The Planning Inspectorate

# Appeal Decisions

Site visit made on 15 January 2019

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 January 2019**

**Appeal A Ref: APP/B9506/C/18/3202028**
**Appeal A Ref: APP/B9506/C/18/3202029**
**Land at Paddock View, Pollards Moor Road, Copythorne SO40 2NZ**

- 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 Mr Philip Kingston (Appeal A) and Mrs Deborah Kingston (Appeal B) against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 6 April 2018.
- The breach of planning control as alleged in the notice is without planning permission a building shown in the approximate position on the attached plan.
- The requirements of the notice are: 5.1 Permanently remove (or dismantle or demolish) the building from the land affected and restore the land to its previous level and condition with soils and re-seed with grass. 5.2 Remove any debris or materials arising from compliance with the aforementioned requirements from the land affected.
- The period for compliance with the requirements is eight weeks.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (e) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 as amended have lapsed.

**Summary of Decisions: The appeals are dismissed and the enforcement notice upheld.**

## Preliminary Matters

1. As no appeal was lodged under ground (a) 'that planning permission should be granted for what is alleged in the notice', the representations concerning the planning merits of the development cannot be taken into account in my decision. Also, whether it was expedient for the National Park Authority (NPA) to issue an enforcement notice is a matter dealt with by Judicial Review and is therefore beyond my jurisdiction.

2. The appellants submitted a detailed written statement and they made final comments in response to the NPA's written submissions. Consequently, the appellants' case has not been prejudiced by any late receipt of copies of the appeal questionnaire and associated documentation.

## Ground (e) appeals

3. The ground of appeal is that copies of the enforcement notice were not properly served on everyone with an interest in the land. The onus is on the appellants to prove their case in this respect.

4. According to the appellants, they did not receive copies of the notice. They were informed that the notice had been issued by a letter dated 12 April 2018 from their bank, who held a mortgage against the appeal property and who had been served with a copy.

5. At s329, the Town and Country Planning Act 1990 provides for a number of methods by which an enforcement notice may be served. These include, at s329 (1) (c), sending a copy of the notice by recorded delivery, addressed to the person on whom it is to be served at their usual or last known place of abode.

6. I understand that the NPA had undertaken a search of the Land Registry prior to issuing the notice. Although the search copy provided is dated 17 December 2018, this shows that the property is owned by the appellants and there is nothing to suggest that it is not their usual or last known place of abode. The search also establishes that there is a mortgage held by their bank. Further information submitted certifies that on 6 April 2018, the NPA served copies of the notice on the appellants at the property, as well as on their bank, by using the recorded delivery 'signed for' service.

7. Therefore, I find that copies of the notice were served in accordance with s329 (1) (c) of the Act. It follows that copies of the notice have been served on the owner and the occupier of the land to which it relates and on any other person having an interest, as required by s172 (2) of the Act. Accordingly, the NPA has fulfilled its statutory responsibilities in terms of serving copies of the notice. Any mislaying of Post Office delivery notes in the appellants' letterbox leading to a delay in collecting copies of the notice, is not a matter over which it might reasonably be expected that the NPA could have had any control.

8. In any event, s176 (5) of the Act provides for disregarding a failure of service of copies of a notice where persons do not suffer substantial prejudice as a result. Although the date the appellants became aware of the notice was less than 28 days before it was due to take effect, they were nonetheless able to make the appeals within the remaining three weeks available to do so. The appellants made full arguments during the course of these proceedings as to why their appeals should be allowed. Therefore, the appellants have not suffered any prejudice. There is no suggestion that any other person may have been prejudiced. As a result, even if there had been a failure by the NPA in terms of service I would have concluded that it should be disregarded in this case.

9. For all the above reasons, the ground (e) appeal fails.

**Ground (b) appeals**

10. The ground of appeal is that the matter alleged in the notice has not occurred. The onus of proof in this respect also rests with the appellants.

11. A building has been stationed in a field adjacent to the appellant's dwelling. The building is in the approximate position shown on the plan attached to the notice. Submission of a retrospective planning application for the building shortly before the notice was issued does not alter the factual nexus.

12. As the matter alleged has therefore occurred as a matter of fact, the ground (b) appeal fails.

## Ground (g) appeals

13. The ground of appeal is that the time for compliance is unreasonably short.

14. I note an interested local resident's comments that the building had been installed from the roadside, using a container lifting lorry, during the winter of 2017. The resident also said that installation of the building took less than an hour. There is no firm evidence to suggest that the building could not be removed in a similar manner to its installation, within a similar timescale. Consequently, removal of the building is unlikely to be adversely affected by seasonal ground conditions in the field. Furthermore, given the absence of significant changes to ground levels in the field associated with the installation of the building, any groundworks and re-seeding are likely to be of limited scale. Such works are unlikely to be unusually complex or be adversely affected by seasonal ground conditions. Therefore, carrying out the remedial works would be reasonably straightforward and would not be an unduly lengthy undertaking.

15. The appellants are likely to have to arrange for a contractor to remove the building. However, no firm evidence was provided to suggest that such contractors might need more than a few weeks' notice in order to undertake the works. Where the building might be moved to and any delays in erecting a replacement building within the curtilage of the appellants' dwelling are not matters directly related to the breach. As a result, these are not matters which would warrant extending the period for compliance.

16. Therefore, I am satisfied that eight weeks strikes the appropriate balance between giving the appellants sufficient time to undertake the required works whilst remedying the planning harm identified in the notice. It follows that extending the time allowed to twelve weeks or the summer of 2019 as requested by the appellants would not be justified.

17. Consequently, the ground (g) appeal also fails.

## Conclusion

18. For the reasons given above I consider that the appeals should not succeed.

## Formal Decisions

19. Appeals A and B are dismissed and the enforcement notice upheld.

*Stephen Hawkins*

INSPECTOR