

Date: 17 April 2019
Telephone: Council Contact Centre 01227 862178
Email: planning@canterbury.gov.uk
Website: www.canterbury.gov.uk/planningbreach
Our Ref: ENF /17 /00049



Whitstable Beach Campaign

Dear Mr McNally

**TOWN AND COUNTRY PLANNING ACT 1990
APPEAL UNDER SECTION 174**

Site Address	Whitstable Foreshore Oyster Beds
Alleged Breach	Without planning permission, the construction of oyster trestles with the associated activity for the purpose of cultivating and farming of oysters on the land.
Appellants name	Mr J Woodward
Appeal reference	C/18/3209297, 3209299, 3209300
Appeal start date	09/04/2019

3209297 - The Whitstable Oyster Co Ltd - Grounds a, b c, d, e, f, g
3209299 - The Whitstable Oyster Fishery Co - Grounds b c, d, e, f, g
3209300 - The Whitstable Oyster Trading Co Ltd - Grounds b c, d, e, f, g

An appeal has been made to the Planning Inspectorate against an enforcement notice issued by Canterbury City Council. The appeal will be determined by the **Public Inquiry** process. I will write again advising you of the date and venue when that information becomes available. The Public Inquiry will be open to attendance by the public and if you attend you may, at the discretion of the Inspector, give your views.

The Council's reasons for issuing the notice are as follows :-

- . It appears to the Council that the above breach of planning control has occurred within the last ten years.
- .
 1. It appears to the Council that the above breach of planning control has occurred within the last four years. Area 1 of the survey shows that oyster trestles numbered 6-33 and 61-52 appear to be within the low mean water line and the high mean water line to fall within the District of Canterbury.
 2. The development of the construction of oyster trestles with the associated activity for the purpose of cultivating and farming of oysters on the Land is a Schedule 2 development, under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 in that it falls within Schedule 2 Column 1 (c). The development is likely to give rise to significant environmental impacts because it is located in the Swale Special Protection Area (SPA), the Swale Site of Special Scientific Interest (SSSI), The Swale Ramsar site (RAMSAR) and the

Swale Estuary Marine Conservation Zone (MCZ). The land is designated a European Site that benefits from the highest protection of the European Habitats Directive and the Habitats Regulations 2010 from significant impacts of development.

3. This development fails to comply with Local, National Planning legislation by the developer failing to carry out an Environmental Impact Assessment and obtaining the appropriate permissions and licenses prior to constructing oyster trestles within the Foreshore of Whitstable. This development together with the associated activities is likely to have significant impacts on this European Designated Site and is therefore not sustainable development that complies with Chapter 11 (Conserving and Enhancing the Natural Environment) and Chapter 12 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework. The development not being sustainable development is contrary to Canterbury District Local Plan Policies, SP1 (Sustainable Development), Policy LB5 (Sites of International Conservation Importance), Policy LB6 (Sites of Special Scientific Interest), and Policy LB9 (Protection, Mitigation, Enhancement and increased connectivity for Species and Habitats of Principal Importance).

4. The development is in conflict with Policy HE11 (Archaeology) and Chapter 12 (Conserving and Enhancing the Historic Environment) of the National Planning Policy Framework. Archaeology interests have not been assessed to determine whether there is archaeology being harmed.

5. Canterbury District Local Plan Policy LB5 (Sites of International Conservation Importance) states that site of international nature conservation must receive the highest levels of protection and that no development will be permitted which may have an adverse effect on the integrity of the Special Area of Conservation (SAC), Special Protection Area SPA or RAMSAR site alone, or in combination with other projects as it would not be in accordance with the Habitat Regulations 2017. Paragraph 10.33 of Policy LB5 (Sites of International Conservation Importance) states that, " a precautionary approach to development will be applied for development within The Swale Special Protection Area / Ramsar and that developers will need to provide, or contribute to mitigation measures."

6. Planning permission could not be granted or granted with appropriate conditions.

The appeal has been made on the following grounds: -

- (a) That planning permission should be granted for what is alleged in the notice. Section 174(2)(a) of the Town and Country Planning Act says "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged."
- (b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
Section 174(2)(b) says "that those matters have not occurred"
- (d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

Section 174(2)(d) says "that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters".

- (e) The notice was not properly served on everyone with an interest in the land. Section 174(2)(e) says "that copies of the enforcement notice were not served as required by Section 172".
- (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. Section 174(2)(f) says "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
- (g) The time given to comply with the notice is too short. Section 174(2)(g) says "that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed".
- (c) That there has not been a breach of planning control. Section 174(2)(c) says "that those matters (if they occurred) do not constitute a breach of planning control".

If you wish to make comments, you can do so on the Planning Portal at <https://acp.planninginspectorate.gov.uk> or by emailing teame2@planninginspectorate.gov.uk. If you do not have access to the internet, you can send **three** copies to:

The Planning Inspectorate
Room 3B
Temple Quay House
2 The Square
Bristol
BS1 6PN

All representations must be received by **21 May 2019**. Any representations submitted after the deadline will not usually be considered and will be returned. The Planning Inspectorate does not acknowledge representations. **All representations must quote the appeal reference.**

Please note that any representations you submit to the Planning Inspectorate will be copied to the appellant and the council and will be considered by the Inspector when determining the appeal.

If you submit comments and then subsequently wish to withdraw them, you should make this request to the Planning Inspectorate by the date above.

A copy of the appeal documents are available for inspection at these offices and the councils statement will be available to view from **21 May 2019**

For more information about planning appeals please visit;

<https://www.gov.uk/government/collections/taking-part-in-a-planning-listed-building-o>

[r-enforcement-appeal](#)

Yours sincerely,

Planning Enforcement