

Appeal Decisions

Site Inspection on 12 September 2016

by Graham Self MA MSc FRTPi

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

Decision date: 19 September 2016

Appeal Reference: APP/U1105/C/16/3148322

Site at: Bucknole Wood, Dullimoor, Offwell, Devon EX14 9SR

- The appeal is made by Mrs Lindsey Talbott under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by East Devon District Council.
- The notice is dated 22 March 2016.
- The breach of planning control alleged in the notice is: "Without planning permission the construction of a wooden single-storey storage building in the approximate position outlined in blue on the attached plan".
- The requirements of the notice are:
 - (i) Permanently remove the building and any foundations.
 - (ii) Permanently remove from the land all building materials and rubble arising from compliance with requirement (i) above, and restore the land to its condition before the breach took place by levelling the ground and re-seeding with grass.
- The period for compliance is three months.
- The appeal was made on grounds (a) and (g) as set out in Section 174(2) of the 1990 Act (but see "Procedural Matters" below).

Summary of Decision: The appeal does not succeed.

Appeal Reference: APP/U1105/C/16/3148323

- The appeal is made by Mr Neil Talbott. All other details are the same as those summarised above, except for a matter relating to the deemed application fee (see "Procedural Matters" below).

Summary of Decision: The appeal does not succeed.

Appeal Reference: APP/U1105/W/16/3148089

- The appeal is made by Mrs Lindsey Talbott and relates to the same site as recorded above. This appeal is under Section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991; it is against a refusal of planning permission by East Devon District Council.
- The council's reference is 15/2242/FUL.
- The development subject to this appeal was described in the relevant application as:

"Retention of a single skin recycled wooden shed for forestry, conservation + amenity (with artistic/therapeutic elements, on a not-for-profit basis). Full details in supporting statement. Building is for storage; shelter for observing the wood + writing about it/painting it in adverse weather conditions; occasional 1:1 therapeutic work. Detail in supporting statement".

- In the council's refusal notice (dated 26 January 2016) the development was described as: "Retention of wooden storage building for forestry, conservation and artistic/therapeutic uses".

Summary of Decision: The appeal does not succeed.

Procedural Matters

1. The standard form lodging the Section 174 appeals indicates that the appeals are made on grounds (a) and (g), as noted above. However, in one of their statements, the appellants say they "would like the enforcement notice varied" to remove the requirements to level the ground and re-seed it with grass. This part of the appellants' case is equivalent to a claim that the requirements of the enforcement notice are excessive. The Act allows for such a claim to be made under ground (f) of Section 174(2). Although ground (f) was not pleaded, out of fairness to the appellants I shall treat these appeals as if it had been.
2. There are two separate appeals with different reference numbers. This is because the relevant legislation (Section 174 of the 1990 Act) specifies that "a person" (singular) having an interest in the land to which an enforcement notice relates, or "a relevant occupier", may appeal against the notice. There is no right of joint appeal. Therefore when two (or more) individuals appeal against an enforcement notice, they have to be treated as having made separate appeals, which have separate reference numbers. (The same does not apply to an appeal under Section 78 of the Act against a refusal of planning permission, as planning applications can be made jointly; then the appellants have a joint right of appeal.)
3. When an appeal is made against an enforcement notice, an application for planning permission for the development enforced against is deemed to be made under Section 177(5) of the 1990 Act. A fee is normally payable for this application (not for the appeal itself). As far as I can tell from the case papers, the deemed application arising from Mrs Talbott's appeal was assessed as being "fee exempt" because a fee had previously been paid to the planning authority for the application now subject to the Section 78 appeal, covering similar development. The application was made by Mrs Talbott, so Mr Talbott's appeal against the enforcement notice would not have been fee exempt. This is a technical matter which does not affect the overall outcome of the case, but it affects the format of this decision and the wording of the formal decisions on each appeal.

Section 174 Appeals, Ground (a) and Mrs Talbott's Section 78 Appeal

4. Under ground (a) of the appeals against the enforcement notice, planning permission is sought for the development enforced against. The Section 78 appeal against the refusal of planning permission raises similar issues, so I consider these aspects together. The main issue of dispute is whether the development is acceptable having regard to relevant planning policies for this area.
5. The disputed building was evidently bought from the Exeter Guildhall shopping centre where it functioned as "Santa's grotto", and was re-erected at the appeal site after Mr and Mrs Talbott had been wrongly advised that planning permission would not be needed. The appellants explain that the building is intended for three primary purposes: woodland management; therapeutic work connected to woodland; and community or educational uses connected to the woodland and its appreciation. In the appellants' submission, the scale of the building is necessary

and reasonable, the building's size being justified by the need to store forestry tools, equipment, outdoor clothing and footwear, to provide shelter and refuge space, and for other activities such as drying or seasoning wood. The appellants contend that the development accords with the planning policies mentioned by the council.

6. I can see that Mr and Mrs Talbott have genuine intentions. It is also apparent from the available evidence that their aim is to use the building for a mixture of purposes. Forestry management, in what may be termed the conventional sense of this expression, is only one purpose. Among other things, they want to support a process of reconnection between people and the landscape, to alter the way humans engage with the natural world, and to participate in this process through small scale therapeutic group activities, writing, social media and art. In their statement supporting the planning application, the following intended purposes for the building were set out:
 - Storage of forestry tools and equipment;
 - Storage of outdoor clothing and footwear;
 - Drying and storing camping equipment;
 - Wood store;
 - Storing artistic materials and works;
 - Storing reference books;
 - Space to sit down in bad weather whilst working in the wood for forestry or artistic purposes, plus storage of canvas chairs and outdoor chair;
 - Table space for artistic work; and
 - Space for therapeutic work.
7. The appeal statement explains more about the proposed activities and contends that the first, second and seventh of those listed above (the ones regarded by the council as "forestry") are enough to justify the building. Part of the appellants' case is that the District Council work to a different forestry model based on profit, which the appellants say is outdated. The appellants' model is holistic and related to stewardship, working synergistically with the rhythms and energies of the woodland and wildlife to recognize and respect the interdependence between ecosystems.
8. The law imposes certain requirements for making decisions on planning applications. Decisions have to be made in accordance with the provisions of the development plan for the area, unless "material considerations" indicate otherwise. The policies contained in the development plan for this area¹ will have been adopted on behalf of the local community only after extensive public consultation and public hearing procedures, and so have considerable weight. Local and national planning policies are aimed at protecting the rural character of the countryside whilst allowing development where it can be shown to be needed for purposes such as agriculture or forestry. The site is part of a designated Area of Outstanding Natural Beauty ("AONB"). Such areas have the highest status of protection from most forms of development under national policy.
9. Bucknowle Wood is evidently owned by the appellants, and the building within the wood is not readily visible from publicly accessible viewpoints. That is not a

¹ Since the council's decision on the application the then adopted East Devon Local Plan has been superseded by the New East Devon Local Plan. Policy labelling has altered. However, the aim and purpose of relevant policies have not materially changed.

compelling point of support for the appellants' case. If screening from public view were to be regarded as sufficient to make the erection of buildings in rural areas and AsONB acceptable for planning purposes, such development would before long be dotted all around the countryside, contrary to long-established national policies.

10. The argument about the need for this building is clouded by the mixture of intended uses described by the appellants. There appears to be a genuine requirement for some forestry-related uses such as the storage of equipment, although for a fairly small area of woodland I think the amount and scale of equipment mentioned by the appellants is overstated. I am aware of the possibility or hope that other woodland might be acquired in the future, but intentions can change, so this point has little weight.
11. More significantly, most of the other uses mentioned by the appellants do not involve what can properly be called forestry for the purposes of planning control and policy. The proposed artistic, therapeutic or educational activities, plus uses of the building related to camping, are linked in some way to the site's woodland location; but the link is too indirect to be regarded as forestry management. For example, the appellants say that part of their purpose in buying the wood was for them "to make art there", and I can see that it would be convenient for artist's material to be kept in the building (perhaps for use by Mr Talbott who is evidently an artist); but painting woodland is not forestry. There are references in the submitted evidence to sourcing, creating and putting up bird, bat and mammal boxes and feeders, as well as insect hotels for bees and other pollinators. These are all admirable intentions, but enhancing, observing or monitoring wildlife is not forestry.
12. I realise that what for planning purposes would be regarded as non-forestry activities may only be intended as secondary uses of the building. Nevertheless I get the impression from the available evidence that taken together, all these activities would be a significant component in the overall use of the building. The building would no doubt greatly help the appellants enjoy the woodland in various ways, and would help them in their aims to enhance the woodland and increase biodiversity; but I do not find that the building is needed for forestry purposes to such an extent as to meet relevant planning policies. It is not for me to say whether a smaller shed might or might not be appropriate or justified, as that would be a different proposal.
13. I note that Offwell Parish Council and other parties support the building remaining in place. The Parish Council's representation does not mention the local plan and I do not know whether the Parish Council opposed the adoption of the local plan's policy on development in the countryside. Be that as it may, I judge that the expressions of support for the appellants do not overcome the objections.
14. In reaching my decision I have taken account of all the other matters raised in evidence on which I have not specifically commented, including the circumstances which left the appellants having to make a quick decision when they bought the building. I conclude that planning permission should not be granted. Therefore the appeals on ground (a) against the enforcement notice do not succeed. The same applies to the Section 78 appeal against the refusal of permission.

Section 174 Appeals, Implied Ground (f)

15. As I have mentioned in paragraph 1 above, the appellants consider that the requirements to level the ground and re-seed it with grass are excessive.
16. It is tempting to accept the appellants' argument that the presence of a patch of flat land in the middle of a wood, where the slope is already irregular, would not cause material harm to the area's rural quality. On the other hand, the council rightly point out that the levelling of the land is not so minimal as to be *de minimis*² and that the land has a natural character and form. The "cut and fill" operation has created an obviously man-made and therefore alien feature, and one of the purposes of designating an AONB is to preserve the natural form of the land. In this context the requirement to restore natural ground levels is not excessive or unreasonable.
17. The ground surface in the vicinity of the building is mostly covered with earth or leaf mould with patchy grass in places, and it seems likely that allowing re-growth would probably achieve a more natural ground cover than re-seeding with grass. For those reasons I have decided to delete the requirements for re-seeding from the enforcement notice, so the implied ground (f) appeal succeeds to that extent.

Section 174 Appeal, Ground (g)

18. Ground (g) concerns the compliance period. The appellants say that because of the practical difficulty and expense of removing the building, their only option is to sell it on a "buyer removes" basis, and finding a buyer who could then carry out such an operation would take at least six months.
19. The location of the building is such that removing it will not be easy, since normal access by a vehicle capable of transporting the building in sections is not possible. I appreciate the difficulties faced by the appellants, and it is unfortunate that they erected the building without planning permission, apparently after relying on advice (the source of which is not revealed but I suspect would have been someone not having professional planning qualifications).
20. Since the basic requirements of the notice could be carried out within the three months specified, the case for a six month compliance period is weak. On balance, in recognition of the particular circumstances explained by the appellants, I have decided that an extension to four months would be reasonable and justified. The council have powers to grant a further extension if they consider it to be justified, for example if the building had been sold but bad weather were to cause logistical problems for a purchaser.

Formal Decisions

Section 174 Appeals

21. I direct that the enforcement notice be varied in the following ways:
 - (i) by deleting from Step(ii) of the requirements all the words after "above", and substituting: "and restore the level of the land to the natural slope it had before the breach took place".
 - (ii) by deleting "three months" and substituting "four months" as the time for compliance.

² This legal term is commonly misspelt (as in the council's statement). It is an abbreviation of *de minimis non curat lex*, which roughly translates as "the law does not care about minimal things".

22. Subject to the above variations, I dismiss the appeals, refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act in the case of Mrs Talbott's appeal, and uphold the enforcement notice as varied.

Section 78 Appeal by Mrs Talbott

23. I dismiss the appeal.

G F Self

Inspector