



Appeal Decisions

Hearing held on 10 September 2024

Site visit made on 10 September 2024

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2024

Appeal A Ref: APP/B1740/C/23/3331915

Appeal B Ref: APP/B1740/C/23/3331916

Land at 77 Burley Road, Bockhampton, Bransgore, BH23 7AJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Andy Boulton and Appeal B by Mrs Tina Boulton against an enforcement notice issued by the New Forest District Council.
- The notice was issued on 13 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, construction of a single storey building on the Land shown in the approximate position marked with a black cross on the attached plan.
- The requirements of the notice are to:
 - i) Demolish the single storey building that is located in the approximate position marked with a black cross on the attached site plan and remove all resulting materials from the Land.
- The period for compliance with the requirement is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Appeal C Ref: APP/B1740/X/24/3340260

77 Burley Road, Bockhampton, Bransgore, BH23 7AJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Andrew and Tracey Boulton against the decision of the New Forest District Council.
- The application ref 23/11029, dated 25 September 2023, was refused by notice dated 21 November 2023.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the construction of an outbuilding under Class E of GDPO.

Decision

Appeals A and B

1. It is directed that the enforcement notice is varied by: the deletion of the words " i) Demolish the single storey building that is located in the approximate position marked with a black cross on the attached site plan and remove all resulting materials from the Land.", and their substitution with the words " i) Demolish the single storey building that is located in the approximate position marked with a black cross on the attached site plan; and ii) Remove all resulting materials from the Land" in paragraph (5) of the notice and the

deletion of 2 months and the substitution of 6 months as the time for compliance.

2. Subject to these variations, the appeals are dismissed and the enforcement notice is upheld.

Appeal C

3. The appeal is dismissed.

Applications for costs

4. At the Hearing a written application for a full award of costs for these appeals was made by Mr and Mrs Boulton against the New Forest District Council. This application is the subject of a separate decision.

Procedural and background matters

5. At the Hearing it was confirmed that Appeal A and Appeal B are proceeding under the grounds set out above, there being no appeal under ground (a). Appeal C is an application for a Certificate of Lawful Use or Development (LDC), where the onus of proof is on the appellant to show that, on the balance of probability, the proposed development would have been lawful, at the time of the application. Therefore, I should explain that the merits of the development are not relevant to these appeals.
6. The description of the proposal on the appellants application form is 'Construction of outbuilding under class E of GDPO. See plans for details drawings and design.'. The Council's decision notice expands this description to 'development consisting of construction of outbuilding for General Permitted Development) (England) Order 2015 (GDPO)'. However, as there is no material difference in these descriptions, for the purpose of determining these appeals I shall use the appellants original description on their application form and this is reflected in the banner heading above.
7. As set out above there are three appeals on this site. In essence, they differ only in respect of the location of the building, since the proposal for appeal C would involve dismantling the building and relocating it into a different part of the appeal site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
8. An agreed and signed hard copy of a Statement of Common Ground (SoCG) was received at the Hearing. However, it became clear that paragraph 5.1 (i), and the additional reference to the stove flue, had been missed by the appellants on signing. Thus, I accept that this element of the SoCG is not agreed.
9. The appeal site lies to the north of Burley Road, to the west of Bransgore, within a small group of residential properties. The appeal site comprises a residential dwelling, a range of outbuildings and several polytunnels used in connection with the appellants nursery business. An additional plot of land lies to the north with its own access. It was agreed that this land falls outside the appeal site. The appeal site lies within the South Hampshire Green Belt.

Main issues for the appeals

10. As set out above, there are a number of overlapping matters that are relevant to all three appeals, in particular matters of the appropriate planning unit and curtilage. For this reason, I shall consider these first in the context of all three appeals, before moving on to consider where there are areas of difference for Appeal C.
11. Having considered the evidence I consider that the main issues for these appeals are:
 - The correct planning unit(s) for the appeal site; and
 - Whether the appeal building, as built and as proposed, would be permitted by Class E (Schedule 2, Part 1) of the GDPO.

Reasons

Appeals A and B (Ground (c)) and Appeal C

12. The s174 appeals have been lodged on ground (c), that the matters stated in the notice do not constitute a breach of planning control. This is a legal ground where the burden of proof is on the appellants to make out the case that there has not been a breach of planning control. Similarly Appeal C, seeks to demonstrate that the proposed and relocated building benefits from the same rights conveyed by Class E of the GDPO. The relevant test for the evidence is on the balance of probability.
13. The two-storey dwelling lies towards the southwest corner of the site. At the time of my site visit, to the rear of the dwelling there was an area of manicured grass with ornamental shrubs. There were two similarly landscaped areas, one between the front of the dwelling and Burley Road and another just to the north of the appeal building. There were a small number of polytunnels and frames located towards the north and eastern boundaries.
14. All parts of the appeal site are served by a single vehicular driveway from Burley Road, with dedicated parking for several vehicles and a sign written business-related trailer. A building referred to as 'the Annex' was sited adjacent to this parking area and is believed to have replaced a former commercial greenhouse. It is now understood to be occupied by the appellants son. A brick-built garage was set at an angle to the dwelling. This was being used for general domestic storage. A shaded glass greenhouse containing young plants and several smaller storage sheds were sited within this part of the site. The appeal building, has been located between the garage and these other buildings.
15. The appeal building has been substantially completed with plastered internal walls and fitted with laminate flooring. However, further internal fittings, decorating and electrical works appeared to be incomplete. It was divided into three rooms, including a fitted bathroom with a sink, toilet and shower. There were no kitchen units, but a small quantity of storage and gym equipment were evident. A log burning stove with an external flue has been fitted in the largest of the rooms.
16. It is the appellants case that the building is sited within the curtilage of the dwelling and benefits from permitted development rights conveyed by Class E

(Schedule 2, Part 1) of the GDPO. They provided an aerial photograph dated July 2021, in their final comments. The photograph has been annotated into three distinct areas outlined in red, blue and yellow respectively. This is to help demonstrate their submissions in respect of the use of the site, and was used for reference purposes at the hearing.

17. The crux of their case is that the areas edged in red and blue both form part of the curtilage of the dwelling and this is where the appeal building has been sited (Appeals A and B). The LDC (Appeal C) proposes that the building would be relocated into the area annotated red. They accepted that the status of the remaining site area edged in yellow is less clear.
18. The Council acknowledges that at the time it was built, the building met the various conditions of Class E, in terms of its dimensions and proximity to the boundary. It was agreed that the flue was added several years later, and its addition would not in itself render the whole building unlawful. However, it is their position that the appeal site comprises a single planning unit in a mixed use and Class E rights therefore do not apply.
19. I should explain that for permitted development rights under Class E to apply, the use of the host development must be regarded to be in Class C3 use (residential) of the Use Classes Order 1987. Schedule 1 Part C. Article 3(6) goes on to specify a number of sui generis uses. However, in addition to these a mixed use site would also be considered to be a sui generis use, thus falling outside any of the use classes and the scope of Class E of the GDPO.
20. To establish the correct use of the appeal site it is firstly necessary to consider the appropriate planning unit(s) and the uses taking place on the appeal site, before considering whether the appeal building is, or would be, sited within the curtilage of the dwelling, for the purposes of applying Class E.
21. In general, the starting point is that the unit of occupation is the appropriate planning unit, unless smaller planning unit(s) can be identified. At the Hearing it was confirmed that the appeal site was purchased by the appellants some 32 years ago. At this time the dwelling and land included an ongoing nursery business that had been operating for at least 5 years prior to their purchase. At this time there were a number of polytunnels, greenhouses and outbuildings on the land, some associated with the nursery and others the dwelling. From the evidence heard at the Hearing, including that given by the interested party, the positioning of these various structures seems to have changed and evolved over the intervening years.
22. At my visit there were no formal fenced boundaries within the appeal site separating the business from the residential use, although there were several planted beds that provided some limited visual separation. The nursery business appears to be of a scale where it could not reasonably be described as secondary to the residential use. Accordingly in my judgement, the two uses co-exist across the whole site.
23. This view seems to be supported by the proximity of one of the greenhouses to the dwelling and garage and the residential annex that replaced another commercial greenhouse, that was demolished in 2017/2018. The shared access running adjacent to the dwelling, provides parking for both the residential uses and the business, including the liveried trailer. Moreover, it is understood that

business related plants are stored periodically in this area whilst waiting to be transported from the site.

24. Overall, in my judgement and on the particular facts before me I am satisfied that on the balance of probability, the appeal site comprises one planning unit that is in a sui generis mixed use. My finding in respect to the planning unit is pertinent for all three appeals. Consequently, given my finding there is no need to consider the question of curtilage.
25. My attention has been drawn to the proposed plans for Appeal C. The appellants accepted that these included a stove flue installed on the roof. The overall height of the roof shown on the submitted plans was some 3.995m, excluding the flue. The inclusion of the flue would consequently appear to exceed the height limitations permitted by Class E and thus would not in any event constitute permitted development.
26. Consequently, I find that appeals A and B on ground (c) fail and the Council's decision to refuse the LDC application (Appeal C) was well founded.

Appeals A and B - ground (f) and Ground (g)

27. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)), or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case the Council are seeking to remedy the breach of planning control through the demolition of the building and the removal of the resultant materials.
28. Turning to ground (g), for an appeal under ground (g) to succeed, it is necessary to consider whether the compliance period of 2 months is too short. From the evidence there is clearly some overlapping of the issues for these grounds and for this reason I shall consider them together.
29. The gist of the appellant's case is threefold: Firstly, that it would be possible to impose a condition to ensure that the building remains incidental to the residential use. This would overcome the Council's concerns about how the building would be used in the future; Secondly if Appeal C was allowed, they would like to be able to reuse the materials from the building, and re-site it in accordance with those plans; and Thirdly that the building was sited on pre-existing concrete foundations and requiring the removal of this material is excessive. In combination, they submit that the requirements are excessive.
30. Taking the appellants first point, there is no ground (a) appeal and therefore the scope to consider the merits of the development are limited. Moreover, with no deemed application it would not be appropriate to impose conditions to control the use of the appeal building.
31. With regard to the second point, at the Hearing it was accepted that in the event that Appeal C succeeds, the appeal building could be rebuilt in the proposed location. Even if Appeal C were to be dismissed, then the appellants would like to have the opportunity to recoup some of the costs of the project by selling the materials, rather than simply disposing of them. They argue that this would take some time to organise.

32. Turning to their third point, I have little evidence before me to demonstrate that the appeal building was built on an existing concrete base, or to what extent that original base still exists. Furthermore, the appellants confirmed that a second base was laid on top of the original. The Council were unable to provide any assistance but agreed that a requirement to restore the land to its condition before the breach took place would satisfy their concerns. I have no reason to disagree and am satisfied that I can vary the steps required by the notice to reflect this without causing injustice.
33. I share the Council's concerns that, given the timescale for implementation of an LDC, they would not wish to see the dismantled materials remaining on site for an extended period. Therefore, along with the variation set out above, it was agreed that the compliance period requiring demolition of the building and restoration of the land to its former condition and all resultant materials removed, could be extended to six months under ground (g).
34. Given my findings above, I am satisfied that I can vary the notice in this respect without causing injustice to the parties. To this extent the appeals on grounds (f) and (g) succeed.

Conclusion

Appeals A and B

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

Appeal C

36. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of the outbuilding under Class E of GDPO, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen Rosier BA MSc MRTPI
Andy Boulton

Agent
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Tanya Coulter Solicitor
Warren Simmonds BSc Hons MSc MRTPI
Sarah Barnes

Assistant Director Governance
Planning Enforcement Team Leader
Planning Enforcement Officer

INTERESTED PARTIES:

Susan Spolander

Local Resident