

Appeal Decision

Site visit made on 2 September 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03rd October 2024

Appeal Ref: APP/J2210/C/22/3313695

Land at Little Nash Wood, Woodlands Road, Adisham, Canterbury

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mrs Kristina Inman against an enforcement notice issued by Canterbury City Council.
 - The notice was issued on 24 November 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a building including associated hard surfacing, the stationing of x 1no. touring caravans and the siting of x 2no. shipping containers within Ancient Woodland in an Area of Outstanding Natural Beauty.
 - The requirements of the 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. 4. Permanently remove x 1 no. touring caravan. 5. Permanently remove x 2 no. shipping containers.
 - The period for compliance with the requirements is: six months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Act. 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 corrected by the deletion of the text 'including associated hard surfacing' and '2. Permanently remove the hard surfacing'. Subject to the corrections 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.

Preliminary Matters

2. It is incumbent on me to get the notice in order. The notice refers to hard surfacing which is not identified in any plans accompanying the notice. The Council's officer report refers to an area of approximately 100 square metres being hard surfaced. However, there are extensive areas of hard surfacing at the site, including tracks running through the woodland, which are seemingly not referred to in the officer report. I have also been referred to hard surfaced tracks which are claimed to be authorised at the site. All of this makes it unclear which hard surfacing the notice refers to. The notice therefore fails to comply with section 173(2) of the Act and is invalid.
3. I shall correct the notice without causing injustice to any parties by deleting references to hard surfacing within the description of the breach, together

with Step 2 of the notice. With regard to section 171B(4)(a) of the Act, this does not prevent the Council from taking further enforcement action against any unauthorised hard surfacing.

4. Many representations have been made by interested parties referring to a claimed residential use of the land and various items on the land such as post boxes and fencing. These fall outside the scope of the appeal because they are not mentioned in the notice.
5. A caravan and shipping containers referred to by the notice have since been removed from the land. The appellants submissions make it clear that planning permission is not sought for those items.

Main Issues

6. The main issues are:

- The effect of the development on the character and appearance of the area, with particular regard to an Area of High Landscape Value (AHLV) and the Kent Downs National Landscape (the NL); and
- The effect of the development on biodiversity, with particular regard to ancient woodland.

Reasons

Character and Appearance

7. The site is a parcel of woodland within the NL and an AHLV, as defined by the Canterbury District Local Plan (2017) (the CDLP). It is a secluded countryside location surrounded by other woodland and open fields, characterised by its undeveloped and tranquil setting. There is a small collection of dwellings and an ornate historic water tower nearby, but otherwise the character and appearance of the area is distinctly rural and isolated.
8. The building is of simple utilitarian appearance on account of its lack of windows and basic door openings, with black lap cladding. It has a steep pitched roof and a wood burner flue which are more reminiscent of a domestic building, rather than a building specifically designed and used for forestry purposes in a modest area of woodland. It cannot be seen from public viewpoints as it is enclosed by thick tree planting, but it remains an odd and uncharacteristic feature within the undeveloped woodland on account of its scale and form.
9. The undeveloped nature of the woodland makes a positive contribution to the landscape of the NL and the AHLV. As an unusually large and permanent uncharacteristic feature within the remote woodland, the building harms the character and appearance of the area, including the landscape of the NL and the AHLV.
10. There are small differences between the external appearance of what has been built and that shown on plans which formed part of an application for prior approval¹. However, the building is an odd and uncharacteristic development in this isolated countryside location. This would remain the case

¹ The Council's ref: CA/19/01926

even if I were to accept that it is used solely for forestry purposes. The building therefore has a significant harmful effect on the undeveloped nature of the local landscape. Despite its limited visibility from public vantage points and basic finish, the building does not read as a simple woodland management building on account of its excessive scale and unusual form.

11. The building harms the character and appearance of the area and is unsympathetic to the undeveloped landscape character, including that of the AHLV and the NL. It is therefore contrary to Policies DBE3 and LB1 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 landscape character, amongst other things. Policy LB1 specifically seeks to conserve and enhance the natural beauty of the NL.

Biodiversity

12. The site comprises 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.
13. It is claimed that the building is required for woodland management activities, but very little detail has been provided to show this is the case, or to show the development has not resulted in the loss or deterioration of irreplaceable habitat. Aerial photographs indicate large areas of ancient woodland have been lost in the process of erecting the building. Hardstanding would have also caused a loss or deterioration of irreplaceable habitat, but that does not negate or justify any harm caused by the building.
14. On the evidence, I consider it likely that the erection of the building has led to at least some loss or deterioration of irreplaceable habitat. No wholly exceptional reasons have been put forward to justify this, and it has not been shown there are potential suitable compensation strategies. The lack of certainty in this regard means it would be inappropriate to grant planning permission subject to conditions requiring the approval of any potential compensation strategies.
15. I therefore find that the building is likely to have resulted in the loss or deterioration of irreplaceable habitat, contrary to Policy LB8 of the CDLP. This requires, amongst other things, development to show how it will retain, protect and enhance notable ecological features of conservation value, such as ancient woodland. For the reasons set out above, the building is also contrary to paragraph 186(c) of the Framework.

Other Matters

16. It is claimed that the building is used for forestry purposes, to maintain the woodland. Very little information has been provided to show the building is required for such purposes, or that any need or benefits associated with the

building outweigh the harm it causes to the character and appearance of the area and biodiversity.

17. I have been referred to some, but not all, of the comments made by Rural Planning Limited in respect of the prior approval application for a similar building at the site. However, the Council's previous confirmation that prior approval was not required for a similar building did not establish any need for a building at the site. Furthermore, even if the building the subject of the notice is reasonably necessary for the purposes of forestry, this does not mean any need for the development outweighs the harm it causes.
18. No appeal has been made under ground (c) and the appellant refers to the building erected as 'an amended form' of the building which was the subject of the prior approval application. There is little information before me to show that a building could be erected at the site without the need for express planning permission. I do not therefore consider there to be more than a theoretical possibility that a replacement building could be erected without the need for express planning permission which would have the same effects as the building the subject of the notice.
19. It has not been shown that the building is required or necessary to meet the aims of Policy LB10 of the CDLP. For the above reasons the building does not draw support from Policies LB4, LB10 or SP4 of the CDLP, and any support offered by the Framework, including paragraphs 88 and 180, is limited.

Conclusion

20. The building harms the character and appearance of the area, including the landscape of an AHLV and the NL, and has likely resulted in the loss or deterioration of irreplaceable habitat, harmful to biodiversity. The building is therefore contrary to the development plan taken as a whole and there are no other considerations, including the Framework, which indicate planning permission should be granted.
21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR