



Appeal Decision

Site visit made on 2 February 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 07 February 2022

Appeal Ref: APP/Y3940/C/21/3284019

Land lying to the northwest of Bouverie Lodge, Spin Hill, Market Lavington, DEVIZES, Wiltshire, SN10 4NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anthony Rae against an enforcement notice issued by Wiltshire Council.
 - The notice, reference ENF/2021/00498, was issued on 17 August 2021.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use of land to a mixed use of agriculture and residential together with the erection of a modular building to facilitate the residential use of the land.
 - The requirements of the notice are a) Permanently cease the use of the Land for residential purposes. b) Permanently remove all residential paraphernalia associated with the unauthorised use from the Land. This includes but is not limited to, generator, bbq, gazebo, gas cylinders, chairs, tables, bicycles. c) Demolish the building including all associated hard standing, foundations, septic tank and drainage which facilitate the siting of the building. d) Permanently remove the resultant materials that arise from compliance to requirement c) from the Land. e) Restore the ground level to match the profile of the Land that existed prior to the unauthorised development taking place.
 - The period for compliance with the requirements is: 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. 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 have lapsed.
 - An identical appeal has been made by Mrs Phillipa Rae – APP/Y3940/C/21/3284020
-

Decisions for 3284019 & 3284020

1. The appeals are dismissed and the enforcement notice is upheld.

The Appeal on Ground (b)

2. This ground is that the matters alleged haven't occurred as a matter of fact. The appellant's argument is that the 'modular building' is actually a moveable structure that doesn't, therefore, require planning permission. The various tests as to whether a structure is a building or not are well known and revolve around the questions of physical attachment to the ground, permanence and size.
3. The appellant contends the building was delivered in various sections and fastened together on site, but merely sits on concrete slabs and is not fixed to the ground in any way. This may well be true, but it is not the whole case. In terms of size, as I saw on site, it is a substantial structure, that would seem to have been delivered in a number of sections and craned into place. It is certainly not a structure that could be easily moved, unless it was first

dismantled and specialist equipment brought in to then move the pieces. The ground slopes beneath the structure and has been built up to create a flat surface. I saw photographs from the Council showing this was clearly a significant task and probably amounts to engineering works in its own right. Which all suggests a degree of permanence. There is clearly no intention of moving the structure about the site or to anywhere else. Thus it is clear to me that it is a building and so does require planning permission.

4. The notice attacked both the change of use and the building itself and no argument has been made that there has not been a material change of use of the land to residential. So on both counts the appeal on ground (b) fails.

The Appeal on Ground (f)

5. This ground is that requirements are excessive. As the allegation is both a material change of use and the erection of a building then the requirements to cease the use, remove the building, any other residential paraphernalia and return the land to its former condition seem entirely reasonable. As the land is earmarked for allotments then the residential use must cease in order to remedy the injury to amenity. The appellant's other arguments seem to turn on success on ground (b), but as the modular building does require planning permission then removing it and the septic tank is entirely reasonable.

The Appeal on Ground (g)

6. I agree with the Council that 9 months is generous. I recognise the appellant will lose his home, but 9 months should provide plenty of time to buy or rent somewhere else. There is no suggestion that this would prove particularly difficult. There would be an infringement of his human rights, but that is entirely proportionate given the location of the site in the open countryside and the strong policy objections to residential development here.

Conclusion

7. I shall dismiss the appeal and uphold the notice.

Simon Hand MA

INSPECTOR