



Appeal Decisions

Hearing Held on 10 October 2024

Site visit made on 10 October 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 November 2024

Appeal A Ref: APP/K1128/C/23/3317807

Appeal B Ref: APP/K1128/C/23/3317808

Appeal C Ref: APP/K1128/C/23/3317810

Appeal D Ref: APP/K1128/C/23/3317811

Land at Dennings Paddock, Wallingford Road, Kingsbridge TQ7 1NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Ms Imke Wood against an enforcement notice ('the Notice') issued by South Hams District Council.
- Appeal B is made by Mr Bogdan Szafranek against an enforcement notice issued by South Hams District Council.
- Appeal C is made by Mr Roger Tyler against an enforcement notice issued by South Hams District Council.
- Appeal D is made by Ms Joyce Tyler against an enforcement notice issued by South Hams District Council.
- The enforcement notice, numbered 027299, was issued on 1 February 2023. The breach of planning control as alleged in the notice is (1) Without planning permission, the operational development comprising of: The erection of the sheds on the Land shown in the approximate positions marked as B, C and D ("the Sheds") and hatched blue on the Plan. These structures are being used for residential purposes; The erection of the yurts on the Land shown in the approximate positions marked as 1 and 2 ("the Yurts") and hatched blue on the Plan. These structures are being used for residential purposes; The construction of decking on the Land for the siting of the shed marked as C and the construction of the decking around the Yurts ("the Decking"). The Decking is in the approximate position shown hatched blue on the Plan. The Decking appears to be used for domestic purposes ancillary to the residential use of the Yurts as it has various domestic items and domestic paraphernalia stored on it. Without planning permission, the material change of use of the Land from a lawful agricultural use, to a mixed use comprising agricultural and residential use, by the siting and use of the Sheds, the Yurts and the Decking identified in paragraph 3(1) above and the associated storage of residential paraphernalia on the Land; 6. Cease the use of the Land for any use other than agricultural. 7. Dismantle and remove the Decking.
- The requirements of the notice are: 1. Cease the residential use of the Sheds. 2. Dismantle and remove from site the Sheds; and 3. Cease the residential use of Yurts; and 4. Dismantle and remove from site the Yurts; and 5. Cease the use of the Sheds and the Yurts and the Land for the storage of residential paraphernalia; 6. Cease the use of the Land for any use other than agricultural. 7. Dismantle and remove the Decking.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended ('the Act').

Decision

1. In respect of Appeals A, B, C and D:

It is directed that the enforcement notice is varied by:

The deletion of the words "the Sheds" in bullet point 1 of section 5 of the Notice, 'What you are required to do', and the substitution of the words "Sheds B and C" in their place.

The deletion of the words "the Sheds" in bullet point 2 of section 5 of the Notice, 'What you are required to do', and the substitution of the words "Sheds B and C" in their place.

The deletion of the words "the Sheds" in bullet point 5 of section 5 of the Notice, 'What you are required to do', and the substitution of the words "Sheds B and C" in their place.

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

Procedural Matters

2. Ms Wood clarified in the Hearing that she had only intended to lodge one appeal in her own name, and that appeal reference APP/K1128/C/23/3317809 had been lodged in error. Nothing turns on this, but for the sake of clarity I have omitted it from the list of appeals in my header.
3. Ms Wood submitted a letter at the Hearing in which the Appellants in Appeals B and C set out their agreement to her representing them. The Appellant in Appeal D was unable to sign this letter for medical reasons. Notwithstanding this, I accepted the single case presented on behalf of all of the Appellants and, therefore, I need not distinguish between the various appeals in my reasoning.
4. By the time that I visited the site, the yurts and some of the decking associated with them had been removed.

The Council's action

5. Although not formally challenged in the Appellant's submissions, in the Hearing Ms Wood questioned the motives for the Council issuing the Notice. As it will not prejudice any party, I shall address the point here.
6. Although it is clear that residents of the area did express their concerns about buildings on the site and their use, there is no substantive evidence to show that the Notice should not have been issued. Whilst responding to those concerns, there is no evidence that the Council overreacted to the pressure of neighbours. It followed its normal investigative approach and its decision to issue a Notice was well-made, notwithstanding that I allow the appeal in part.

Reasons

The appeal site and planning history

7. The appeal site lies towards the northern edge of Kingsbridge, with access from the narrow Wallingford Road. The road forms its eastern boundary and, from

there, the land falls steeply to a stream that forms the western boundary. Residential properties bound it on its north and south sides.

8. Planning permission was granted on 14 January 2022 for a dwelling in the upper, middle part of this sloping land, Council reference 4019/21/VAR. Its construction is well-advanced, though I could not be sure whether it is substantially complete. The land that benefits from this planning permission is omitted from the plan attached to the Notice.
9. An enforcement notice was issued and served on 27 January 2023; though it was found to be faulty. It was withdrawn on 1 February 2023, with a replacement Notice, which forms the subject of this appeal, being issued contemporaneously.

Ground (e)

10. A case made under Ground (e) is that copies of the Notice were not served on all parties, as required by section 172 of the Act.
11. S172(3) states "A copy of the notice must be served—(a) on the owner and the occupier of the land to which it relates, and (b) on any other person having an interest in the land, being an interest that, in the opinion of the authority, would be materially affected by the notice". The required method of service is set out in s329 of the Act. Furthermore, s176(5) sets out that the Secretary of State can disregard a failure to serve a copy of a Notice properly if the appellant has not "been substantially prejudiced by the failure to serve him" correctly.
12. Whilst the Council's letter withdrawing the first Notice gave an incorrect date for the issuing of that Notice, this had no effect on whether the Notice before me was served correctly.
13. The Appellant in Appeal A was served with a copy of the Notice, on 1 February 2023. On that date, she requested an electronic version of the Notice, citing health reasons that hinder her from reading hard copies correctly and at ease. She did not hear from the Council and repeated her request on 12 February 2023. A copy was emailed the next day. She asked for an extension to the "notice deadline", but the Council did not agree to this.
14. Amongst its terms, s329(1)(cc) states that a Notice might be served "in a case where an address for service using electronic communications has been given by that person, by sending it [a copy of the Notice] using electronic communications". It has not been demonstrated that a specific request for the service of the Notice was made prior to the initial service of the Notice, which is how I read the terms of s329(1)(cc). Although the Council would have had a copy of the Appellant's electronic address and could have served the Notice electronically, its actions accorded with the statutory requirements.
15. Even were I to be incorrect on this point, I have to have regard to s175(6) of the Act. The Appellant agreed that the Council's actions had not stopped her from making her full case in a timely manner. Whilst I appreciate how the Council's actions might have hampered her ability to respond, and have sympathies with her in this regard, I would have found that no substantial prejudice had occurred.

16. For the above reasons, the Ground (e) case fails.

Ground (b)

17. An appeal made under Ground (b) is that the matters alleged in the Notice have not occurred. This is a legal ground where the onus lies with the Appellant to make her case, on the balance of probability.
18. The Appellant made the point in her Statement of Case that the Site Plan attached to the planning permission for the dwelling clearly shows the yurts and sheds. That plan identifies three yurts, a tool shed and a polytunnel. The former are roughly in the location of the two yurts, decking and Shed C as shown on the plan attached to the Notice, whilst the tool shed is in the same position as Shed B from the Notice plan. That Site Plan did not show Shed D from the Notice plan.
19. In the circumstances, I have to look to the terms of the planning permission. The original description of the planning application was lengthy, part of which did not actually describe development. The decision notice simply referred to 'Erection of detached dwelling'. Whether there had been agreement to the change of wording I am unsure, though it has not been challenged by the Appellants. Notwithstanding this, neither description refers to yurts or sheds. Although there is reference to them in the Design and Access statement that accompanied the application, I find that planning permission 4019/21/VAR did not grant planning permission for the yurts and shed shown on the Site Plan. I also note that in Informative 6 of the decision notice, the Council made it clear to the then applicant that, as the application made no reference to the yurts and sheds and that as no details of these were given, the decision did not grant permission for them.
20. The evidence before me shows, on the balance of probability, that a shed has been erected in the location marked as Shed D on the Notice plan for many years. A shed was first erected here around the turn of the millennium. Following an enforcement investigation into this and other sheds on the land, the Council wrote a letter to the landowner in which it referred to shed D as a "summerhouse" and said that it had been in-situ for "well over 4 years".
21. The Appellants did not make the case that the building that is on the land presently is the original building. In the Hearing, I was told that it had become derelict and unsafe and that works were undertaken to it in "May-June 2021". In comments that he made in response to the PCN, Mr Tyler said that the original shed was "replaced by a like-for-like shed in 2021 due to rot issues". From what I was told, and taking the judgement in *Hibbitt v SSCLG* [2016] EWHC 2853 (Admin) into account, the evidence shows that what is on the site is a replacement building, rather than a repaired building.
22. However, the alleged breach of planning control is for the erection of sheds used for residential purposes. Ms Wood's oral evidence that the building was used as a summerhouse, in association with the use of the land between it and the road for vegetable growing, was clear and precise. At my site visit, there was clear evidence of this use with growing beds and the remains of previous seasons' plants clearly visible.

23. Given Mr Tyler's age, she said, a day bed was put in the shed for him to take naps in. It had also been used for storage and for "sleepovers" by family members. In my view, these were insufficient to trigger a material change of use of the shed to a residential use.
24. There is evidence in the answers to the PCN that show that this shed was used as a kitchen and canteen during the construction of the dwelling. However, there was a lack of water and power in the shed and the evidence suggests that this was a temporary arrangement that did not amount to a material change of use. The Council's evidence in respect of the use of this shed was scant, and my finding is that the submissions show that Shed D had not been used for residential purposes. I shall vary the terms of the Notice to reflect this.
25. Ms Wood conceded that Shed B had been used for residential purposes by her and her partner and that this ended in October to November 2021, as they were told that this was not acceptable. They then purchased a motorhome for this purpose. She said that Shed B became used for storage after November 2021.
26. In answer to a question posed in a Planning Contravention Notice that the Council sent to her, Ms Wood said that Shed B was a replacement building that was on the same footprint of an earlier chicken house. It was finished in April 2020. Mr McComish told me that the shed was not on the same footprint as the original building, but a little removed from it. As it is, given that the evidence shows that the building was used for residential purposes as alleged in the Notice, whether it was on the footprint or not is immaterial. In respect of Shed B, the Ground (b) appeal fails.
27. It was conceded that the two yurts were used for residential purposes and that Shed C was used as a shower, changing area and toilet for their occupants. The area of decking that linked them was clearly constructed to facilitate this use. I understand that Shed C was positioned close to the chicken coop for biosecurity purposes during the bird flu epidemic. However, this is an argument on the planning merits of the case. As I do not have a Ground (a) appeal into the planning merits, this cannot carry any weight in my deliberations.

Conclusion on Ground (b)

28. I find that there has been no material change to a residential use in respect of Shed D, and I shall vary the Notice accordingly and, to this extent, the Ground (b) appeal succeeds. However, Sheds B and C, the yurts and their associated decking were erected for residential use, as alleged in the Notice. On these, the Ground (b) fails.

Ground (c)

29. A Ground (c) appeal is made on the basis that the matters alleged in the Notice do not constitute a breach of planning control. This, too, is a legal ground where it is for the Appellants to make their case on the balance of probability.
30. The Appellants' case in part relied on the permitted development rights set out in Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) Order (England) 2015, as amended ('GPDO'). This allows for the provision on land of buildings, moveable structures, works, plant

or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. Here, "required" should be read as "reasonably required".

31. Had Sheds B, C and the yurts been solely used for storage of equipment and materials for the building of the dwellinghouse, I agree that this would have probably complied with Class A. However, they were used for residential purposes. As Class A is silent on the use of the buildings it permits for residential purposes, I find that it does not allow for this use. The Appellant provided no evidence to lead me to find otherwise.
32. The Appellants make the case that the Council did not say that they could not use the sheds for residential purposes. However, this could not reasonably be read as the Council giving its formal agreement to this use. This would need to have been gained through applications for a certificate of lawfulness or planning permission; neither was made. Furthermore, for the reasons already given in respect of the Ground (b) appeal, planning permission 4019/21/VAR only granted planning permission for the erection of the dwellinghouse.
33. For the reasons given above, the Ground (c) case made in relation to Sheds B, C and the yurts fails.
34. Given my finding on Shed D, above, I need not address it here.

Ground (f)

35. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, it is clear that the purpose of the Notice was to remedy the breach of planning control.
36. The written submissions on the Ground (f) were made by Mr Tyler. In respect of Sheds B, C, the yurts and the decking, he simply says that they are no longer on land owned by him. It does not say why the requirements are excessive and therefore I give this very little weight. Nothing further was added by the Appellants in the Hearing on this matter.
37. He makes various [points in respect of Shed D, but I need not address them, given my findings on Ground (b).
38. In the circumstances, no substantive reasoning was given to show that there were lesser steps that might remedy the breach of planning control. I cannot see any, either.
39. For the reasons given above, the Ground (f) case fails.

Roy Curnow

Inspector

APPEARANCES

FOR THE APPELLANTS:

Ms Imke Wood	Appellant
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FOR SOUTH HAMS DISTRICT COUNCIL:

David Bate	Senior Planning Enforcement Officer
Trevor Pearce	Planning Enforcement Officer

THIRD PARTY:

Reginald McComish	Neighbour
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