
Appeal Decisions

Site visit made on 15 September 2020

by Paul Dignan MSc PhD

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

Decision date: 2 November 2020

Appeal A: APP/X0360/C/19/3234843

Appeal B: APP/X0360/C/19/3229306

Plot B, Land at The Coombes, Coombes Lane, Barkham, RG2 9JG.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Dean Thomson against enforcement notices issued by Wokingham Borough Council.
 - **Appeal A:** The enforcement notice, numbered 192111, was issued on 19 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an extension to the water tank building to create an enlarged building.
 - The requirements of the notice are: (i) Demolish the extension to the building and return it to its condition before the work commenced, as shown in the photograph below, taken on 27 March 2019; and (ii) Remove all materials resulting from step (i) from 'the Land'.
 - **Appeal B:** The enforcement notice, numbered 191383, was issued on 21 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of an unauthorised engineering operation consisting of the culverting of a ditch and removal of a section of an earth bund.
 - The requirements of the notice are: (i) Remove the culverting materials from the ditch including soil and pipework shown in the approximate position coloured blue on the attached plan; (ii) Reinstate the ditch to the level of the adjoining ditch; (iii) Remove the pipe used to culvert the ditch from 'the Land'; and (iv) Reinstate the removed section of the adjacent bund using earth so that it matches and blends with the profile of the adjoining sections of the bund.
 - **Appeals A and B:** The period for compliance with the requirements is 1 month.
 - **Appeal A** 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.
 - **Appeal B** is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
-

Appeal C: APP/X0360/W/19/3229870

Plot B, Coombes Lane, Ellis Hill, Arborfield, RG2 9JG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dean Thomson against the decision of Wokingham Borough Council.
 - The application Ref. 190661, dated 7 March 2019, was refused by notice dated 26 April 2019.
 - The development proposed is Wooden security fencing.
-

Decisions

Appeal A

1. It is directed that the enforcement notice be varied by extending the period for compliance to 6 months. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice be corrected by the substitution, in section 2, of the given postcode RG41 5SU by the correct postcode RG2 9JQ. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal C

3. The appeal is dismissed.

Applications for costs

4. Applications for costs were made by both parties against the other in respect of Appeals A and B These applications are the subject of separate Decisions.

Appeal A

Ground (c)

5. The appeal site is an approximately 0.56ha block of woodland. It is within a tract of woodland known as Coombes Wood, some of which has recently been sold in similar sized plots. The appeal site is one of these plots. It adjoins Coombes Lane, a public right of way. The 2-storey building the subject of the appeal has resulted from works to a large brick water tank on the plot. The basis of the appeal on this ground, which is that the matters alleged in the notice do not constitute a breach of planning control, is that the building as extended and altered¹ is development permitted by the GDPO².
6. Class E of Part 6 of Schedule 2 to the GDPO provides that "The carrying out on land used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes consisting of (a) works for the erection, extension or alteration of a building" is development permitted by the GDPO, subject to limitations and conditions. Among the latter is a pre-commencement requirement to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. Development may not begin until either (i) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required, (ii) notice is given within 28 days following the date of receiving the application of their determination that such prior approval is required, and that it is given, or (iii) the expiry of 28 days following the date on which the application was received without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination.

¹ In the main I refer to the works as the erection of a building.

² The Town and Country Planning (General Permitted Development)(England) Order 2015

7. The appellant applied to the Council for a prior approval determination for the works to alter the existing water tank to a relatively large 2-storey building, accompanied by the requisite details. The Council failed to notify the applicant of its determination before the expiry of the relevant period, hence condition E.2(1) was discharged. However, it is well established that regardless of the outcome of the prior approval process, development can only proceed if it is in any case development permitted by the GDPO. In this case the Council's view is that the land is not land used for forestry, and the building is not reasonably necessary for the purposes of forestry, so Part 6 Class E does not apply.
8. The GDPO does not define forestry, but the approach to be taken in construing the GDPO is to ascertain the ordinary meaning of the language used in a broad or common sense manner. A 'forest' is defined by the Oxford English Dictionary (OED) as "an extensive tract of land covered with trees and undergrowth", and by the UKFS as "generally large tracts of land, under stands of trees". The OED goes on to define forestry as "the science and art of forming and cultivating forests and management of growing timber", and the 'UK Forestry Standard: the government's approach to sustainable forestry' (2017) (UKFS) is consistent in stating that that "forestry is the science and art of planting, managing and caring for forest." Similarly, Collins Dictionary defines forestry as 'the science or skill of growing and taking care of trees in forests, especially in order to obtain wood.' The foregoing suggests that the area of land under management is a central consideration, and I find it difficult to conceive of any circumstances where the management, however beneficial or well intentioned, of a plot of only 0.56ha could reasonably be considered to be forestry.
9. In coming to this view I note that for most planning purposes forestry is grouped with agriculture, and for GDPO purposes both fall within Part 6 of Schedule 2. There are similar permitted development rights for forestry and agriculture where the agricultural unit exceeds 5ha, but below 5ha agricultural buildings are not permitted development. Having regard to the totality of Part 6, in not specifying a minimum area of land to which Class E applied I consider that the government must have been of the view that it was unnecessary, on the basis that land used for the purposes of forestry would be extensive in area.
10. But even if I was to accept the assertion that the plot was being used for the purposes of forestry, it is difficult to see how a permanent building of the considerable size erected could be regarded as reasonably necessary for its management. The essential equipment for the type of work being carried out, and that planned in the future, chainsaws and hand tools, is easily portable, and for most forestry purposes would be brought onto site when necessary, that is when works are actually being carried out. While I appreciate that the appellant has carried out significant scrub clearance works, much of that is now complete, so whatever justification there may have been for storing tools and equipment on-site during the clearing phase is much diminished. Indeed the site is easily accessible by vehicle, with informal parking very close by and vehicular use permitted on the adjoining by-way, so that the few essential tools could readily be brought to the site when necessary. The larger scale works on the plot, felling of some of the larger trees, appear mainly to have been carried out by contractors and would not have required on-site storage facilities.
11. No doubt the building would provide refuge while on site in inclement weather, but because of the easy accessibility by vehicle and the small the size of the

plot, this adds little weight to the need for the building for the purposes of forestry. On this point, the appellant's tree consultant has advised that the plot is not considered viable as a full forestry enterprise, and that the management approach should be conservation and improvement to the ecosystem rather than a commercial forestry business. Unlike agriculture, for GDPO purposes forestry does not need to be a trade or business, but an implication of non-commercial management is that whatever management works need to be carried out are likely to be in the appellant's spare time, hence the need for on-site refuge and shelter are far less pressing than would be the case if he was attempting to make a living from the plot.

12. Secure and dry storage of logs harvested from the site is also put forward as justification, but on-site firewood storage of any significant scale and duration is not a core forestry activity. Indeed it is far from clear that any substantial timber harvesting will be carried out, particularly as the plot is part of a wider area subject to a woodland Tree Preservation Order³.
13. The small size of the plot, the type and extent of works that have been carried out to date, and the future plans, which, though unclear or unformulated, seem focused more on ecological/ biodiversity and some community benefits than on any commercial use, suggest to me that rather than being used for the purposes of forestry, the use would be more appropriately characterised as a leisure use. But I find in any case, as a matter of fact and degree, the plot is not being used for the purposes of forestry. It must follow that the building is not reasonably required for the purposes of forestry. But in that respect I find, regardless, that the building is not reasonably required for the purposes of the management of the plot, however that might be defined.
14. It follows that the erection of the building is not development permitted by Class E of Part 6 of Schedule 2 to the GDPO, and the appeal on this ground must fail.

Ground (f)

15. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the purpose of restoring the building to its condition before the breach took place. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices. An appeal on ground (f), in a case such as this, is limited to an argument that the steps specified in the Enforcement Notice exceed, as a matter of fact, what is necessary to restore the building to its condition before the breach took place.
16. The argument on this ground is that it is excessive to return the building to its condition before the unauthorised works, but the basis of that argument is exactly that same as that under ground (c) above, namely that the building as it stands is permitted development. I have found that it is not, and so the appeal on this ground cannot succeed.

Ground (g)

17. The period for compliance is one month. A 12-month period is sought to 'find an alternative remedy', though that is not specified. While it is not for me to

³ Tree Preservation Order 1684/2019

find such a remedy, whatever it may be, I note that the Council has referred to an existing building on site, the water tank, which would be there on compliance with the notice and which could potentially be used if a storage facility was a necessity on the site. This would require a new roof and a door being inserted in the external wall, as a minimum. Such works would require planning permission. In the circumstances I consider it reasonable to extend the period for compliance to allow time for that avenue to be explored. A period of 6 months would be appropriate in the circumstances, and the appeal succeeds to that extent.

Appeal B

Ground (c)

18. This concerns the engineering works for the creation of the access into the site. Article 3(1) and Schedule 2, Part 2, Class B of the GDPO grant planning permission for 'the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road', where that access is 'required in connection with development permitted' by any Class in Schedule 2 of the GDPO (other than by Class A, Part 2). The development relied upon is the development the subject of Appeal A. Since I have found that the building is not permitted development, and no other qualifying development on the site has been put forward as justification, Part 2 Class B cannot apply. The engineering works require planning permission, and there is none, so the appeal on this ground fails.

Ground (f)

19. The argument on this ground is that it is excessive to return the land to its condition before the breach took place, what is sought under this ground is to simply require that the access be maintained in order to allow the free drainage of the culvert. In other words, to leave things as they are. However, the reasons given for issuing the notice include policy considerations that go beyond harm to amenity, indeed one reason given for issuing the notice is to remedy the breach of planning control. In these circumstances, where there is no appeal on ground (a), the planning merits of the development cannot be considered under ground (f). The Courts have made clear that the power to vary a notice in s.176(1)(b) needs to be read in such a way as not to afford a remedy that is obtainable by pursuing an appeal under ground (a). The appeal on this ground cannot therefore succeed.

Appeal C

20. This appeal is against the refusal to grant planning permission for the enclosure of the plot by close boarded fencing, 1m high along the by-way frontage and 2m high around the rest of the plot. An Article 4 Direction has removed permitted development rights for the erection of fences and other means of enclosure. The fencing is sought by the appellant for security reasons.
21. Having regard to the reasons given for refusing planning permission, the main issues are the effect on the character and appearance of the area, the effect on protected trees, and the effect on biodiversity, including protected species.
22. The plot is close to the western end of Coombes Wood, beyond which is mainly open countryside. Coombes Wood extends from the vicinity of the plot eastwards towards the settlement of Barkham. The site lies within an area

assessed by the Wokingham Borough Council's Landscape Character Assessment as Landscape Character Area (L1) 'Bearwood Wood Sand and Gravel Hills, whose key characteristics include heavily wooded upland hills and smaller scale intimate rural patchwork of deciduous patchwork and sheep pasture.

23. The by-way passing the site, Coombes Lane, is wooded on both sides for much of its length, becoming more open as it approaches Barkham. There is sporadic development further to the west, but the predominant character of Coombes Lane and its environs is of semi-natural open woodland. Some short runs of post and rail fencing occur between the site and Barkham, and there is rabbit fencing on one side near Barkham bordering a golf course, but these do little to detract from the open semi-natural character. In this context the proposed close boarded fencing would be a strikingly discordant and urbanising feature. It would be entirely out of keeping with the prevailing character and it would detract considerably from the ambience of the by-way, which is evidently popular and well used. As such it would conflict with Policies CP1 and CP3 of the Wokingham Borough Core Strategy (2010) (the CS), which seek to maintain the high quality of the environment and ensure that development is appropriate to the character of the area, and with Policies CC03 and TB21 of the Managing Development Delivery (MDD) Local Plan (2014) which are concerned with landscape protection.
24. I will note on this issue that Coombes Lane is subject to the Council's Rights of Way Improvement Plan (Greenways). The appellant claims that this will result in the introduction of street lighting, signage and fencing along the length of Coombes Lane and beyond. However, beyond improving the surface, I have not been made aware of any plans for lighting and fencing. I have no reason to doubt the Council's statement that it will exercise its development management powers to ensure the development will be carried out in a sensitive way so as not to harm this sensitive location. A planning application to develop nearby paddocks for a large equestrian centre has also been raised. This development would probably have an effect on the character and appearance of the area, but I have no reason to doubt the Council's assertion that pre-application advice given in 2017 was not supportive, and in the absence of a valid planning permission I give this matter no further consideration.
25. The erection of the fence would involve either driving stakes into the ground or digging post holes. This has the potential to damage tree roots, which can in turn lead to the death or premature decline of any tree affected. If concrete was used to set the posts, harm could also potentially arise from pH changes during curing. It is possible that above ground tree damage could be avoided by deviations in the fencing line as required, but there is far less scope to avoid or minimise below ground damage, and no arboricultural information has been provided to demonstrate how the development would seek to ensure that no harm arose. Harm to protected trees could adversely affect the ongoing contribution that the woodland makes to public amenity. The potential for such harm to arise, and the absence of any clear strategy to avoid such harm, places the development in conflict with MMD Policy CC03 in particular, and also with the other development plan policies referred to above.
26. The third main issue has been addressed by the provision of a report prepared by a chartered ecologist. In short, she acknowledges that close boarded fencing could in principle result in the fragmentation of common woodland faunal

species' commuting routes, but advises that modifications to the fencing could be made to enable wildlife dispersal which would enable the development to proceed without significant residual effects. Such modifications could be secured by condition. I consider that the further comments that the lack of fencing might have negative implications for biodiversity gains to be not well supported by evidence. Nonetheless, in the absence of information to the contrary I consider that the development would accord with CS Policies CP3 and CP7 and national biodiversity and conservation policy.

27. There has evidently been a degree of animosity between the owners of plots within Coombes Wood and local residents and other woodland users, and the appellant has referred to incidents of what he considers to be vandalism and trespass on his plot which he considers justifies the erection of the fencing. However, notwithstanding my finding on biodiversity effects, the harm to the character of the area, and the potential for harm to trees protected for their contribution to public amenity, places the development in clear conflict with the development plan read as a whole. The security benefits of the fence, if it was effective in that respect, is not a material consideration sufficient to justify a development that does not accord with the development plan. The appeal must therefore be dismissed.

Paul Dignan

INSPECTOR