



Appeal Decisions

Site visit made on 14 October 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 11th November 2025

Appeals A & B Refs: APP/R3650/C/23/3328599 and APP/R3650/C/23/3328600 Land South of Foxhaven, Old Park Lane, Farnham GU10 5AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Keith Baxter (Appeal A) and Mrs Rosemary Baxter (Appeal B) against an enforcement notice issued by Waverley Borough Council.
 - The notice was issued on 21 July 2023.
 - The breach of planning control as alleged in the notice is Without planning permission the operational development consisting of : 1. The erection of a building ("the Building"); 2. The erection of associated decking with railings and steps ("The Decking")
 - The requirements of the notice are: i Remove the Building from the approximate position marked 'A' identified on the attached Appendix 1 Plan. For the avoidance of doubt this includes the wooden extension; ii Remove the surrounding Decking, steps and railings of the Building in the approximate position marked 'A' identified on the attached Appendix 1 Plan; iii Remove from the Land all materials resulting from the carrying out of steps i and ii.
 - The period for compliance with the requirements is: Six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), and (f) 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.
-

Decision

1. It is directed that the enforcement notice is corrected by:
 - in paragraph 2 of the notice deletion of the wording '('The Land')' and reinsertion of the wording '('The Land')' after the word 'Plan';
 - in sub-paragraph 5(i) of the notice deletion of the word 'from' and substitution with the wording 'in';
 - in sub-paragraph 5(i) of the notice after the word 'Remove' the insertion of the wording 'from the Land';
 - in sub-paragraph 5(ii) of the notice after the word 'Remove' the insertion of the wording 'from the Land'; and
 - in sub-paragraph 5(ii) deletion of the wording 'the surrounding Decking, steps and railings of the Building' and substitution with the wording 'the Decking'
2. Subject to the corrections the appeals are 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 1990 Act as amended.

Preliminary Matters

3. The revised National Planning Policy Framework 2024 (Revised Framework) came into force during the course of the appeal. The parties were given an opportunity to comment on this but no submissions were made.
4. Some documents and policies referred to in representations were not submitted along with the appeal. Copies were requested and an opportunity given for comment.

The Notice

5. Paragraph 2 of the notice defines the land affected by the enforcement notice but for clarity the definition should include reference to the notice plan. For clarity and consistency with requirement 5(iii) I shall also correct requirements 5(i) and (ii) to cross-reference the defined term of 'Land' in paragraph 2 of the notice. Finally, in paragraph 3 of the notice a defined term is introduced for the decking, railing and steps attacked by the notice as "The Decking". It is therefore appropriate to use this defined term in the requirements. Since these corrections are for clarity and consistency, no injustice would result to either party from making these.

The appeal on ground (b)

6. The appeal on ground (b) is that the matters alleged in the notice have not occurred. The onus is on the appellants to make their case on the balance of probabilities.
7. The appellants submit under this ground essentially that the building was lawful when constructed. However, this submission properly relates to the ground (c) appeal. There is no dispute that a building has been constructed on the site and the ground (b) appeal therefore fails.

The appeal on ground (c)

8. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. Again, the onus is on the appellants to make their case on the balance of probabilities.

Site history

9. The appellants are the former owners of the residential property to the immediate north of the appeal site known as 'Foxhaven'. Around 2003 the appellants purchased the land to the south of Foxhaven which now forms the appeal site and 'immediately fenced around the full 4 acres' i.e. the land previously owned and site newly purchased.
10. In 2017 the appellants made an application for a lawful development certificate (LDC) for a proposed outbuilding which was granted¹ on the basis that the proposed building was permitted development (PD) under Schedule 2, Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (Class E).
11. In September 2019 the appeal building was constructed on the appeal site and around September 2020 the appellants sold the Foxhaven dwelling and land in its

¹ Ref: WA/2017/1633 (2017 LDC)

title, retaining ownership of the appeal site. Subsequent retrospective applications made in respect of the appeal building were refused².

Legislation

12. Section 191(2) of the 1990 Act³ states that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission, because the time for enforcement action has expired, or for any other reason); and (b) they do not constitute a contravention of the requirements of an enforcement notice.
13. The appellant is seeking to demonstrate here that the operational development attacked by the notice is lawful either because (a) it was certified as lawful by the 2017 LDC; or (b) it was constructed pursuant to PD rights under Class E. I deal with these in turn.

2017 LDC

14. A copy of the Officer Report in respect of the 2017 LDC indicates that the LDC granted referenced the application plans and the undisputed evidence from the LPA is that the appeal building was not built in the location detailed in the 2017 LDC application plans, having been constructed significantly further from the dwelling (and indeed to a different design than shown in the 2017 LDC plans). I find on this basis that the appeal building is not certified as lawful by the 2017 LDC.

Class E

15. Since the grant of a LDC is not a pre-requisite to lawfulness under s191(2) of the 1990 Act, the appeal development could potentially be lawful if it represented PD under Class E. I therefore assess this below.
16. Class E states as permitted development *'The provision within the curtilage of the dwellinghouse of— (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas'*. This is subject to the conditions and limitations contained within Class E.
17. As to curtilage, the appellant contends that the Council has previously certified the curtilage of Foxhaven as including the appeal site by reference to the Officer Report in respect of a 2015 planning application⁴ granted for 'Erection of extensions at Foxhaven'. Plainly the comment that the property was situated within a 'large residential curtilage' followed by a statement that the 'site is 1.72 hectares in area' does not amount to a certification that the full 1.72 hectares represented the extent of the curtilage of the dwelling (such that the appeal site was included).
18. Similarly as regards the Officer Report in respect of the 2017 LDC, the comment was that the 'site' measured 1.8 hectares; there is no certification that the full 1.8 hectares fell within the curtilage of the dwelling. Equally, an informal comment from a Council officer that the building was lawful when built is not binding on the LPA.

² Refs: WA/2022/00216 and WA/2022/03163

³ Town and Country Planning Act 1990

⁴ Ref: WA/2015/0440

19. As to my assessment of curtilage then, the term 'curtilage' is not defined in legislation and there is no all-encompassing, authoritative definition of the term. Curtilage has been described in case law as land used for the comfortable enjoyment of a dwellinghouse which serves the purpose of the dwelling in some reasonably useful way. It should be intimately associated with the dwelling such that it forms part and parcel of it and in assessing curtilage regard should be had to (i) the physical layout of the building and the land said to be in its curtilage, (ii) ownership (past and present) and (iii) use or function (past and present). The assessment of curtilage is a matter of fact and degree for the decision maker.
20. The appeal building is sited within an area of woodland which is a significant distance from the Foxhaven dwelling. Mr Baxter's sworn Statement of Truth indicates that following purchase of the appeal site in 2003, the appeal site was 'immediately' fenced off together with the land which had been in the Foxhaven title. The appellant refers to use of the land in connection with the residential use of Foxhaven from 2003 including referencing walking and running trails within the appeal site and use of the appeal building as a home office in connection with Foxhaven. I have very little detailed information though as to the use made of the appeal site following the 2003 purchase in terms of the types of activity on the site and frequency of use.
21. I also have little information as to the use of the appeal site prior to 2003 other than by reference to the presence of WW2 pillboxes within the appeal site and Foxhaven title and a comment from the appellant that the land was mined for flint in the past.
22. Drawing these matters together, I find on the available evidence that given the relatively recent combined ownership and use in connection with the dwelling at Foxhaven, limited detail related to use of the site in connection with Foxhaven, along with the distance from the dwelling, the appeal building has not been sited on land within the curtilage of a dwelling. It would not therefore have been PD under Class E.
23. Further, at paragraph E.1(h) of Class E is a limitation that a building cannot fall within Class E if '*it would include the construction or provision of a verandah, balcony or raised platform*'. On the available evidence, I share the Council's view that the decking and railings attached to the appeal building would breach this limitation and the appeal development therefore cannot represent PD under Class E irrespective of whether or not these items could now be removed.
24. I find then that the appeal development is not PD under Class E and constitutes a breach of planning control. The ground (c) appeal fails.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issues

25. The main issues are the effects on:
 - the character and appearance of the area including impacts in relation to trees;
 - highway safety in the vicinity of the appeal site; and
 - biodiversity interests.

Reasons

Character and appearance

26. The appeal site is located outside of any settlement boundary and within an Area of High Landscape Value and Sensitivity and Area of High Landscape Sensitivity and Historic Value.
27. The woodland comprised in the appeal site represents an important feature of the distinctive rural character of Old Park Lane. I note comments from the appellant that the woodland at the appeal site is self-seeded light woodland and is likely not long established in view of the presence of WW2 pillboxes, and that trees felled were not 'significant' in terms of their maturity and were not subject of a tree preservation order. This does not alter the fact that the woodland area cleared in order to enable construction of the appeal building formed an important characterising feature of the surrounding area. The appeal building introduces significant built development into this woodland area, compromising the sense of rural character which is harmfully apparent in public views from Old Park Lane.
28. I find then on the first main issue that the appeal development has had a harmful effect on the character and appearance of the area including through the loss of trees which formed an important part of the area's character. There is conflict in this way with Policies RE1, TD1 and NE2 of the Waverley Borough Local Plan - Part 1 2018 (LPP1), Policies DM1, DM4 and DM11 of the Waverley Borough Local Plan - Part 2 2023 (LPP2) and Policies FNP1, FNP10 and FNP20 of the Farnham Neighbourhood Plan 2020 (FNP). These together seek to ensure that new development safeguards the intrinsic character and beauty of the countryside and landscape character including through retaining woodland and responding to local distinctiveness and that new buildings for business uses do not adversely affect the character and appearance of the countryside.

Highway safety

29. The appellants Planning Contravention Notice response indicates that the appeal building was used for 1-3 days per week from October 2020 in connection with their business. The more recent sworn Statement of Truth dated 29 August 2023 indicates use at around four times per month on average. I have no detailed information though in relation to the frequency of use nor on how often use is by the appellant only or also by any employees or clients.
30. While the size of the building limits the number of people likely to be using this at any one time, I have no detailed information then on the trip generation resulting from the use of the building. Bearing in mind that the appeal site is accessed from a single track lane, in my view, even a fairly small increase in trips has potential to result in highway safety harm stemming from cars not being able to pass each other and therefore having to carry out potentially unsafe reversing manoeuvres.
31. On the evidence before me, I cannot be satisfied that the appeal development would not result in a harmful effect on highway safety in the vicinity of the appeal site. There is conflict then with the highway safety aims of paragraphs 115 and 116 of the Revised Framework. While the Council has cited Policy ST1 of the LPP1 in the enforcement notice, this does not directly relate to highway safety.

Biodiversity

32. The LPA maintains that insufficient information has been submitted by the appellant in order to demonstrate an absence of negative impacts as regards biodiversity or related to promotion of enhancements in accordance with Policy DM1 of the LPP2 and FNP13 of the FNP.
33. The appellant submitted with retrospective application reference WA/2022/00216 a letter from Greenlink Ecology Ltd dated 4th November 2021. A Tree Survey was also submitted with application reference WA/2022/03163. The Greenlink Ecology letter references the presence of badger sett entrance holes within the application site. It indicates that the use of the building as likely to be primarily during daylight hours is unlikely to adversely impact on the local badger population. However, there is no proposal here to restrict use in this way. Further, the letter also advises that it is not possible to retrospectively determine the impact of the construction of the appeal building on ecology/protected species and the Tree Survey submitted offers no substantive information in this regard either.
34. Thus I conclude on the third main issue that, on the evidence before me, I cannot be satisfied that the appeal development complies with the requirements of Policies DM1 and FNP13 as detailed above. Policy FNP12 cited in the enforcement notice is not directly relevant since this relates to residential uses.

Other Matters

35. The appeal development affords a useful office base for the appellant's business albeit that I have no detailed information as to the consequential benefits in this regard. In any event, this consideration is due only limited weight since there is no evidence that no other suitable office space is available. While the Council has referenced Policy FNP17 in the notice which relates to Land for Business, no direct policy conflict has been identified.
36. While I appreciate that the appellant may be frustrated by having been invited to make a retrospective application which was subsequently refused, it was not unreasonable for the LPA to invite an application in order to offer proper consideration of the appeal development.

Ground (a) and DPA Conclusion

37. The limited benefits offered by the appeal development do not outweigh the harm identified above as regards the character and appearance of the area, highway safety and biodiversity. For these reasons the appeal development does not represent the sustainable development in respect of which the Revised Framework creates a presumption in favour and conflicts with the development plan, read as a whole. There are no material considerations that warrant a decision other than in accordance with the plan. For these reasons ground (a) fails and planning permission will be refused in respect of the DPA.

The appeal on ground (f)

38. This ground of appeal is that the requirements of the notice exceed what is necessary.
39. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of

planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires removal of the appeal development and materials resulting from that removal suggests that its purpose is to remedy the breach of planning control.

40. The appellant contends that the 'requirement to demolish the building is unreasonable' on the basis that 'the building could be moved onto the site of the remaining Pillbox' (on the appeal site) on the premise that this represents previously developed land. The appellant does not offer any detailed explanation for this assertion and plainly moving the building onto the site of the Pillbox would not remedy the breach of planning control. The ground (f) appeal accordingly fails.

Overall Conclusion

41. For the reasons given above, I conclude that the appeals 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 1990 Act (as amended).

V Bond

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/R3650/C/23/3328599	Mr Keith Baxter
Appeal B	APP/R3650/C/23/3328600	Mrs Rosemary Baxter