



Appeal Decisions

Hearing held and site visit made on 29 May 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH JULY 2024

Appeal A Ref: APP/B9506/C/23/3321286

Appeal B Ref: APP/B9506/C/23/3321287

Appeal C Ref: APP/B9506/C/23/3321288

**Land adjacent to The Birches, Canada Road, West Wellow, Romsey
SO51 6DE**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Ms Beverley Golden, Appeal B is made by Mr Brett Golden and Appeal C is made by Mrs Diana Trotman against an enforcement notice issued by New Forest National Park Authority.
- The notice was issued on 30 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building shown in the approximate position hatched green on the plan attached to this Notice.
- The requirements of the notice are to:
 - 5.1 Permanently demolish / dismantle and remove the building shown in the approximate position hatched green on the plan attached to this Notice.
 - 5.2 Permanently remove the materials and any debris resulting from compliance with requirement 5.1 from the land affected, and restore the land to its former level and condition.
- The period for compliance with the requirements is: four months.
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld.

Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. The Notice contains some superfluous or unnecessary words, which can be deleted. These include the word 'permanently' in step 5.1 and 5.2 of the requirements. Also, in step 5.1 of the requirements the words 'dismantle and remove' are not needed. Demolish sufficiently describes the action needed to take down the building and it is not necessary to require it to be removed when step 5.2 also requires all the materials and any debris resulting from compliance with 5.1 to be removed. Furthermore, it is unnecessary to require the appellant to restore the land to its former level when restoring it to its former condition would suffice. As such, the words 'level and' can be deleted from step 5.2 of the requirements.
2. These variations were discussed at the hearing, and no objections were raised. The variations, set out below for clarity, do not alter the nature of the allegation or cause any injustice to the Council or appellant.
3. In paragraph 5, step 5.1 delete the words '*permanently*' and '*dismantle and remove*'. In paragraph 5, step 5.2 delete the words '*permanently*' and '*level and*'.

Preliminary Matters

4. I note that correspondence was sent to the appellant on 2 May 2023, setting out that there was a possible hidden ground (d) appeal attached to the case. In order to succeed on this ground, the appellant would have had to show that the Notice was issued after the end of the period of four years beginning with the date on which the building operations were substantially completed.
5. Having regard to the Statement of Common Ground, the appellant acknowledges that the breach alleged in the Notice is referring to works carried out by the appellant in June 2020, two years before the Notice was issued. Based on this, and a brief discussion at the hearing, it was confirmed that the appellant was not in a position to pursue a ground (d) appeal.
6. Furthermore, there is an indication in the appellants' submissions that the Land was part of the extended garden and curtilage of the Birches. However, it was confirmed at the hearing that there was not any evidence to substantiate this claim, and it was not a matter that was being pursued as part of the appeal. Also, as no ground (a) has been pleaded, issues such as the impact on the character of the area are not matters before me for consideration.

Appeals on Ground (b)

7. The appeals on ground (b) are that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. In ground (b) appeals the test of the evidence is on the balance of probability and the burden of proof is on the appellants.
8. The appellants' case largely centres around the fact (a) the works were associated with the restoration, and not the rebuilding, of a previous building. They do not consider that these works amounted to development. However, this contention amounts to a ground (c) appeal, rather than ground (b) and will be discussed in more detail below.
9. Nonetheless, at the hearing both parties agreed that aside from the concrete slab, footings and a few courses of brickwork, the previous building had been removed by 2014. I shall hereafter refer to the previous building as the original building. In June 2020, a new timber frame structure, cladding and tin roof were constructed from new materials to replicate the original barn in the same position. With the benefit of my site visit, I can confirm that a timber framed structure is positioned in the location hatched in green and edged in red on the plan attached to the Notice.
10. Section 336 of the Town and Country Planning Act 1990 (1990 Act) interprets a "building" to mean any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. Furthermore, established caselaw (*Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385*), endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2) [2000] JPL 1025* identifies three primary factors as being decisive in determining what is a building. These are: (1) that it is of a size that it would normally be constructed, as opposed to being brought ready-made onto the site; (2) there would be physical attachment to the ground; and (3) it would cause a physical change of some permanence. None of the factors are necessarily decisive and - greater weight may be given to one over others when reaching a conclusion.

11. The timber framed structure is physically attached to the hardstanding, brickwork and foundations of the original building. The structure is of a notable size, which is the equivalent of a small barn with roof storage. Based on its size and how the appellants erected the structure on the land, it is something that was constructed as opposed to being brought on to the land ready-made. The structure has not been moved, and the appellant has applied for the structure to remain in place permanently.
12. I, therefore, must conclude that the works have formed a building, due to being constructed on site, its degree of permanence as well as its physical attachment to the hardstanding, brickwork and foundations of the original building.
13. For this reason, I conclude that, on the balance of probability, the matters alleged have occurred as a matter of fact, and the ground (b) appeals fail.

Appeals on Ground (c)

14. To succeed on ground (c), the appellants must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. Again, the test of the evidence is on the balance of probability and the burden of proof is on the appellants. As indicated above, the discussion largely centred around whether the works carried out are development as defined in section 55 of 1990 Act.
15. Section 55 sets out that the meaning of “development” and “new development” means the carrying out of building, engineering, mining or other operations in, on, over or under land¹. Section 55 (2) lists operations that shall not be taken for the purposes of this Act to involve development of the land, which amongst other things, indicates the carrying out for the maintenance, improvement or other alteration of any building of works which—(i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.
16. Having regard to the meaning of ‘development’ as set out in the 1990 Act, the appellant contended in the hearing that the works did not amount to development as it was ‘restoration’ of the original building and not the ‘rebuilding’ as outlined in section 55 (1A) (b) of the 1990 Act.
17. It is not disputed that there was an original building in this location for an extended period of time. Nonetheless, the timber frame, elevations and roof of the original were removed by 2014, due to it being considered unsafe. It was clarified at the hearing that it was always the intention of the appellants to restore the original building, but due to personal reasons the works were not carried out until 2020. It is the appellant’s claim that the timber frame is the same size, height and form as the original building as well as being in the same location. The slates for the roof are still on the land, but there were not enough to complete the roof. As such, a tin finish was used for the roof.
18. The appellant did not provide a definition of ‘restoration’ in this instance. Whether the building has been ‘rebuilt’ or ‘restored’ is debatable based on your definition of those terms. However, there can be no dispute that a significant amount of building operations was needed to ‘restore’ the original building. Based on the evidence before me, the building operations consisted of the erection of a two-

¹ For the purposes of this Act “building operations” includes—(a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.

storey timber frame and its attachment to the original foundations and brickwork. The timber frame provides a structure for the pitched roof finished in tin and the external timber cladding to form the elevations.

19. Although there is provision within section 55 (2) of the 1990 Act for works to repair, maintain, or improve a building without effecting its external appearance, there will come a point where works do not amount to maintenance, improvement or alteration but rebuilding. Based on a fact and degree assessment, it is clear that very little of the original building was remaining in 2020 when the works began. Whilst the appellants have tried to replicate what was previously on site, the operational works carried out to 'restore' the building, in my judgement, go beyond maintenance, improvement or alterations and, amounts to the rebuilding of the original building.
20. Rebuilding is a building operation that amounts to development as set out in section 55 (1A)(b) of the 1990 Act, which would require planning permission. The appellant has not directed me to a relevant section of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order), or shown any evidence of a valid planning permission, which permits the development carried out.
21. The burden of proof rests with the appellant and the relevant test is the balance of probability. The appellant has failed to demonstrate that the works are not development and do not amount to a breach of planning control. Consequently, the appellants have failed to discharge the required burden of proof.
22. For the reasons above, the appeals on ground (c) therefore fail.

Other Matters

23. I note the letter of support from a third party, which indicates that the barn was a replacement of the previous structure, which was taken down as it was dangerous and falling down. The interested party also sets out that the previous barn was used by the appellants in connection with the horses in the other field, and the new barn is a much nicer structure than the previous one.
24. I have had regard to these comments, but no ground (a) appeal has been made in this case, as such, it is not within my remit to consider the planning merits of the development. Also, for the reasons set out above, the works as alleged have occurred as a matter of fact and they constitute a breach of planning control. The existence of the previous building in this case does not negate the need for planning permission for the development alleged in the Notice.
25. I have had regard to the appeal² and the legal judgement³ highlighted by the appellant. However, both these cases relate to the abandonment of the residential use of land rather than operational development. In this case, the Council has not alleged a material change of use of the land, but the erection of a building, which in its own right is operational development that requires planning permission.

Conclusion

26. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the Notice with variations.

² Appeal Ref: APP/C3810/X/15/3035706

³ *Hughes v SSETR & South Holland DC* [2000] JPL 826

Formal Decisions

27. It is directed that the Notice is varied by:

In paragraph 5, step 5.1 delete the words 'permanently' and 'dismantle and remove'.

In paragraph 5, step 5.2 delete the words 'permanently' and 'level and.'

28. Subject to the variations, the appeals are dismissed, and the enforcement notice is upheld.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Beverley Golden	Appellant
Mr Brett Golden	Appellant
Mrs Diana Trotman	Appellant

FOR THE NATIONAL PARK AUTHORITY:

Ms Lucie Cooper	Planning Enforcement Manager- New Forest National Park Authority
Ms Catherine Pullen	Planning Enforcement Officer- New Forest National Park Authority
Ms Jane Sharples	Planning Enforcement Officer- New Forest National Park Authority

INTERESTED PARTIES:

None