, the land is not a part of Keepers Cottage, its [sic] has been a part of the garden of The Coach House for more than 10 years, planning permission has been granted for the Coach House which includes the garden area where the building in question is situated.'*

4. Not all of those arguments relate to the individual grounds of appeal. I will deal with each as relevant.
5. For the legal grounds of appeal (grounds (b), (c), (d) and (e)), the onus lies with the appellants to make their case on the balance of probabilities.

### **Appeals A and B on Ground (e)**

6. An appeal on ground (e) is that the notice was not properly served on everyone with an interest in the land.
7. The appellants argue that the enforcement notice is incorrectly served as it states that the building subject of this appeal is on Land at Manor Copse Farm, which is not the case. They state it is within the garden of the Coach House.
8. The appellants also refer to the notice stating that '*the building is under the host property of Keepers Cottage*', which they say is not true as Keepers Cottage has no connection with the land nor the building subject of the notice and is under separate ownership.
9. Notwithstanding that the notice states that '*the development has taken place on land outside of the curtilage of the host property Keepers Lodge...*', the Council has provided two Land Registry search documents which identify one of the appellants as the registered owner for two different titles covering land purported to form part of the Coach House. The contact address for one of the titles is Manor Copse Farm and the other is Keepers Lodge. The remainder of each address is essentially the same and the same as that in the enforcement notice.
10. The Council has also provided a 'Certificate of Service', addressed to both appellants at Manor Copse Farm, attached to which are pictures which show it posted in the post box outside the door with 'Coach House' and 'Manor Copse' name plates.
11. I note the appellant states that those Land Registry details are out of date and that their Coach House search incorrectly brought up details of a neighbouring property, which has been reported to the Land Registry. However, s176(5) of the 1990 Act provides that any failure to serve may be disregarded if the appellant has not been substantially prejudiced. Even if the address is incorrect, the appellants do not argue that they were not served with a copy of the enforcement notice or that they were unable to make an appeal against the notice before it came into effect. Nor do the appellants claim that any other person was not served with a copy of the notice when they ought to have been.
12. Moreover, an incorrect address does not render an enforcement notice a nullity or invalid so long as the recipient is not misled. In this case, the plan attached to the notice shows the land affected edged in red with an arrow pointing towards the alleged building. Accordingly, I have no reason to find that the address in section 2 of the notice has misled the appellants.

13. I therefore conclude that the appellants have not demonstrated that the notice was not properly served, or that any such failure gave rise to substantial prejudice. The appeals on ground (e) fail.

### **Appeals A and B on Ground (b)**

14. To succeed on ground (b) the appellants need to demonstrate, to the required standard of proof, that the alleged erection of a building has not occurred as a matter of fact. However, the appellants state that the building is within the garden and approved curtilage of The Coach House and photographs are provided of it in place in the approximate position shown on the plan attached to the enforcement notice.
15. I therefore find that the alleged development did occur on the balance of probabilities and the appeals fail on ground (b).

### **Appeals A and B on Ground (c)**

16. A ground (c) appeal is that the matters alleged in the notice, namely the erection of a building, do not constitute a breach of planning control.
17. Consideration of ground (c) involves a two stage process: whether the matters constitute 'development' requiring planning permission, and, if so, whether the 'development' already benefits from a grant of planning permission.
18. S55(1) of the 1990 Act provides a broad definition of 'development' and includes building operations in, on, over or under land. S57 of the 1990 Act provides that, subject to exclusions, planning permission is required for development.
19. The appellants describe the building as a sectional shed, which is 2.4m high with a footprint of 30m<sup>2</sup>. Although they state that the building should not require planning permission, having regard to its size, permanency and degree of physical attachment, it is clearly a building for the purposes of the 1990 Act.
20. The appellants explain that there has been a shed in this location since 2015, but that during the winter of 2019/2020 flooding in their garden damaged the building, resulting in the need to rebuild it in the spring of 2020. As s55(1A) of the 1990 Act provides that building operations include rebuilding, planning permission was required for those operations in 2020.
21. The appellants state that in 2020, a planning application was submitted and approved for the Coach House which included the appeal site and appeal building (reference 20/02096/DOM). However, the permission granted was for a first floor window to create a fire escape window in the Coach House. No reference is made in the description of development to the appeal building and merely because an outline of the appeal building is shown on the approved block plan doesn't mean that planning permission was granted for it. Nor does it mean that the land included within the red line boundary forms the residential boundary of the Coach House.
22. Therefore, on the balance of probabilities, planning permission was not granted under reference 20/02096/DOM for the building subject to the enforcement notice. For the same reasons I reach the same conclusion for planning permission reference 21/01930/FUL for a two storey extension to the existing dwelling (the Coach House).

23. Moreover, it is not shown that the development benefits from planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015.
24. Accordingly, the appellants have not demonstrated that the development is not in breach of planning control on the balance of probabilities. The appeals on ground (c) fail.

### **Appeals A and B on Ground (d)**

25. For the appeals to succeed on ground (d), the onus lies with the appellants to demonstrate that the operations involved in the erection of the building were substantially completed four years before the date of issue of the notice (25 August 2017<sup>1</sup>).
26. I note the appellants' concerns over the Council's photographs from April 2017 and agree that it would not be possible to see the building from those locations. Nevertheless, although the appellants explain that there has been a shed in this location since 2015, they acknowledge that it was rebuilt in the spring of 2020. Consequently, it was not substantially complete by 25 August 2017.
27. It therefore follows, that on the date that the enforcement notice was issued, it was not too late for the Council to take enforcement action. The appeals on ground (d) fail.

### **Appeal A on Ground (a)**

#### **Main Issue**

28. The main issue is whether the site is an appropriate location for the building, having regard to relevant development plan policies and the National Planning Policy Framework (NPPF).

#### **Reasons**

29. The Council refer to the building being to the north of a garage/workshop/store known as the Coach House, which is located to the west of the residential properties known as Oakdale House and Keepers Cottage.
30. The Council's reasons for issuing the enforcement notice include that the development has taken place on land outside of the curtilage of the host property, Keepers Cottage, and in a location removed from the curtilage approved under planning application reference PS/08/01019/FUL (for the demolition and rebuilding of the Coach House). The appellant asserts that the building is within the garden and approved curtilage of the Coach House and has nothing to do with Keepers Cottage which is under separate ownership.
31. However, the address of the above planning permission for the Coach House (as a garage/store/workshop) is Keepers Cottage. Moreover, the appellant was the applicant, and his address was also Keepers Cottage.
32. In any case, the term 'curtilage' simply describes an area of land that has an intimate association with a building. Because of the separation, natural screening and intervening boundary treatments, the land on which the building

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<sup>1</sup> s171B(1) of the 1990 Act

is situated does not have an intimate association with Keepers Cottage and, as a matter of fact and degree, does not fall within its curtilage. Indeed, the land is more likely to form part of the curtilage of the Coach House, given its proximity and functional relationship.

33. However, curtilage does not describe what the use of the land might be and should not be confused with the concept of a planning unit. Although both may sometimes cover the same area of land, that will not always be the case. In any event they are not the same thing. For the purposes of the ground (a) appeal, whether it falls within the curtilage of the Coach House, is not the pertinent issue. The issue is whether it falls within the planning unit of the Coach House or Keepers Lodge, or outside of an identifiable planning unit.
34. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of a material change of use. The area covered by a planning permission is not necessarily determinative of the planning unit.
35. Following an investigation in April 2017, the Council concluded that the use of the Coach House for habitable accommodation had existed for four years and thus was immune from enforcement action. However, that does not mean that the use of the land around it for residential purposes is also immune from enforcement action. In that regard, the appellant would need to show that there had been a material change of the land to residential use for at least ten years (as opposed to four for the residential use of the building) without material interruption, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act.
36. Planning permission was granted on appeal in July 2020 for elevational changes to the Coach House<sup>2</sup>. Although the plans included its internal layout the Inspector explicitly referred to permitting only the development as illustrated on the east elevation, for which permission was sought. Indeed, the permission is conditioned to that effect. That decision does not therefore infer or deal with the lawfulness of the current appeal building or the land around it.
37. In any case, the red line boundary for that permission essentially includes the Coach House and land in front of it (and appears to be broadly the same as that of the above referenced permission also for the Coach House building - PS/08/01019/FUL). The building subject to the enforcement notice, is not shown on the site location plan nor is the land on which it is sited included within the red line boundary.
38. As noted above, permission was granted for the enlargement of a first floor window of the Coach House to create a fire escape<sup>3</sup>. The red line boundary for that planning application is much larger than that of the previous appeal permission and includes the land to the north and south of the Coach House. The block plan depicts the current appeal building and land around it within the red line boundary.
39. However, as explained under ground (c), that permission does not grant planning permission for the appeal building. Nor does the inclusion of the land within the red line boundary approve its use as residential garden.

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<sup>2</sup> Appeal Ref: W/4000430

<sup>3</sup> Reference PS/20/02096/DOM

40. Indeed, informative 3 of the decision notice states that *'The red line of the submitted location plan for this application PS/20/02096/DOM is not consistent with the red line on the location plan submitted for application PS/19/02449/DOM. Please note that this application does not relate to nor would determine whether there has been a change of use of land. The granting of this planning permission for the works in the description does not constitute planning permission for the use of the lane [sic] edged red'*<sup>4</sup>. The permission does not therefore establish a wider planning unit of the site commensurate with the red line boundary.
41. Even if subsequent planning permission reference 21/01930/FUL does not include a similar informative, that permission is for a two storey extension to the existing dwelling (the Coach House). It is not a planning permission for the change of use of the land within the red line boundary to residential garden.
42. The appellant states that the land has been used as private amenity/garden since 1998 and was also the *'recreational area of the appellants' family, which included a quad bike track and pond'*. He refers to an ongoing landscaping project since 1998 with significant domestic planting and grass maintained as lawns.
43. However, the Coach House wasn't approved until 2008 and the aerial photographs from 2012 and 2019 appear to show the land on which the appeal building is situated as forming part of a larger field running to the north, rather than a discernible residential garden.
44. The evidence before me therefore points towards a residential use of the Coach House commencing sometime after 2008 and a residential garden being created for it, independent from Keepers Cottage, by encroaching into the countryside. Even if I am wrong about that, it is not shown that the building is situated within a lawful residential planning unit associated with the Coach House, or even Keepers Cottage for that matter.
45. Indeed, post final comments, the appellant requested that I be made aware of an application made for a certificate of lawful use or development (LDC) (under reference PS/22/00208/ELD) for the use of land at the Coach House as residential domestic garden land, along with the supporting 26 witness statements. Whilst I have noted the content of those statements, the Council's decision was to refuse the LDC and it has confirmed that no appeal has been lodged.
46. The appellant obviously disagrees with the Council's contention that the lawful use of the land is forestry. However, it is not necessary that I arrive at a conclusion on that matter. What is germane is that the land on which the building is located has not been shown to form part of a residential garden within a lawful planning unit, which is immune from enforcement action through the passage of time.
47. For the purposes of Policy 2 of the Chichester Local Plan: Key Policies 2014-2049 (LP), the land is situated within the countryside. LP Policy 2 identifies the locations where sustainable development will be accommodated, which in terms of scale, function and character support the role of identified settlements. Development outside the settlements, as is applicable here, is

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<sup>4</sup> Planning application reference PS/19/02449/DOM relates to the appeal allowed in July 2020

restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with Policies 45 and 46. LP Policy 45 states that within the countryside, outside settlement boundaries, development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements.

48. The appellant has not sought to show, and I do not find, that the building (and its use as a pottery studio) requires a countryside location, or that its purpose meets an essential local rural need or supports rural diversification. The development is therefore contrary to LP Policies 2 and 45 and to LP Policies 1, 25, and 48 and to the NPPF as a whole. Those policies state, amongst other matters, that when considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.
49. The appellant states that there are no policy restrictions that exclude garden sheds at a rural property. Be that as it may, the building is clearly not a shed. It has a footprint of 30m<sup>2</sup> and is used as a pottery studio. Nor does it form part of a lawful residential garden.

### **Other Matters**

50. The Council advise that since issuing the enforcement notice, Natural England has published a statement regarding water supply issues in the Sussex North Water Resource Zone which are likely to impact the Arun Valley SAC, SPA and Ramsar site. It is explained that, as a result, development within the zone needs to be subject to Habitats Regulation Assessment (HRA) and can only proceed if water neutrality can be achieved. However, as I am dismissing the appeal for other reasons, no further consideration of HRA matters is required.
51. Although the building is unlikely to affect the living conditions of neighbouring occupants, the absence of such harm does not weigh in favour of the development.
52. The appellants are critical of the Council for issuing an enforcement notice during the pandemic and for declining to determine a planning application in favour of enforcement action. However, those are not matters for this appeal. Furthermore, an application for costs has not been made and I have no reason to believe that the Council has acted unreasonably.
53. I note that the appellant has queried the fee for the ground (a) appeal and requested a refund for the amount paid. However, that is a matter for the Council rather than for this appeal.

### **Appeal A Conclusion**

54. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Richard S Jones*

INSPECTOR