



Appeal Decisions

Site visit made on 16 January 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Refs: APP/P2935/C/23/3316802 and 3316803

Land at Wheelings Wood, Corbridge, Hexham, Northumberland

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Lionel and Mrs Pat Waterhouse against an enforcement notice issued by Northumberland County Council.
 - The notice was issued on 15 February 2023.
 - The breach of planning control as alleged in the notice is the material change of use of a forestry building for use as residential.
 - The requirements of the notice are (i) Cease the use of the forestry building for residential use.
 - The period for compliance with the requirement is four weeks.
 - The appeals are 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.
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Decision

1. The enforcement notice is corrected by the deletion of the address in section 2 and the substitution instead of 'Land at English Wood to the south-east of the B6307, Northumberland'. Subject to the correction the appeals are dismissed.

Preliminary Matters

2. The Appellants own two adjoining areas of woodland; English Wood and Wheelings Wood. The Council's first enforcement notice against the forestry building, issued on 22 September 2022, identified its location as being in English Wood. In a letter dated 12 December 2022 the Council stated that "It has been established that the forestry building has not been located within English Wood...In view of this it seems appropriate to withdraw the notice and re-serve it...".
3. The Council reacted, in withdrawing the first enforcement notice, to a comment from the Appellants that the notice had been fixed to a gate into Wheelings Wood, not to a gate into English Wood. The comment was not indicating that the forestry building is on Wheelings Wood rather than on English Wood. The location of the forestry building given on the first enforcement notice was correct.
4. The re-served enforcement notice, which is the subject of these appeals, identifies the location of the breach of planning control to be as given above. The Appellants have confirmed, and it was noted at the site visit, that the forestry building is, as a matter of fact, located in English Wood. In addition, Corbridge and Hexham are different towns and whilst English Wood is roughly equidistant between them an address should not include two different town names.

5. The address of the land to which the notice relates must be corrected and this can be achieved without causing prejudice or injustice to either main party. Land does not need to be related to any nearby town, as long as there is another means of identifying its location. For locational purposes, the land has a north-west frontage to the B6307 and the land can therefore be identified to be 'Land at English Wood to the south-east of the B6307, Northumberland'.

Reasons

The ground (b) appeals

6. Ground (b) appeals are made when it is claimed that the breach of planning control has not, as a matter of fact, occurred. The Council confirmed in a letter dated 9 May 2017, with regard to application no. 17/01025/AGRGDO, that prior approval was not required for a proposed forestry building to be sited at English Wood. The stationing of the forestry building at English Wood is thus lawful, as is its use to support forestry activities.

7. The Appellants' home address is in Chester. They do not, however, dispute the claim made by the Council that they have used the forestry building for residential purposes. The use of the building for this purpose is corroborated by third party evidence. The Appellants cannot therefore claim that the breach of planning control, use of a forestry building for use as residential, has not occurred. The ground (b) appeals thus fail.

The ground (c) appeals

8. Ground (c) appeals are made when it is claimed that the matters alleged in the enforcement notice do not constitute a breach of planning control. The stationing of the forestry building in English Wood is development permitted under Class E of Part 6 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. Section E.1(a) of Class E states that development is not permitted if it would consist of or include the provision of a dwelling. The use of the forestry building for residential purposes is not therefore permitted development and planning permission has not been granted for this use of the building. The matters alleged in the notice do therefore constitute a breach of planning control. The ground (c) appeals thus fail.

The ground (d) appeals

9. Ground (d) appeals are made when it is claimed that the breach of planning control has gained immunity from enforcement action through the passage of time. Sections 171B(1) and (2) of the Act state that where there has been a breach of planning control consisting of building works or the change of use of a building to use as a single dwellinghouse, no enforcement action may be taken after the end of four years beginning with the date of the breach. Section 171B(3) of the Act states that in the case of any other breach of planning control, no enforcement action may be taken after the end of a period of ten years.

10. The Appellants stated, on the appeal form and under ground (d), that the "Building is mixed use/single dwelling". If the building is in a mixed use then Section 171B(3) applies and the time limit is ten years. The forestry building was brought on to the land less than ten years ago in 2017 so if it is in a mixed use then this use cannot be immune from enforcement action.

11. Elsewhere on the appeal form, under ground (b), the Appellants claim that the '4 year rule applies' and this has been repeated in their appeal statement. In section 4 of the enforcement notice it is stated that "It appears...that the...breach of planning control has occurred within the last ten years". The Council has accepted that 'ten years' is an error and that 'four years' is correct. It would appear, therefore, that the Council is alleging the material change of use of a forestry building to use as a single dwellinghouse and that the four rule is applicable. It is not necessary to correct section 4 of the notice.

12. For their ground (d) appeals to succeed the Appellants must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use of the forestry building as a single dwellinghouse commenced more than four years before the date of issue of the enforcement notice, and that the use has been continuous throughout the four year period.

13. The Appellants have submitted in evidence an 'affidavit' by Mr A Stephens, a near neighbour to their address in Chester. The document is not an affidavit because it is not signed or dated and has not been sworn to be true in the presence of, and witnessed by, a commissioner for oaths. The document, which is simply a letter to 'WHOM IT MAY CONCERN', can therefore be afforded little weight. Three other letters 'To whom it may concern', from Mrs H Santana and Louise Black and another from Mr A Stephens, can also be afforded little weight for the same reason.

14. The letters do indicate that the Appellants have been living in the forestry building during the four year period prior to the date of issue of the enforcement notice. But there is nothing in the letters to indicate that use of the building as a dwelling has been continuous. Furthermore, and of particular importance, there is no documentary evidence to support the Appellants' claim that they have been using the forestry building as a dwelling. There is no evidence that council tax has been paid, no invoices for any provision of services or utilities, and no dated photographs or documents indicating residential use of the forestry building.

15. There is no precise and unambiguous evidence to demonstrate, even on the balance of probability, that the use of the forestry building as a single dwellinghouse commenced more than four years before the date of issue of the enforcement notice, and that the use has been continuous throughout the four year period. The ground (d) appeals must therefore fail.

The ground (e) appeals

16. Ground (e) appeals are made when it is alleged that the enforcement notice has not been properly served. The enforcement notice was attached to a gate into Wheelings Wood, rather than English Wood, but this is inconsequential. The notice was sent to the Appellants' home address in Chester and they certainly became aware of it because they have submitted appeals. The Appellants have not been at all prejudiced by the notice being attached to a gate into Wheelings Wood and the ground (e) appeals therefore fail.

John Braithwaite

Inspector