



Appeal Decisions

Inquiry held on 13 & 14 February 2024

Site visit made on 12 February 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeals A & B Refs: APP/R3650/C/23/3330042 & 3330043 Woodmans Copses, Hyde Lane, Churt, Farnham, Surrey GU10 2LP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr John Morris & Mrs Linda Morris respectively against an enforcement notice issued by Waverley Borough Council.
 - The notice, reference number EN/2023/07, was issued on 7 August 2023.
 - The breach of planning control as alleged in the notice is Without planning permission:
 - 1) The erection of a building in the approximate position marked 'A' on the attached plan ('the Building').
 - 2) An engineering operation comprising the construction of an access track and hardstanding being the area cross hatched on the attached plan.
 - The requirements of the notice are to:
 - (i) Remove the Building shown in the approximate position marked 'A' on the attached plan.
 - (ii) Remove the access track and hardstanding as identified by crosshatching on the attached plan.
 - (iii) Remove from the Land all materials resulting from the removal of the Building, access track and hardstanding.
 - The period for compliance with the requirements is: 12 months after the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), and (g) 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.
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Decision

1. It is directed that the enforcement notice is varied by substituting 'Woodmans Copses' for 'Woodmans' as the name of the site, and its requirements to be substituted for the requirements as follows:
 - '(i) That works strictly in accordance with agreed Proposed Plan Ref NG/A035 and Proposed Elevations Ref NG/A04/RevA (the Alternative Building Scheme), attached to the notice respectively at Annex 1 and Annex 2, which show a smaller non-residential building than the unauthorised building currently constructed on the Land, shall be carried out in full, failing which the entire building shall be demolished.
 - (ii) Remove all hardstanding on the Land save for that which is set out on and in accordance with Plan Ref NG/A02/RevA (the Alternative Hardstanding Scheme), attached to the notice at Annex 3, which shows a smaller area of hardstanding than that around the current unauthorised building.

(iii) Remove from the Land all excess materials resulting from the carrying out of the said works.'

The above drawings should be attached as Annexes to the notice as varied.

2. Subject to these variations, the appeals are allowed in part on ground (a), and I grant planning permission on the revised application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a (smaller) agroforestry building to serve the woodland, subject to the conditions in the Schedule at the end of this decision. The enforcement notice is upheld as varied.

Preliminary Matters

3. The appeals were originally made on all the grounds set out in the heading above. Following a discussion between the main parties during the lunch break on Day 1 of the Inquiry, it was agreed that the appellants would not pursue their residential use of the Building given the Council's recognition that a smaller building surrounded by a smaller area of hardstanding would be appropriate for forestry related (non-residential) use only. The above plans and elevations were subsequently agreed and hence are incorporated into the varied requirements of the notice.
4. I have no reason to challenge or disagree with such in terms of relevant local and national planning policies, taking into account the recent linked section 78 appeal decisions on the Land.¹ It is reasonable to allow a smaller building for the forestry related use of the Land, including for a workshop, the storage of required vehicles and welfare/office space for the owners and staff.
5. Given this agreement between the appellants and the Council, the appellants withdraw their appeals on grounds (b), (c) and (d). They are pursuing their appeals on grounds (a) and (f) only to the extent of the above agreed revised plans and elevations and are not pursuing retrospective permission for the larger unauthorised building and hardstanding area currently present on the Land, hence my upholding of the notice. They are however still appealing on ground (g), and I deal with this below.

Main Issue

6. Consequently, the only remaining main issue in these appeals is whether 12-months is a reasonable period for the appellants to cease the residential use of the building and carry out the agreed works to create a smaller building for agroforestry purposes only, with a smaller area of hardstanding surrounding it as set out in the above plans and elevations.
7. I also address the proposed conditions agreed between the main parties in respect of the revised deemed application on ground (a).

Reasons

Ground (g)

8. Ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.

¹ APP/R3650/W/23/3316737 & 3316774, Dismissed 19 July 2023

9. The appellants will need to find alternative accommodation as well as complete the above works to reduce the size and layout of the building and the size of the hardstanding on the site within the compliance period. They consider that they will need 18 months to do so, including because the price of property in the local area is expensive.
10. The appellants have clearly agreed to move out of the Building and live somewhere else. They must have agreed to this even on the basis that I could uphold the existing compliance period, notwithstanding that they maintain their ground (g) appeal. They must have therefore accepted that they have sufficient funds to do so, as well as do the above works to reduce the size of the Building and hardstanding. Consequently, the price of suitable alternative accommodation in the locality is not an issue that I need consider. Nor indeed is the cost of the works.
11. The building was erected, and the hardstanding and regraded access track were completed, in a matter of months. I see no reason why a compliance period of more than 12 months would be necessary for the new requirements of the notice. Such a period, given that the appellants must have the financial resources to carry out the works and secure a new home, is a reasonable if not a generous period in which to do so. Anything more than 12-months would be akin to a new temporary planning permission, for which there is no justification.
12. Consequently, the appeal on ground (g) fails. The compliance period remains at 12 months.

Conditions

13. The parties suggest 5 planning conditions in respect of the revised deemed planning application, as set out in the Supplementary Statement of Common Ground dated 14 February 2024.
14. Condition 1 is the standard commencement condition required by the Act, stating that the development shall begin not later than 3 years from the date of this decision. I have carefully considered whether this condition is necessary, and whether it would frustrate the purpose of the notice. I consider it is necessary because if no such condition was attached the permission would last for ever and could commence whenever in theory, which would be unacceptable. There is no reason to specify commencement within 12 months because the compliance period for the notice remains at 12 months. So, if the works are not completed as per the requirements within 12 months, the notice would not have been satisfactorily complied with. Condition 1 as suggested below is therefore acceptable.
15. Condition 2 merely clarifies the above drawings for the required works: the plans and elevations as referred to in the requirements of the notice above. I have altered the agreed requirement (i) to ensure that if the works set out in these drawings are not completed within 12 months, then the building in its entirety would have had to have been demolished.
16. Condition 3 requires a scheme to minimise light spillage from the windows during darkness, in order to minimise such inappropriate spillage within the Surrey Hills AONB. This is necessary because, although the building will not be

used residentially, it may be used for forestry related purposes in the afternoon and evening in the winter months.

17. Condition 4 is necessary in order to preclude external lighting, which would clearly be inappropriate in the AONB and unnecessary for forestry work, which would only take place during hours of daylight.
18. Condition 5 stipulates that the biodiversity net gain measures set out in the Ecological Appraisal shall be installed within 12 months of this decision, otherwise there is no certainty that they would occur.

Conclusion

19. For the reasons given above I conclude that the appeals should succeed in part only, and I will grant planning permission for the revised deemed planning application as set out in the above drawings which show the works as now required by the varied notice, which I uphold.

Nick Fagan

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings: proposed plan AC/A035, proposed elevations NG/A04/RevA, and block plan NG/A02/RevA.
3. Within 3 months of the date of this decision, a scheme to minimise internal light spillage into the night sky from the windows of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The mitigation measures shall thereafter be installed in accordance with the approved details and retained.
4. No external lighting shall be installed at the property.
5. The biodiversity enhancement measures set out in the Ecological Appraisal prepared by The Ecology Co-op dated 12 June 2023 shall be carried out in full. The Bat, Bird and Dormice boxes and the hibernacula shall be installed within 12 months of the date of this decision and be retained thereafter.

APPEARANCES

FOR THE APPELLANT: *Celina Colquhoun* (39 Essex Chambers) appointed by Janet Long would have called:

-Alan Bloor, Reading Agricultural Consultants

-Janet Long, Planit Consulting

had the appellants not agreed to cease the residential use and reduce the size of the Building and hardstanding around it as agreed with the Council, who were happy to vary the notice and grant planning permission for the smaller agroforestry development as set out in the approved drawings above.

FOR THE LOCAL PLANNING AUTHORITY: *Rowan Clapp* (Cornerstone Barristers) appointed by the Council's Solicitor, called:

-John Bennett, the Council's Senior Enforcement Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

1. The above revised drawings
2. Statement of Common Ground dated 13 February 2024
3. Supplementary Statement of Common Ground dated 14 February 2024