
Appeal Decisions

Site visit made on 26 May 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal A: APP/Q9495/C/19/3239952

Appeal B: APP/Q9495/C/19/3239954

1 Lambgill Bank, Watermillock, Penrith CA11 0LR

- 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 J P Shaw and Mrs V Shaw against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice was issued on 18 September 2019.
- The breach of planning control as alleged in the notice is building operations consisting of the permanent siting of a shipping container for domestic use.
- The requirement of the notice is to permanently remove the shipping container from the land.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. However, with respect to Appeal B, 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 Decision: The appeals are dismissed and the enforcement notice upheld.

The appeals on ground (c)

1. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. The definition of development in S55 of the Act includes the carrying out of building operations on land. A building is defined by s336(1) of the Act as any structure or erection.
2. I observed at my site visit that the land on which the shipping container is situated appears to have been prepared and levelled to host the container. It is anchored onto the land by its own considerable weight and it is not intended to be moved. I also understand that it has been on site for more than two and a half years and consequently has a degree of permanence. As such it constitutes a building operation and therefore operational development for which planning permission is required.
3. Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 allows buildings etc incidental to the enjoyment of a dwellinghouse. It states that the provision within the curtilage of the dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse is permitted development. This is subject to limitations, including E.1 (c) which states that

development is not permitted by Class E if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwelling. Since the shipping container is situated on land forward of the wall of the principal elevation of the original dwellinghouse it is not permitted by virtue of the provisions of the GPDO. The appeals on ground (c) fail.

Appeal A on ground (a)

4. The ground of appeal is that planning permission should be granted. The main issue is the effect on the character and appearance of the area.
5. The appeal site comprises a semi-detached bungalow which is situated in a small group of buildings near Watermillock. The green shipping container has been sited to the side of the dwelling, forward of its front elevation. The site is situated within the Lake District National Park which has the highest status of protection in relation to landscape and scenic beauty according to the National Planning Policy Framework (the Framework).
6. The shipping container is visible from the nearby highway and as a consequence of its position forward of the front elevation of the residential property is prominent when passing by. The site is within the open countryside where there are some residential properties along the north side of the nearby highway. Land to the south slopes downwards providing views over Ullswater and hills. The character of the locality is rural and is sensitive to changes that may arise from development.
7. The development the subject of the enforcement notice is utilitarian and industrial in character which contrasts greatly with the adjacent residential properties and rural character of its surroundings. It is incongruous in its sensitive setting and at odds with the character and appearance of the National Park. I conclude that it is harmful to the character and appearance of the area and contrary to Policies CS11 and CS25 of the Lake District National Park Local Development Framework Core Strategy Adopted October 2010 and the Framework. Among other objectives these require development to conserve and enhance the character and quality of the local landscape, require the type, design and scale of development to maintain and where possible enhance local distinctiveness and sense of place and be sympathetic to local character.

The appeals on ground (f)

8. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve that purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity(s173(4)(b)). Since the notice requires the shipping container to be removed, the purpose is clearly to remedy the breach. The appellant suggests that the effect of the development could be minimised by planting and wooden cladding, but that would leave the shipping container in situ. Clearly, leaving it in place would not achieve the purpose of the enforcement notice. The appeals on ground (f) fail.

Conclusion

9. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

10. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

AA Phillips

INSPECTOR