



Appeal Decisions

Site visit made on 6 January 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 April 2026

Appeals A and B Ref: APP/U1430/C/24/3343276 and APP/U1430/C/24/3343277 Land to the west of Wyland wood, Willards Hill, Robertsbridge TN32 5ET

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mrs Rebecca Marsh and Mr Richard Marsh against an enforcement notice issued by Rother District Council.
 - The notice was issued on 28 March 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, change of use of the Land from agriculture to a mixed use for agricultur and for leisure and recreation purposes, including the associated installation of a zip wire, tyre swing and tree house
 - The requirements of the notice are:
 - (i) Stop using the land for leisure and recreation purposes;
 - (ii) Remove all items installed on the land associated with the said unauthorised use including zip wire, tyre swing and tree house located on the ground and covered with tarpaulin; and
 - (iii) Remove from the land all rubble, rubbish, debris, materials, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is four months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Appeals C and D Ref: APP/U1430/C/24/3343279 and APP/U1430/C/24/3343280 Land to the west of Wyland wood, Willards Hill, Robertsbridge TN32 5ET

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Mrs Rebecca Marsh and Mr Richard Marsh against an enforcement notice issued by Rother District Council.
 - The notice was issued on 28 March 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a timber building ("the Building") in the approximate position shown edged blue on the attached plan.
 - The requirements of the notice are:
 - (i) Demolish, dismantle and remove the Building from the Land;
 - (ii) Disconnect and remove from the land all brick and block piers upon which the building is sited; and
 - (iii) Remove from the land all rubble, rubbish, debris, materials, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is four months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld.

Appeals C and D

2. It is directed that the enforcement notice is varied by extending the period from four to nine months. Subject to this variation the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. No deemed planning applications for planning permission here fall to be determined for either Appeals A or B, as no ground (a) submissions have been made. Considerations that would involve planning merits and impacts are not thereby relevant. Instead, the main thrust of the appellants' case relates to legal grounds in that the alleged breaches have either not occurred as a matter of fact, or that the allegation(s) are correct, but no planning permission is required. In general, this is usually based on the fact that the development is covered by the Town and Country Planning (General Permitted Development) Order (England) 2015, as amended (GPDO). Alternatively, the use and/or works targeted do not actually constitute development, as defined by s55 of the 1990 Act, as amended.
4. The appellant's representations concentrate largely on a civil action, heard last year in the County Court, brought against the appellants and their company, Tapstone Ltd by the neighbouring occupiers of Wyland Wood. The claimants' case was essentially in respect of a boundary dispute. Judgement was handed down in June 2025, with the claim disallowed. This decision does not affect the current appeals, being subject to different legislation. The use of land and any associated operational development undertaken is not affected by a boundary dispute so long as, following enforcement action, the appellants have a legal interest in the land identified. That is the case here.
5. The appellants representations also comment on procedural issues whereby they criticise the Council's actions leading up to the enforcement notices being issued. Process and procedure must remain a matter between the two parties. My remit requires only that I examine the submitted evidence in relation to the substance of the appeals lodged. Accordingly, although I have familiarised myself with the background to the Council issuing the enforcement notices, my decisions as to the grounds of appeal put forward against the notices have been arrived at with reference to planning law and evidential fact.

Appeals A and B

The appeals on ground (b)

6. An appeal under ground (b) is that the breach or breaches alleged have not occurred as a matter of fact, and this relates to the planning position at the date the enforcement notice was issued. In other words, the planning position is not as the Council alleges in the enforcement notice and, in this particular instance, the appellants are claiming that the works carried out did not represent a contravention of planning control.

7. The onus is on the appellants to provide compelling information and evidence to confirm their claim which should thereby be precise and unambiguous. The burden of proof is on the balance of probability.
8. The appellants purchased the site which, they say, comprises seven acres of woodland and also agricultural land, in April 2021. They say that they wished to establish a viable farming and forestry business. Forestry is defined as the practice of managing, creating, using and conserving forests, woodlands and associated resources in a sustainable manner. At my site visit, and from photographs submitted in relation to the appeals, apart from some small piles of logs and their apparent storage, I have seen no direct evidence of substantial forestry practice. Instead, from the various representations made, the emphasis has been on using the woodland for children's recreational purposes, maybe sporadic, over a period of time.
9. The Council indicates that, prior to the Enforcement notice being issued in March 2024, enforcement officials made visits to the site in April, June, October and November 2023, and then in January and February 2024. The Council's Statement says that the zip wire and tyre swing were present throughout these visits
10. Under Class B, Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended, land can be used for any purpose for up to 28 days in a calendar year without planning permission. This includes setting up temporary structures, as was the case here. The 28 days do not need to be consecutive, but can be cumulative, meaning a structure remaining on site counts as one of the days.
11. The appellants indicate that, on three separate occasions in 2024; 16 and 19 March, and 23 April, the land was used by schoolchildren for specific activities. The first was their son's fifth birthday party, and the other two where pre-school age children and their parents came to plant vegetables and trees. No dates or details are given for the period April 2021 to December 2023, yet the appellant's Statement, Appendix B, provides a matrix which indicates that the tyre swing and 'treehouse' – although I understand this structure only sat above ground level by way of skids below - were in place during 2021 with the zip wire erected in March 2023. Interested parties confirm this, saying that 'playground equipment first appeared in the middle of 2021, thereby after the appellant's took control of the land.
12. Incidentally, representations from interested parties suggest that any agricultural use is confined to a vegetable patch within the front field. On this point the appellants have not illustrated the extent of the agricultural use currently taking place but the absence of such, or rather the relative degree of this, is not an issue. Agriculture is not actually development, and what is targeted here is the degree of the recreational use of the land, thereby its materiality and whether this is such as to have warranted a material change of use in planning terms. The appellants refer to camping at the site and, although this is development, it is not referred to in the enforcement notice.

13. In light of the above, due to the appellants' acknowledging the presence of the apparatus on the land, the degree of local interest as to the recreational use taking place, and the findings of Council officials at the site visits undertaken, I have concluded, on the balance of probabilities, that the recreational use was taking place in March 2024, certainly beyond that permitted by Class B of Part 4 of the GPDO along with the associated apparatus or operational development being in situ to facilitate activities within the woodland. Accordingly, the enforcement notice, in alleging unauthorised development, was responding to the planning position for the land at the date the notice was issued.
14. The appeal on ground (b) therefore does not succeed.

The appeals on ground (c)

15. It follows that, given my findings on the ground (b) appeal, I am satisfied that the alleged breach(es) of planning control, constituting development being/having been carried out without the benefit of planning permission, were taking place at the date the enforcement notice was issued. The development does not fall within the parameters of the GPDO and, in the absence of any such planning permission, the development is unauthorised.
16. As an appeal under this ground is that planning permission is not required for the matters described in the enforcement notice, the ground (c) appeal fails.

The appeals on ground (f)

17. An appeal on ground (f) is that the required steps for compliance set out in the enforcement notice go beyond what is reasonable to remedy any harm caused by the identified breach(es). It is clear that the enforcement notice was issued for policy reasons, along with the consideration that the development is harmful to the character and appearance of the High Weald National Landscape (formerly the High Weald Area of Outstanding Beauty) within which it falls. However, as mentioned, in the absence of any deemed planning application (DPA) as part of these appeals, planning policies cannot be of direct relevance in reaching my decision.
18. The required steps – cessation of the recreation/leisure use and the removal of the zip wire, the tyre swing and the treehouse are all consistent with the Council's objective of regularising the use of the land and, thereby, all equipment and apparatus that facilitated it. The fact that the tyre swing and zip wire have now been removed does not mean that the requirement for their removal should be struck out. It is to ensure that they do not return.
19. The tree house structure is no longer being used for its originally intended purpose – having been lowered to ground level, and in use as a log store. The said apparatus was all in place when the enforcement notice was issued and as they required/would require planning permission compliance step (ii) shall remain.
20. Again, to clarify the legal position, the fact that no DPA falls to be determined means that I am unable to consider these features for planning permission, as the

scope of any ground (f) appeal made does not extend to regularising the existing planning position.

21. The appellants have not put convincingly demonstrated why the said steps are excessive or any alternative steps in this regard.

22. Accordingly, the appeal on ground (f) cannot succeed.

Appeals C and D

The appeals on ground (c)

23. As I set out earlier in this decision letter an appeal on this ground is that planning permission is not required for the development identified. The timber-framed structure within the woodland, referred to by the appellants as the 'forestry shelter' is targeted by this enforcement notice. It was apparently erected in early 2022 with the intention to use it to store tools and equipment. The appellants indicate that it has replaced a dilapidated building, since removed, which was similarly sited. From the evidence, and my observations, it is clear that the shelter is a rebuild, rather than a refurbishment, and it therefore constitutes development under s55 of the 1990 Act, as amended.

24. In the judgement of *Skerritts of Nottingham Ltd v SOS* [2000] JPL 1025 it was held that there were three distinct factors to be borne in mind when deciding whether or not works undertaken constitute a building. These relate to size, the degree of permanence, and the degree of physical attachment to the land.

25. The shelter here does not have the appearance of a store; more a summerhouse. It has French windows and an area of decking, and is raised off the ground by blocks. It would seem from the evidence that this development has been in situ since it was erected some four years ago and there is clear physical attachment to the land. Further, its size – 3m x 6m - is not insignificant. Accordingly, I am satisfied that, on the face of it, this development is, indeed, a building.

26. However, the appellants term it a 'mobile structure', and say it is now a 'caravan' for use by a temporary worker, as a shelter. The appellants are here relying on the definition stated in the Caravan Sites and Control Development Act 1960 which describes a caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another. A caravan used for habitable purposes therefore represents a use of the land rather than operational development which would be the case if a building was erected.

27. Notwithstanding the appellants' assertion that the shelter is a caravan, their representations, appear to be making two different claims as regards why planning permission is not required for the shelter's lawful retention, as they also say that the building's erection is covered by Schedule 2, Part 6, Class E of the GPDO.

28. Class E is concerned with the carrying out on land used for the purposes of forestry, or development reasonably necessary for those purposes, consisting of works for the erection, extension or alteration of a building. If this is the case then

the question follows as to whether the building can be considered as being reasonably necessary for the carrying out of forestry on the land.

29. Whilst I acknowledge that a forestry worker might reasonably require shelter and toilet facilities during the working day I am not properly convinced from the evidence provided that the land is actually being used for the managing, creating, using and conserving of woodlands and associated resources, certainly to any significant extent. A degree of work has been undertaken, but I have not seen any accounts or invoices to confirm the extent and materiality of this. The correct process for the appellants to demonstrate otherwise would have been by way of a s192 application made to the Council for a lawful development certificate. This would necessitate the appellants providing evidence as to the degree of such activity, thereby enabling the Council to consider the appropriateness of a 'caravan' on the land. No such application was made.
30. Fundamentally, development permitted by Class E is subject to particular conditions, one of which necessitates that, before the development commences, an application is made to the Council for a determination as to whether the prior approval of the Council will be required as to the siting, design and external appearance of the building. The process is not retrospective and, therefore the development undertaken cannot fall within the parameters of the GPDO. In the circumstances, the use of the building is immaterial.
31. To summarise, I have concluded that a building has been erected. It is not a '*mobile forestry shelter*' as claimed, and Class E does not apply. Neither of the appellants' claims on this matter thereby hold weight, or at least are not compelling with regard to the claim that the shelter is a caravan. The building requires express planning permission to remain on the land. Again, no such application has been made.
32. Accordingly, the appeals on ground (c) do not succeed.

The appeals on grounds (f) and (g)

33. The required steps for compliance are the removal of the building which is what would be expected when an enforcement notice targets the unauthorised erection of any building. Accordingly, the notice here is to remedy the breach. Turning to the appellants representations on this ground, as explained the appellants are unable to afford themselves the option of following the prior notification procedure should the building remain in situ. Also, if moved to a different location on the land – that is if it was actually possible to move the structure - it would still require planning permission.
34. Besides, any further proposals must remain a matter between the appellants and the Council, as it is beyond my remit to make any recommendations in this regard. No formal proposals alternative proposals are before me. I am, though, able to extend the compliance period, which concerns the appeal made under ground (g) whereby the appellants consider that the compliance period – in this case four months – is unreasonably short.
35. The appellants make the point that if the building is removed there will be a shortage of storage space. In order to minimise disruption, and so that alternative

arrangements might be made I am extending the compliance period to nine months. The appeal succeeds to this extent.

36. I have had regard to previous decisions and appeals referred to by the appellants. However, each case is assessed with regard to the respective individual circumstances involved and the particular legal issues that arise from these. As such, direct parallels are not easily drawn. As mentioned, I have reached my decisions on the basis of relevant legislation and evidential fact.
37. Finally, the appellants have made reference to the Human Rights Act. This is a consideration given that they stand to lose the forestry shelter which would run contrary to the thrust of Article 1 thereto. However, this must be balanced against the public interest and the objectives of the enforcement action which, as mentioned was taken for reasons of policy, both local and national, and to achieve a planning purpose. In the circumstances I have concluded that the enforcement notices and their requirements are a proportionate response to the breaches of planning control identified.

T C King

INSPECTOR