



Appeal Decisions

Site visit made on 1 April 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal A Ref: APP/C1760/C/24/3341014

Appeal B Ref: APP/C1760/C/24/3341015

The Orchard, Lynton Meadow, Chilbolton, Stockbridge SO20 6BE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Paul Lawton-Bryant (Appeal A) and Mrs Julie Lawton-Bryant (Appeal B) against an enforcement notice issued by Test Valley Borough Council.
 - The notice was issued on 22 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of three (3) buildings on the land, comprising; (i) a shed (edged in blue and marked 'A' on the plan attached to the notice); (ii) a metal framed building with tarpaulin cover (edged in blue and marked 'B' on the attached plan); (iii) a timber cabin building (edged in blue and marked 'C' on the attached plan).
 - The requirements of the notice are: (i) Demolish the three buildings marked 'A,' 'B' and 'C' (in the approximate position on the land) as shown on the attached plan. (ii) Remove from the land all resulting materials and waste in association with compliance of (*sic*) step (i) of the above requirement.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) 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. Appeal B is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fee has not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.
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Decisions

1. Appeals A and B-It is directed that the enforcement notice is varied by in paragraph 6 substituting 'three (3) months' with 'five months' as the period for compliance. Subject to this variation, Appeal A is allowed insofar as it relates to buildings A and B shown on the plan attached to the enforcement notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the construction of two buildings on the land, comprising; (i) a shed (edged in blue and marked 'A' on the plan attached to the notice); and (ii) a metal framed building with tarpaulin cover (edged in blue and marked 'B' on the notice plan) at The Orchard, Lynton Meadow, Chilbolton, Stockbridge SO20 6BE, subject to the condition in the Schedule at the end of this Decision.

Appeal A is dismissed and the enforcement notice is upheld as varied insofar as it relates to building C on the plan attached to the enforcement notice and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for a timber cabin building (edged in blue and

marked 'C' on the notice plan) at The Orchard, Lynton Meadow, Chilbolton, Stockbridge SO20 6BE.

Preliminary Matters

2. I have taken into account the revised National Planning Policy Framework (the Framework), which came into force during the course of the appeals.
3. Whether it was expedient for enforcement action to be taken can only be dealt with by way of Judicial Review. Therefore, the matters considered by the Council prior to the issuing of the enforcement notice have little bearing on these proceedings.

Appeal A, Ground (a) appeal

Main Issue

4. The main issue in this ground of appeal is whether the buildings are in a suitable location in the countryside, having regard to the Development Plan and national policy concerning sustainable development.

Reasons

5. The appeal site is a partly wooded, rectangular parcel of land around 0.26 hectares in area. The site is accessed through the grounds of a bungalow at the head of a residential cul-de-sac. The enforcement notice attacks three buildings erected on the site. Building A-a metal shed and building B- a metal framed, tarpaulin covered structure, are situated in a clearing alongside the boundary with the adjacent bungalow. Building C is a timber summerhouse located towards the northwest end of the site, amongst a group of maturing trees. A damaged prefabricated structure, located towards the centre of the site, is not attacked by the notice.

Whether in a suitable location

6. The site is located outside of the settlement boundary for the village in the Test Valley Borough Revised Local Plan (LP) and is therefore in the countryside for the purposes of planning policy. LP Policy COM2 restricts development outside of settlement boundaries unless (a) it is appropriate in the countryside in accordance with other referenced LP policies, or (b) it is essential for the development to be located in the countryside. The policy objective of supporting the social and economic elements of sustainable development whilst ensuring no conflict with policies that aim to respect the environment, is set out in the LP supporting text. Locating development where it will enhance or maintain the vitality of rural communities whilst recognising the intrinsic character and beauty of the countryside is consistent with promoting the economic, social, and environmental objectives of sustainable development set out in the Framework.
7. The Council have determined that the lawful use of the site is as 'amenity land'¹. The grounds do not have the more manicured appearance normally associated with ornamental gardens. Nevertheless, given the considerable size of the site, together with the presence of a significant number of maturing trees, as well as extensive areas of grass and other vegetation, it is highly likely that the use as amenity land involves undertaking a reasonably substantial amount of regular maintenance.

¹ Council Ref: 24/00057/CLEN

8. Buildings A and B are of modest scale. These buildings contain various items of grounds maintenance equipment including a mini tractor, trailer, mowers and other power tools, hand-held implements and other gardening items. My understanding is that building A has replaced the damaged structure, which is no longer useable. Further, I understand that building B has replaced a small garden shed (since moved to the grounds of the adjacent bungalow), as well as providing covered space for keeping additional equipment.
9. The floorspace of both buildings is largely taken up by items of grounds maintenance equipment. It is highly likely that all the items of equipment kept in buildings A and B are used in connection with maintaining the site; there is little to suggest otherwise. Although the previous owner might have had less equipment, that does not necessarily mean they kept up with maintaining the grounds. It is not unreasonable to keep the equipment items close to where they will be put to regular use. The appellant does not reside locally and transporting equipment to and from the site on a regular basis is unlikely to be practical, particularly in the case of the larger items. Therefore, in my view buildings A and B are reasonably required, or in other words essential, to facilitate the maintenance of the site in conjunction with its lawful use.
10. Building C however is a structure of relatively substantial scale, the floor area being significantly in excess of that of buildings A and B combined. The interior of this building contains various items including domestic chairs and tables, drawers and shelving along with a wood stove. The furniture and other items in the building facilitate activities such as informal relaxation, socialising and family gatherings normally associated with a residential garden use. In practice, there is little difference between the activities described above and those which might take place in a residential outbuilding in the grounds of a dwelling. It is not uncommon for residential outbuildings in the grounds of dwellings to be used for similar purposes. There is no suggestion that the building is being used as living accommodation. Even so, the above factors point to the principal use of the building as being more residential in character, rather than being related to the use of the site as amenity land.
11. I acknowledge that the building also provides a place to shelter at the site during periods of inclement weather, as well as for breaks, making hot drinks and to access a WC. In addition, I understand that some of the furniture as well as other garden related items are kept in the building when not in use outdoors, along with some items of electrical equipment used for grounds maintenance at the site. Even so, in my estimation the size of the building is considerably greater than what might reasonably be required for such purposes. Moreover, it is highly likely that any covered space considered necessary for those purposes need not have involved erecting a substantial, permanent building. As a result, given these and the other reasons set out above I am not persuaded that building C is reasonably required in connection with the lawful use of the site.
12. LP Policy COM11, which concerns extensions to dwellings and the erection and extension of ancillary domestic buildings, is one of the policies referenced in criterion (a) of LP Policy COM2 where development can be appropriate in the countryside. Even so, building C cannot be ancillary or incidental to a residential use, given the lawful use of the site as amenity land. Accordingly, LP Policy COM11 does not assist the appellant's case in relation to building C.

13. A number of residential outbuildings and structures erected at neighbouring property and in the locality, outside the settlement boundary, were drawn to my attention. However, those developments are generally located in residential gardens, being ancillary or incidental to dwellinghouse uses. Some examples of developments granted planning permission in the countryside were also referenced. Even so, as far as I could ascertain, based on the limited details before me, none of those examples have involved erecting what in this case is effectively a residential building, outside of a residential planning unit. Moreover, it is a well-established principle that each case falls to be determined on its individual planning merits. As a result, these examples also do not advance the appellant's case in respect of building C.
14. Drawing these matters together, for the reasons set out above buildings A and B are in a suitable location and it is essential for them to be located in the countryside, in accordance with criterion (b) in LP Policy COM2. However, building C is not in a suitable location and being neither appropriate in the countryside, nor essential to be located in the countryside, is in conflict with LP Policy COM2.

Other Matters

15. The Council did not object to the buildings on grounds of harm to the character and appearance of the surrounding area and there is no sound reason why I should do so. Consequently, there is no conflict with Policy HD4 of the Chilbolton Neighbourhood Development Plan. This is a neutral factor which neither weighs in favour nor against the granting of permission.

Conditions

16. I shall impose a condition requiring the submission, approval and implementation of a scheme for removal of the damaged structure. This is necessary to safeguard the character and appearance of the surrounding area. The condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure removal of the damaged structure. The purpose and effect of the condition is therefore to ensure that buildings A and B may only remain if the appellant complies with its requirements. However, I shall not impose a condition requiring the planting of a native hedge. As building C will not be granted planning permission, such a condition is unnecessary.

Conclusion-Appeal A, Ground (a) appeal

17. Buildings A and B are in a suitable location in the countryside and accord with the Development Plan, taken as a whole. However, building C is not in a suitable location and conflicts with the Development Plan, taken as a whole. No material considerations, including the Framework, indicate that the decision should be made other than in accordance with the Development Plan. Therefore, the appeal on this ground can only succeed in part.

Appeals A and B

Ground (g) appeals

18. The ground of appeal is that the time allowed for complying with the notice requirements is too short.

19. Building C is assembled from largely prefabricated components. It will probably be a relatively straightforward task to dismantle this structure and remove the resulting materials from the site. Such activity would be unlikely to take much more than a week or so to complete. I appreciate that the appellants will wish to recoup as much as possible of their investment. However, that in itself is not a sound reason to delay removal of the building. Applying for planning permission to replace the damaged structure is also not a sound reason for putting off compliance, particularly as such an application would involve similar considerations to in the ground (a) appeal in Appeal A.
20. On the other hand, the ability of the ground at the site to support heavily loaded vehicles is likely to have a significant bearing on when the most appropriate time to undertake the remedial works will be. It may also be relevant to minimising any disturbance to neighbouring residential occupiers as far as possible. Also, salvaging and re-use of the building materials would be a more sustainable approach. Although the materials could be stored offsite following the dismantling of the building, the availability of suitable space is uncertain and would be likely to involve the appellants in further expenditure.
21. Taking these matters into account, I shall vary the notice to extend the period for compliance but only to five months, not the nine months sought by the appellants. There would then be ample scope for the building to be marketed for sale and for it to be carefully dismantled and removed at a time when the ground conditions are likely to be more favourable. This would strike an appropriate balance between remedying the breach and the associated planning harm as soon as is practicable, whilst also not imposing a disproportionate burden on the appellants. There would be no injustice in varying the notice as set out above. Any longer period however would unduly perpetuate the breach.
22. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The ground (g) appeals succeed to that extent.

Conclusion

23. Appeals A and B-For the reasons given above I conclude that Appeal A should succeed in part only, and I will grant planning permission for buildings A and B shown on the plan attached to the enforcement notice, but otherwise I will uphold the notice with a variation and refuse to grant planning permission in respect of building C. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR

PLANNING CONDITIONS SCHEDULE

- 1) Unless within three months of the date of this decision a scheme for demolition of the damaged prefabricated structure located towards the centre of the site and removal of the resulting materials has been submitted in writing to the Local Planning Authority for approval and; unless the approved scheme is implemented in full within three months of the Local Planning Authority's approval, buildings A and B shall be demolished and their resulting materials removed from the site until such time as the scheme has been approved and fully implemented.

If no scheme in accordance with this condition is approved by the Local Planning Authority within six months of the date of this decision, buildings A and B shall be demolished and their resulting materials removed from the site until such time as the scheme approved by the Local Planning Authority is fully implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.