
Appeal Decision

Site visit made on 6 June 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 12 June 2017

Appeal Ref: APP/J9497/C/17/3169342

Land at Stiniel, Chagford, Devon, TQ13 8EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ashley Wengraf against an enforcement notice issued by Dartmoor National Park Authority
 - The enforcement notice, numbered ENF/0062/15, was issued on 12 January 2017.
 - The breach of planning control as alleged in the notice is operational development consisting of the erection of a timber building on the land in the approximate position shown edged in blue on the plan attached to the notice.
 - The requirements of the notice are to permanently remove the development from the land, including all debris and materials and restore the land to its former condition.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: appeal dismissed and notice upheld.**
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Procedural matter

1. The appeal was originally made on ground (f) but as the facts also relate to ground (c), I have determined the appeal accordingly.

The appeal site and relevant planning history

2. The appeal site is an area of sloping ground within an area of undulating agricultural land comprising small to medium fields enclosed by Devon hedge banks. A timber field shelter of about 7.2m x 3.6m is located within the site.
 3. An application for the erection of a goat shelter, hay and equipment store with stone access track was made in July 2014. However, the application was withdrawn following the Authority's indication that it would be recommended for refusal due to its landscape impact.
 4. In March 2015, the Authority's enforcement officer noted that a timber building had been erected in a paddock some 50 metres or so up a steep slope. It had been sited with one side cut into the slope and the other sitting on boarding. Although built on skids, the officer considered that it could not be moved easily because of where it was sited, the contours of the land and that it would fall off the wooden supports if moved. The Authority advised the appellant that the shelter was not considered to be mobile and was a permanent feature. In September 2015, the Authority noted that the shelter had been shifted 3 or 4 metres to the corner of the fenced area but at the same level as before. A down pipe and water butt had been installed.
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5. Four further monitoring visits between November 2015 and January 2017 confirmed that the shelter had not been moved.

The appeal on ground (c)

6. An appeal on this ground is that there has not been a breach of planning control.
7. The appellant states the shelter is a mobile field shelter that contravenes no planning legislation. It is necessary for the housing and breeding of pygmy goats and storage of food and bedding. It has not been cut into the ground and is only propped up on its lower side by placing the skids on a railway sleeper. It is not sat within an enclosure, nor is it attached to the paddock fence which is removable to accommodate the different positions of the shelter. It is on skids with a tow hitch and is easily moveable by tractor and that an agreement exists with a local farmer to move it every three months. Due to family circumstances, the appellant states that he fell behind the schedule of movement last year but it was moved on 12 February 2017 and will be moved again in May 2017.
8. Setting aside the personal circumstances of the appellant, the shelter does not appear to have been moved around the site with the frequency associated with mobile shelters.
9. The appellant also refers to comments of officers indicating that the size, type and siting of the shelter being deemed to be acceptable and that it did not constitute development so long as the structure was moved on a regular basis, every three months or so and that it should be easily moved without damage.
10. However, the Authority considers that the constructed timber building constitutes a building operation and is development within the meaning of s55 and refers to the tests to establish whether a structure is a building on the basis of its size, permanence and attachment to the land.¹ None of these factors is decisive in its own right and the structure needs to be assessed as a matter of fact and degree.
11. At 7.2m by 3.6m, with an overhanging corrugated roof, the size of the shelter is not insignificant although it lacks a floor and is not attached to the ground by virtue of it being constructed on skids sitting on top of a bed of railway sleepers. The presence of a down pipe and water butt are not significant in terms of the permanence of the structure but the extent that it is moved within the appeal site is a key factor.
12. At the site inspection the appellant indicated the positions that the shelter had been moved to and from. He indicated that it is currently sited in its original position and that previously it had been moved 6m to one side and 6m to the other side along the track created by the bed of sleepers. This appears to be a contrivance created solely for the purpose of demonstrating that the shelter can be moved and is very different to the usual type of moveable shelters elsewhere such as mobile chicken or pig arcs which are moved for the benefit of the livestock and the land.
13. In the Skerritts case it was held that it is not the fact that a building is capable of being moved, which it is in this appeal case, but more of a question of how

¹ Barvis Ltd v SSE [1971] 22 P and CR 710 and Skerritts of Nottingham Ltd v SSETR (No 2) [2000] JPL 1025

permanence is construed in terms of significance in the planning context. In this case, the visual and landscape impact would not be materially different whether the shelter is in the middle or at the end of the skids and consequently provides a degree of permanence in the landscape not normally associated with genuinely mobile field shelters.

14. I am satisfied from the facts of this case that the shelter is of a size and has a significant degree of permanence to constitute operational development within the meaning of s55 and that planning permission is required.
15. The Authority makes reference to the building being 3m shorter in length than that proposed in the withdrawn application and that it has been erected immediately adjacent to the optimum location as identified in that application. However, this is not relevant to an appeal on ground (c) which is concerned with legal arguments in respect of whether development requiring planning permission has occurred.
16. The appeal on this ground fails.

The appeal on ground (f)

17. The appellant states that the complete removal of the building is asking more than is necessary to comply with the requirements. However an appeal on this ground is that the steps to comply with the notice are excessive, and lesser steps would overcome the objections. The appellant does not, however put forward any lesser steps.
18. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
19. The appeal on this ground fails.

Other Matters

20. The appellant refers to other landowners with similar shelters but none have been asked to move them according to a schedule and this represents an inequality, however this is not relevant to this appeal.
21. The appellant also refers to the visual impact of his shelter and to other shelters in the vicinity but as no appeal has been made on ground (a), I am unable to consider the planning merits of the shelter.

Decision

22. The appeal is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector