



Appeal Decisions

Site visit made on 16 January 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal A Ref: APP/M1710/C/23/3318524

Appeal B Ref: APP/M1710/C/23/3318525

Land at 311 Catherington Lane, Horndean, Waterlooville PO8 0TE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Ian Craig and Appeal B is made by Mrs Beyhan Craig, against an enforcement notice issued by East Hampshire District Council.
 - The notice was issued on 13 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the erection of 2 wooden structures forward of the principal elevation.
 - The requirements of the notice are to:
 1. Permanently remove the two wooden structures from the principal elevation of the property.
 - The period for compliance with the requirement is 2 months.
 - Appeals A and B are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Although the notice refers to 2 wooden structures it is clear from the evidence that it is concerned with two freestanding log stores located to the front of the dwelling. The dwelling is a Grade II listed building, along with the rest of the terrace of three, with the address of Tudor Cottages in the listing description.
3. The appellants' appeal submissions raise matters that relate to the planning merits of the development. As they have only appealed on ground (c), there is no deemed planning application and the planning merits of the development are not relevant to the determination of the appeal.
4. It is my duty to be up to date as to the law and to ensure that it is applied correctly to the facts as found. I must therefore be alert to and deal with any 'hidden' grounds of appeal.
5. The appellants state that the larger log store has been in its current location for five years. The period of immunity for building operations is four years, but the appellants have not provided any evidence to back up their assertion. I have not therefore dealt with it as a hidden appeal on ground (d).
6. The appellants' concerns in relation to the behaviour of the Council, neighbours and the local councillor are not matters that have any bearing on my determination of the appeal. There is disagreement between the Council and

the appellants in relation to the need for planning permission for wooden planters, but that is not a matter that is before me.

7. The neighbouring occupier at No 309 states that part of the smaller log store lies on their parking space and that their ownership of that land has been confirmed by a solicitor. There is no appeal on ground (e) that the notice was not served on every owner/occupier or person having an interest on the land. I have seen no evidence that any party has been substantially prejudiced by the failure to serve the notice on them.

The appeals on ground (c)

8. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof lies with the appellants, and the standard of proof is on the balance of probability. The appellants state that the log stores do not require planning permission because they are freestanding and are not attached to any walls or structure. The decision therefore turns on whether the log stores are development requiring planning permission, and if so, whether they are permitted development.
9. Development requires planning permission under section 57(1) of the 1990 Act. 'Development' is broadly defined in section 55(1) as, amongst other things, 'the carrying out of building, engineering, mining or other operations in, on, over or under land,...'. Such development has been held by the courts to result in some physical alteration to the land with a degree of permanence.
10. Section 55(1)A states that the term 'building operations' includes demolition, rebuilding, structural alterations of or additions to buildings, and other operations normally carried on by a person in business as a building. This list is not exhaustive.
11. A building is defined by section 336(1) as including 'any structure or erection, and any part of a building, as so defined,...'. The courts have established that in order to ascertain whether 'building operations' have taken place, it is necessary first to ask whether what has been done has resulted in the erection of a building.
12. Case law has established that there are three primary factors to be considered as to whether a temporary or moveable structure is a building. These are size, permanence, and physical attachment.

Size

13. The larger log store is stated to be 1.8 metres high by 1.7 metres wide and 0.75 metres deep and the smaller one is 1.25 metres high by 1.4 metres wide and 0.75 metres deep. The larger one is sited in front of the front door to the dwelling with the smaller one adjacent to it. They are both prominently sited to the front of the property, visible from the road and neighbouring properties. I have not been advised as to whether they were built on site, but it seems to me more likely than not that due to their size they have been at least partially constructed on site.

Permanence

14. According to the appellants, the log stores have been in their current positions for two years in the case of the smaller one, and five years in the case of the

larger one. I have seen no evidence that they have been moved since being put in place, nor that there is an intention to move them. While it may be physically possible to move them when empty of logs, in practice they have a high degree of permanence.

Physical attachment

15. I have not been advised whether they are fixed to the ground, but it seems to me likely that they are resting on their own weight, particularly when the weight of logs is taken into consideration.
16. Due to the size of the structures, their siting and permanence, they have resulted in a permanent physical change to the characteristics of the land that has significance in the planning context. Due to their size and prominent siting they are not insignificant and I do not find them to be 'de minimis'. The evidence leads me to conclude that they are buildings. It follows that the erection of the log stores was a building operation that falls within the definition of development.

Whether permitted development

17. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended grants planning permission for various forms of development. Class E Schedule 2 Part 1 grants planning permission for, amongst other things, buildings within the curtilage of the dwellinghouse. Paragraph E.1 sets out limitations to that permitted development right. Paragraph E.1(g) states that it is not permitted if it would be situated within the curtilage of a listed building. Even if it were found not to be within the curtilage of a listed building, the development would also breach the limitation in E.1(c) as the log stores are sited forward of a wall forming the principal elevation of the original dwellinghouse.
18. The two wooden structures are therefore development requiring planning permission. It follows that the appeals on ground (c) fail.

Conclusion

19. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

N Thomas

INSPECTOR