



Appeal Decisions

Site visit made on 22 April 2026

by **Paul Dignan MSc PhD**

an Inspector appointed by the Secretary of State

Decision date: 02 June 2026

Appeal A Ref: APP/J2210/C/23/3332446

Appeal B Ref: APP/J2210/C/23/3332447

Four Buoys, Radfall Ride, Chestfield, Whitstable, Kent CT5 3EW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Ishtiaq Ahmad (Appeal A) and Mrs Shazia Ahmed (Appeal B) against an enforcement notice issued by Canterbury City Council.
- The notice was issued on 3 October 2023.
- The breach of planning control as alleged in the notice is the construction of a building for independent residential use.
- The requirements of the notice are: 1) Demolish the building known as Woodview Cottage marked 'A' in the approximate position on the attached plan; 2) Permanently remove the patio area around the building known as Woodview Cottage; 3) Permanently remove the hard surfacing (driveway) from the highway (Radfall Rise) to the building known as Woodview Cottage; 4) Permanently remove the fencing between the building known as Woodview Cottage and the dwelling known as Four Buoys; and 5) Remove all resultant materials and debris associated with compliance of requirement 1, 2, 3 and 4 above from the land.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (c), (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.

Decisions

1. The appeals are dismissed and the enforcement notice is upheld insofar as it relates to the hard surfaced driveway and fencing and planning permission is refused in respect of that part of the alleged development at Four Buoys, Radfall Ride, Chestfield, Whitstable, Kent CT5 3EW on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

The appeals are allowed insofar as they relate to the erection of an outbuilding and patio 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 erection of an ancillary outbuilding and patio at Four Buoys, Radfall Ride, Chestfield, Whitstable, Kent CT5 3EW subject to the following conditions:

- 1) Unless within 6 months of the date of this decision the roof dormer on the outbuilding hereby permitted has been removed in its entirety, the outbuilding hereby permitted shall be demolished to ground level and all materials resulting from the demolition removed from the Land.
- 2) The development hereby approved shall only be used for purposes ancillary to the main dwellinghouse known as Four Buoys, Radfall Ride, Chestfield, Whitstable, Ket CT5 3EW.

Ground (c)

2. Four Buoys is a detached dwelling in a good sized plot fronting Radfall Ride, an unsealed private road serving numerous such properties. Planning permissions were granted in September and November 2020¹ for “Single-storey detached outbuilding for use as ancillary accommodation”. The outbuilding, to the rear of the host dwellinghouse, was to provide accommodation for the appellants’ elderly parent. At the time the appellants owned Four Buoys and the neighbouring detached dwelling, Hatters Croft. They lived in Hatters Croft and, as far as I can see, rented out Four Buoys, albeit the elderly parent was stated to have occupied Four Buoys at some stage, though it was said not to have been suited to his needs. They claim that their intention was to sell Hatters Croft and eventually move into Four Buoys. The planning permissions were for a small single storey building with a bedroom, a bathroom and a living room. The later permission added an open porch structure. Both were subject to a condition requiring that the outbuilding remain ancillary to Four Buoys.
3. The building subsequently erected deviated significantly from the approved plans of either permission. It is larger, having incorporated the area covered by the open porch roof into the building, it is higher with a different roof form, it is 2-bedroom and entirely self-contained, a mezzanine floor has been included and a roof dormer added along with additional windows. In addition, a separate driveway was constructed to a parking area to the front of the appeal building and it was fenced off from the remainder of Four Buoys, albeit pedestrian access was provided to the garden of Hatters Croft using pad-stones.
4. It is claimed that the building was completed in June 2022 and occupied by the appellants’ parent for a short period before he went into respite care in September 2022. The host property, Four Buoys, was rented out until at least October 2024 and the appeal building was rented out as a holiday cottage between November 2022 and May 2024. Thus it is clear that the appeal building was capable of use as a separate dwellinghouse, and that it was so used. The provision of pedestrian access from Hatters Croft does not alter that, in my judgement.
5. An appeal on ground (c) is that the matters alleged in the notice as comprising a breach of planning control, if they occurred, are not in fact a breach of planning control. It is not disputed that the building erected differs materially from that approved in November 2020, the permission that appears to now be relied upon as the basis for comparison. It is argued however that the building is not being used ‘for independent residential use’, though clearly it has been. That is an argument more appropriate to ground (b), insofar as it is a claim that the alleged breach of planning control has not occurred, but in any case it is the unauthorised erection of the building that is the subject of the notice. So far as the reference to ‘for independent residential use’ is concerned, the approved building could not function as an independent dwellinghouse, whereas the building enforced against could and did. The burden of proof on this ground is upon the appellants, but no cogent evidence to make the Council’s description improbable has been provided. I can see no reason to amend that description.
6. Further argument under this ground concerns the relevant planning unit. Again, this is not strictly relevant given the type of breach, but it appears to me that the

¹ Council Refs. CA/20/01471 and CA/20/02315

appropriate planning unit when the notice was issued was the appeal building and its separate enclosure with Four Buoys, including its own driveway. It was in a use entirely independent of the Four Buoys dwelling, and indeed independent of Hatters Croft, notwithstanding the familial links, provision of pedestrian access between the two, and ownership.

Ground (a)

7. The basis of an appeal on ground (a) is that planning permission should be granted for what is alleged. The deemed planning application is therefore an application for the erection of a building for independent residential use. However, it is also possible to grant permission for part of the matters. What is actually sought under this ground is the retention of the building with some external changes, namely the removal of the dormer, the fencing erected between it and Four Buoys, eventually the erection of fencing between it and Hatters Croft, and reconfiguration of the driveway, with the use of the building subject to a condition ensuring that it can only be used ancillary to Four Buoys. I deal with the deemed planning application on this basis.
8. It has also been suggested that the building could, initially at least, be considered as ancillary accommodation to Hatters Croft. That would involve a change of use, almost certainly material, of the land so that it would be incorporated into the Hatters Croft planning unit and remain separate from Four Buoys, but only until the appellants sold Hatters Croft and moved into Four Buoys. I could see at my site visit that Hatters Croft is up for sale with fencing erected between it and the original Four Buoys garden, but I have no information on who is living in Four Buoys now, or indeed who is living in or using the appeal building, or whether the personal circumstances put forward still exist. Such an arrangement would be difficult if not impossible to achieve through a grant of planning permission given that the permission passes with the land and a personal permission would not be reasonable or appropriate. A complex time and event contingent arrangement like that could possibly be achieved through an agreement or undertaking made under section 106 of the Act, but no such document is before me so I will not consider it further. In any case the circumstances behind this proposed arrangement no longer appear relevant given the prospective sale of Hatters Croft and the establishment of clear boundaries between it and Four Buoys.
9. Also, as a preliminary matter on this ground it is claimed that the November 2020 planning permission remains extant, and is therefore a valid fallback. This is on the basis that the foundations as originally laid were those for that permission before it was decided to erect the larger appeal building, so that it is claimed that the permission was begun in accordance with the condition 1 time limit and subsequently deviated from. A photograph of the foundations is all that is provided in evidence, but given that those foundations are now in fact the foundations of the appeal building, which is a materially different building than that granted planning permission, I do not accept that the foundations were at one stage comprised in the approved development, then incorporated into a different one which was subsequently built out, and yet remain comprised in the former. Furthermore, the photograph shows foundations which are purportedly for the open porch structure which was merely a lean-to roof supported by posts and not a structure requiring linear foundations, and those foundations appear to have in fact been foundations for the building subsequently erected. So far as I can determine from the photograph submitted in evidence, the foundations shown, which appear to have been laid in a single operation, already show significant deviation from the approved development. I can

see absolutely no basis for the contention that there remains an extant permission for a building on the site. So far as there may be a fall-back therefore, it would only be through GDPO Schedule 2 Part 1 Class E permitted development, which would permit an outbuilding but not one with primary living accommodation. I give this some weight.

10. The Council's reasons for issuing the enforcement notice related to the provision of a new dwelling in an unsustainable location, harm to the character and appearance of the area due to its backland nature, and protected habitats issues. None of these issues arise for a truly ancillary building, and back garden buildings, whether incidental or ancillary, are not unusual or incongruous in the area. In terms of scale, the building itself is capable of appearing subservient to Four Buoys. However, the provision of its own driveway and parking inevitably creates a strong impression of a separate dwelling in a backland situation. At present therefore, and notwithstanding the access and boundary treatment changes that have already occurred, along with the removal of the Woodview Cottage signage, the development is likely to be perceived as backland development that is out of keeping with the pattern of development along Radfall Ride and that fails to respect local character. Retention of the driveway and parking is claimed to be necessary for the use of the building as ancillary accommodation for the appellants' elderly parent, but it did not appear to be in that use when I visited, and in any case the building is not so distant from the host dwelling that a separate access and parking arrangement would be needed, even if it was to provide annex accommodation for an elderly person.
11. I consider that the access driveway to the appeal building and the parking area in front of it to be severable from the building. I consider that the building itself, along with the patio, is acceptable in terms of character and appearance, and without the separate driveway and parking it will retain a subordinate character that is not out of keeping with local character. As such its retention as an ancillary outbuilding accords with Policy DBE3 of the Canterbury District Local Plan, and with the development plan read as a whole. I shall therefore grant planning permission for the outbuilding, subject to conditions requiring the removal of the dormer window, which would cause unacceptable overlooking of Hatters Croft, and that the use be ancillary to Four Buoys. This is a split decision, so I will uphold the notice and allow the operation of section 180(1) of the Act to override the relevant requirements of the notice so far as the demolition of the building and patio are concerned. The notice will continue to have effect so far as the driveway and fencing are concerned.
12. For these reasons the appeal on this ground is allowed in part and I will grant permission on the deemed planning application for the building and patio, but I refuse planning permission for the driveway and fencing.

Ground (f)

13. This ground is that the requirements exceed what is necessary to remedy the breach of planning control. No lesser requirements have been identified that would remedy the breach, and so the appeals on this ground must fail.

Paul Dignan

INSPECTOR