

Appeal Decisions

Hearing held on 3 September 2024

Site visits made on 2 and 3 September 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02nd October 2024

Appeal A Ref: APP/J2210/C/22/3313637 - Land at Beech Farm Wood

Appeal B Ref: APP/J2210/C/22/3313639 - Land at Prioress Wood

Appeal C Ref: APP/J2210/C/22/3313640 - Land at Cook Wood

Woodlands Road, Adisham, Canterbury

- 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 Lewis Parsons (Appeal A), Mrs Lettie Parsons (Appeal B), and Mr Luke Kearney (Appeal C) against enforcement notices issued by Canterbury City Council.
- The notices were issued on 24 November 2022.
- The breach of planning control as alleged in the notice in Appeal A is Without planning permission the erection of a building including the excessive laying of associated hard surfacing, in the Countryside within Ancient Woodland in an Area of Outstanding Natural Beauty.
- The breach of planning control as alleged in each notice in Appeals A and B is Without planning permission, the erection of a building including associated hard surfacing, in the Countryside within Ancient Woodland in an Area of Outstanding Natural Beauty.
- The requirements of each notice are: 1. Permanently remove the Building. 2. Permanently remove the hard surfacing. 3. Permanently remove all materials, rubble and debris arising from compliance with step 1 and 2 above from the Land.
- The period for compliance with the requirements in each notice is 6 months after the notices take effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (c), (f), and (g) of the Act. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals are dismissed and the enforcement notices are upheld with corrections and variations in the terms set out below in the Formal Decisions.

Applications for costs

1. Applications for costs were made by Mr Lewis Parsons, Mrs Lettie Parsons, and Mr Luke Kearney against Canterbury City Council. Those applications are the subject of separate decisions.

Preliminary Matters

2. The appellants submitted Statutory Declarations (SDs) in response to an invitation for comments as to whether the appeals should proceed as a Hearing or an Inquiry. I initially refused to accept that late evidence because it was submitted outside of the appeal timetable without good reason.

However, the week before the Hearing, the Council suggested it would concede the appeals under ground (c) if the late evidence were to be accepted. On this basis, I looked at the late evidence and decided to accept it. The Council clarified at the Hearing that it does not dispute the claims made in the SDs, but it does not concede the appeals under ground (c).

3. The notices refer to hard surfacing associated with buildings. There are extensive areas of hard surfacing at each of the 3 sites, including tracks through the woodland. At least some of those tracks existed prior to the appellants purchasing the land and have had further aggregate applied to them. There are no plans identifying the hard surfacing referred to by each notice. The Council claims the notices only relate to the hard surfacing immediately around each building, comprising areas of approximately 50 square metres in Appeal A, approximately 70 to 80 square metres in Appeal B, and approximately 30 to 40 square metres in Appeal C¹.
4. I saw that there is no clear difference between the hard surfacing immediately around each building and the hard surfacing which makes up various tracks. It is entirely unclear which hard surfacing is referred to by each notice, and as such they fail to comply with section 173(2) of the Act and are invalid. Furthermore, the notices erroneously refer to the sites being within an Area of Outstanding Natural Beauty, when they lie outside the boundaries of what is now the Kent Downs National Landscape (the NL).
5. I can correct the notices without causing injustice to any parties by deleting references to hard surfacing and other unnecessary text within the descriptions of the alleged breaches, and Step 2 of each notice. This does not prevent the Council from taking further enforcement action against any unauthorised hard surfacing under section 171B(4)(a) of the Act.
6. Various representations refer to claimed residential uses of the buildings and post boxes, fencing, CCTV cameras, and lighting which are not affixed to the buildings. As these do not form part of the alleged breaches of planning control they are outside the scope of these appeals. External lighting affixed to the buildings forms part of the alleged breaches, which I have considered as part of the appeals under ground (a).

Ground (c)

7. To succeed under this ground of appeal the appellants need to demonstrate, on the balance of probabilities, that the erection of the buildings did not constitute breaches of planning control.
8. Section 57 of the Act sets out that planning permission is required for the carrying out of development. Section 55 provides the relevant meaning of development, which includes the carrying out of building operations. There is no dispute that the erection of the buildings involved building operations which require planning permission. Planning permission is granted for the erection of a building reasonably necessary for the purposes of forestry, subject to conditions and limitations, under the provisions of Article 3(1) and Class E of Part 6, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

¹ As described in the relevant Officer Reports

9. Each of the appellants sought prior approval separately for the erection of forestry buildings in 2019, in accordance with Condition E.2(1)(a) of Class E². The Council confirmed that its prior approval was not required in each case, meaning that planning permission was granted provided the buildings complied with the description of permitted development and the other conditions and limitations set out in Class E.
10. To clarify, Condition E.2(1)(a) requires the developer to apply to the local planning authority (LPA) for a determination of whether prior approval is needed for the siting, design and external appearance of the building. Condition E.2(1)(b) requires the application to be accompanied by a written description of the development, the materials to be used, and a plan indicating the site. Where the LPA decide that prior approval is not required, Condition E.2(1)(e)(ii) states that the development must, except to the extent that the LPA otherwise agree in writing, be carried out in accordance with the details submitted with the application.
11. Condition E.2(1)(e)(ii) means what it says and is not ambiguous. There is no indication in the GPDO that Condition E.2(1)(e)(ii) only applies to the details specified in Condition E.2(1)(b). It is common for further details to be provided as part of an application to show why prior approval is not required or should be granted. Therefore, where details further to those specified in Condition E.2(1)(b) are submitted as part of a prior approval application, and the LPA decides that prior approval is not required, it stands to reason that Condition E.2(1)(e)(ii) applies to all details submitted with the application.
12. Each of the applications included ground floor, elevation, and site location plans identifying the proposed positions and orientations of each building, even though such details were not needed to comply with Condition E.2(1)(b). Those plans formed part of the details submitted with the applications, and the buildings therefore needed to be erected in accordance with those details to achieve compliance with Condition E.2(1)(e)(ii), unless otherwise agreed in writing by the Council.
13. The floor and elevation plans relevant to Appeal A show a building with a pair of double doors on its north elevation, and a single door on the lefthand side of its east elevation. The building, as it currently exists, has a pair of double doors on its south elevation, no doors on its north elevation, and a single door on the righthand side of its east elevation.
14. The floor and elevation plans relevant to Appeal B show a building with a pair of double doors on its south elevation and a single door on the lefthand side of its west elevation. The building, as it currently exists, is orientated differently, with double doors on its southeast elevation and a single door on the righthand side of its northeast elevation.
15. The floor and elevation plans relevant to Appeal C show a building with a pair of double doors on its southwest elevation, and a single door on the lefthand side of its northwest elevation. The building, as it currently exists, has 2 pairs of double doors on its northeast elevation, no doors on its southwest elevation, and a single door on the righthand side of its northwest elevation.

² The Council's refs: 19/00049 in Appeal A, 19/01843 in Appeal B, 19/01060 in Appeal C

16. Even in the absence of topographical plans or detailed surveys of the buildings, it is evident that the door openings on each of the buildings are inconsistent with those shown on the floor and elevation plans. The Council did not raise concerns in these regards until the Hearing. However, the onus throughout the appeals has been on the appellants to show, on the balance of probabilities, that the buildings were substantially completed in accordance with the details submitted as part of the prior approval applications.
17. The subsequent moving of doors to different elevations and/or ends of elevations are significant changes which I would have expected the appellants to have described and explained in detail prior to the Hearing. These are important deviations from the plans submitted with the prior approval applications which materially affect the external appearance of the buildings. The appellants were given the opportunity to explain the circumstances of these changes at the Hearing and claimed that the positions of the doors were changed to facilitate the use of the buildings after the buildings were complete.
18. The SDs state the buildings in Appeals A and C were completed in September 2020 and that the building in Appeal B was completed in July 2021. On the evidence, I find it very difficult to accept that all 3 appellants substantially completed each of the buildings separately in accordance with the details submitted as part of the prior approval applications, only to change external door positions as set out above. While internal alterations would not necessarily create 'scarring' or obvious signs that they were carried out after the buildings had been substantially completed, I would expect to see indications that external doors had been moved if this happened after that point. I have not been referred to any such physical marks on the buildings.
19. I appreciate that the door openings shown on the plans would not relate well to access tracks, hard surfacing, and clearings within the woodland. However, hard surfacing and clearings were created before or alongside the erection of the buildings. Overall, the evidence leads me to doubt external doors were ever in the positions shown on the plans. I therefore assign very little weight to the undetailed claims made in the SDs and elsewhere that the buildings were built in accordance with the approved plans.
20. The prior approval procedure is a light touch process, where the principle of development has been established³. This does not mean the conditions attached to the planning permissions granted by the GPDO do not need to be complied with fully to ensure development is lawful.
21. Aside from whether the buildings are reasonably necessary for the purposes of forestry, and irrespective of whether any internal alterations were carried out before or after the buildings had been substantially completed, the evidence shows it is more likely than not that the developments were not carried out in accordance with the details submitted with the prior approval applications. As a matter of fact and degree, Condition E.2(1)(e)(ii) of Class E of Part 6, Schedule 2 of the GPDO has not been complied with in any of the appeals. I am not aware of any other planning permissions the buildings may

³ The Planning Practice Guidance, Paragraph: 028 Reference ID: 13-028-20140306 Revision date: 06 03 2014

benefit from, and in the absence of planning permissions they are in breach of planning control.

22. The appeals under ground (c) must therefore fail.

Ground (a) and the deemed applications for planning permission

23. The main issues are:

- The effect of the developments on the character and appearance of the area, with particular regard to an Area of High Landscape Value (AHLV) and the settings of the NL and the Woodlands Park (Adisham) Conservation Area (the CA); and
- The effect of the developments on biodiversity, with particular regard to ancient woodland.

Character and Appearance

24. The sites are within an AHLV, defined by the Canterbury District Local Plan (2017) (the CDLP). The southwestern boundaries of the sites in Appeals B and C abut the boundaries of the NL and the CA.
25. The significance of the CA, so far as relevant to these appeals, relies to a large extent on its leafy rural character, demonstrated by the narrow carriageway running through thick woodland, alongside an ornate historic water tower. There are a few secluded residential plots at the eastern end of the CA, typical of the countryside location, but it is otherwise a tranquil and isolated area characterised by its undeveloped natural appearance and surroundings. This and the undeveloped nature of the woodland and surrounding fields make a positive contribution to the landscape character of the AHLV.
26. The buildings have simple, utilitarian finishes on account of their black lap cladding, lack of windows, and basic door openings. They have tall, steeply pitched roofs and are undoubtedly large buildings which form unexpected features of the woodland, especially in such proximity to each other. Their scale and form are surprising for the size of woodland in each appeal. In addition, 2 cameras with motion sensor lighting are affixed to each building, and there is an additional external light fitting to the building in Appeal C.
27. The buildings were not clearly visible from the public highway during my visit, but it has been claimed that they can be seen in winter months due to seasonal leaf fall. It is likely that the external lighting affixed to the buildings would be visible from Woodlands Road to varying degrees during hours of darkness.
28. The Council previously considered the siting, design and external appearance of the buildings acceptable when it concluded that they did not require prior approval on the basis that the principle of the buildings had already been accepted. However, despite their basic finishes and limited visibility from public vantage points, the buildings do not read as simple woodland management buildings on account of their excessive scale and unusual form.
29. Notwithstanding the Council's previous decisions, the buildings are odd and uncharacteristic individual developments in this isolated countryside location,

which are unsympathetic to the undeveloped nature of the landscape. For these reasons the location, scale and design of the buildings harm the local landscape character of the AHLV. This would remain the case even if I were to accept that they are used solely for forestry purposes.

30. The buildings harm the setting and the significance of the CA on account of their external light fittings, but that harm could be addressed by the removal of those lights. This could be required by conditions if planning permission were to be granted. The buildings are therefore capable of preserving the appearance of the CA.
31. The NL covers extensive areas to the south of Woodlands Road. As a whole, the woodland makes a positive contribution to the landscape and scenic beauty of the NL, but the presence of the buildings has a negligible effect on the NL and its setting. This is because they are not seen or experienced in that wider context, being located outside the NL boundary. The buildings do not therefore harm the landscape or scenic beauty of the NL, or its setting.
32. Overall, the buildings do not harm the settings of the NL or the CA, but they harm the character and appearance of the area and the local landscape character of the AHLV individually. They are therefore contrary to Policies DBE3, LB2 and LB4 of the CDLP. These seek to promote, protect and enhance the distinctive character of the District through development which reinforces and positively contributes to its local context, including local landscape character, amongst other things.
33. The buildings do not conflict with Policy LB1 of the CDLP, which seeks to conserve and enhance the natural beauty of the NL.

Biodiversity

34. The sites comprise ancient woodland. The National Planning Policy Framework (the Framework) explains that ancient woodland is an irreplaceable habitat which is technically very difficult, or would take a very significant time, to restore, recreate or replace once destroyed. Paragraph 186(c) of the Framework sets out that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists.
35. There would have been disturbance to irreplaceable habitat prior to the appellants' interests in the sites, but the evidence does not support the appellants' claim this was "considerable". The buildings have been constructed on raft foundations, but I do not accept that any loss or deterioration of irreplaceable habitat by the developments is likely to be limited. Aerial photographs indicate large areas of ancient woodland have been lost in the process of the buildings being erected. Hardstanding within each site would have also caused a loss or deterioration of irreplaceable habitat, but that does not negate or justify the harm caused by the buildings.
36. I was referred to woodland management plans provided at Appendix 10 of the appellants' combined Statement of Case. These documents comprise completed copies of the Forestry Commission's templates for Woodland Condition, Opportunity and Threat Assessments (COT assessments). The

details provided in the COT assessments are brief and pre-date the erection of the buildings. I have not been referred to any updated woodland management plans, and the felling licences do not provide details of any ecological benefits or biodiversity aims.

37. As such, there is a lack of detail as to how any ecosystems have been or will be managed. The COT assessments and the felling licences do not explain how the buildings are required for the protection or enhancement of ancient woodland, or how any loss or deterioration of irreplaceable habitat resulting from the erection of the buildings is justified. I am therefore unconvinced that the ancient woodland would die or cease to exist if it is not managed as set out in these documents or as otherwise described by the appellants.
38. I appreciate that the appellants thought the buildings benefitted from planning permissions granted by the GPDO, which may explain why no detailed ecological surveys or biodiversity assessments were carried out before the buildings were erected. However, there is a paucity of information relating to the effect of the buildings on biodiversity, and the evidence indicates that there has likely been some loss or deterioration of irreplaceable habitat. Indeed, in Appeal A, it was agreed that the planting of laurel for screening purposes was inappropriate, which suggests a less than ideal approach to woodland management has been adopted in that case, even if some laurel previously existed.
39. With regard to the Framework, no wholly exceptional reasons have been put forward to justify any loss or deterioration of irreplaceable habitat. Furthermore, no evidence has been put forward to show suitable compensation strategies could potentially be created. The lack of certainty in this regard means it would be inappropriate to grant planning permission subject to conditions requiring the approval of ecological management plans or any other potential compensation strategies.
40. I therefore find that the buildings are likely to have resulted in the loss or deterioration of irreplaceable habitat, contrary to Policies LB8 and LB9 of the CDLP. These require, amongst other things, developments to show how they will retain, protect and enhance notable ecological features of conservation value, such as ancient woodland, and avoid a net loss of nature conservation value. For the same reasons, the buildings are also contrary to paragraph 186(c) of the Framework.

Other Matters

41. It is not open to the appellants to erect replacement buildings in accordance with the details previously submitted to the Council, as this would breach condition E.2(1)(f)(ii) of Class E, Part 6, Schedule 2 of the GPDO. However, it is open to the appellants to seek prior approval for the erection of new buildings under the provisions of Class E. The Council would not be bound by its previous decisions referred to above to grant prior approval or confirm prior approval is not required for such buildings. Moreover, based on everything I have read and seen, there is significant uncertainty as to whether the Council would take the same approach it did previously.
42. When reaching its previous decisions, the Council relied on the advice of an external consultant. That consultant did not give evidence to the Hearing and

I have not been provided with the full reasoning which led to them advising that each building was reasonably necessary for the purposes of forestry. Based on everything I have read, heard, and seen, I consider it unlikely that there is more than a theoretical possibility that the appellants could erect replacement buildings with the same harmful effects as the existing buildings if the notices are upheld. I therefore assign little weight to claims relating to the appellants' fallback positions.

43. Notwithstanding the above, there are legitimate purposes and economic, ecological, and amenity benefits associated with the management of woodland at each site. The appellants have outlined their woodland management intentions and explained why they consider the buildings are needed to facilitate that effectively and manage woodland elsewhere. I have seen the buildings are used to securely store a range of woodland management machinery, tools and equipment and could act as welfare space for forestry workers.
44. However, I remain unconvinced that appropriate management of the woodland in each case, or the potential benefits set out by the appellants, depend on any of the buildings. There is little clear reasoning to explain why the necessary machinery, tools and equipment could not be appropriately stored elsewhere. Similarly, although I was referred to the tax benefits associated with the appellants having their own machinery and equipment, it is unclear how the economic benefits of the woodland or the development and diversification of rural businesses are enabled by the buildings.
45. It has not therefore been shown that the buildings are required or necessary to meet the aims of Policy LB10 of the CDLP. For the above reasons the buildings do not draw support from policies LB4, LB10 or SP4 of the CDLP. Any support offered by the Framework, including paragraphs 88 and 180, is limited.
46. Finally, the notices do not require the land to be restored to its former condition and it has been suggested that compliance would not address any harm caused to biodiversity by the buildings. Although the land would not be restored fully to its condition before the breaches took place, I am satisfied that compliance with the notice would have a beneficial effect on biodiversity through the removal of the buildings in their entirety, which includes their concrete bases.

Conclusions on Ground (a) and the deemed applications for planning permission

47. I have identified harm caused by the buildings individually to the character and appearance of the area and biodiversity, which is contrary to the development plan as a whole. That harm cannot be addressed by conditions attached to planning permissions. Furthermore, it has not been shown that benefits associated with the buildings, such as secure and dry storage and the provision of welfare space which may support woodland management and rural businesses, outweigh that harm. As such, in each appeal I find that there are no other considerations, including the Framework, which indicate my decisions should be made other than in accordance with the development plan.

48. The appeals under ground (a) therefore fail and the deemed applications for planning permission are refused.

Ground (f)

49. To succeed under this ground of appeal the appellants need to show that the steps required to be taken exceed what is necessary to remedy the breaches of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breaches.

50. The notices require the buildings to be removed from the land and as such their purpose is to remedy the breaches. No alternative steps have been put forward which would achieve this. The conditions attached to the planning permissions granted by the GPDO cannot be complied with retrospectively, and I cannot find any obvious alternatives which would achieve the purpose of the notices with less costs or disruption.

51. The appeals under ground (f) therefore fail.

Ground (g)

52. To succeed under this ground of appeal the appellants need to show that 6 months falls short of what should reasonably be allowed for the notices to be complied with.

53. The appellants request 9 months to comply with the notices as machinery would need to be sold which is unique to the sites, or alternative storage space would need to be found. It has been suggested that preparations should have commenced when the notices were issued, but the appellants were entitled to assume the appeals would succeed.

54. The buildings contain large quantities of tools, machinery and equipment and I can understand why the appellants may want to store these within secure and dry spaces, rather than outside within the secluded woodland. Considering the uniqueness, amount, and size of tools, machinery and equipment which may need to be stored elsewhere or sold, alongside the extent of works needed to demolish the buildings, 9 months would be a reasonable period to comply.

55. The appeals under ground (g) therefore succeed and I shall vary the notices accordingly.

Conclusions

56. For the reasons given above, I conclude that the appeals should not succeed, other than under ground (g). I shall uphold the enforcement notices with corrections and variations and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the Act.

Formal Decisions

Appeal A

57. It is directed that the enforcement notice is corrected and varied by:

- Deletion of the text 'including the excessive laying of hard surfacing, in the countryside within ancient woodland in an area of outstanding natural beauty (AONB)';
- Deletion of the text '2. Permanently remove the hard surfacing'; and
- Deletion of the text 'Six' at section 6 of the enforcement notice and its substitution for the text 'Nine'.

58. Subject to the corrections and variation, 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 Act.

Appeal B

59. It is directed that the enforcement notice is corrected and varied by:

- Deletion of the text 'including associated hard surfacing, in the countryside within ancient woodland in an area of outstanding natural beauty (AONB)';
- Deletion of the text '2. Permanently remove the hard surfacing'; and
- Deletion of the text 'Six' at section 6 of the enforcement notice and its substitution for the text 'Nine'.

60. Subject to the corrections and variation, 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 Act.

Appeal C

61. It is directed that the enforcement notice is corrected and varied by:

- Deletion of the text 'including associated hard surfacing, in the countryside within ancient woodland in an area of outstanding natural beauty (AONB)';
- Deletion of the text '2. Permanently remove the hard surfacing'; and
- Deletion of the text 'Six' at section 6 of the enforcement notice and its substitution for the text 'Nine'.

62. Subject to the corrections and variation, 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 Act.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Judith Norris	The appellants' planning agent
Lewis Parsons	The appellant in Appeal A
Lettie Parsons	The appellant in Appeal B
Luke Kearney	The appellant in Appeal C

FOR THE LOCAL PLANNING AUTHORITY:

Vic Hester	The Council's in-house planning consultant
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INTERESTED PARTIES:

Jack Lowe	Local resident, Chair of Watch Over Adisham Woods (WOAW)
David Conder	Local resident, WOAW member
Philippa Nice	Local resident
Simon Greenstreet	Local resident
Jilly Bradshaw	Local resident, WOAW member
Guy Steward	Local resident, WOAW member
William Turrell	Local resident
Caroline Armstrong	Local resident
Jean Swan	Adisham Parish Council
David Bradshaw	Local resident, WOAW member
Tabitha Nice	Former local resident
Andrew Cullinane	Local resident
Ben Linklater	Local resident

DOCUMENTS PROVIDED AT THE HEARING

- Signed Statement of Common Ground with copies of felling licences
- Copies of prior approval application references: 19/00049, 19/01060, and 19/01843
- Aerial photograph said to date from 2021
- The Woodlands Park (Adisham) Conservation Area boundaries plan