



Appeal Decision

Site visit made on 6 December 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/D0121/C/22/3298022

Land at: The Old Town Quarry, South Road, Weston-super-Mare, BS23 2LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeal is made by Mr Aaron Moffatt against an enforcement notice issued by the North Somerset Council.
 - The enforcement notice was issued on 12 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a structure (in the approximate position shown marked in blue on the attached plan).
 - The requirements of the notice are to remove the structure and all resultant materials from the land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) (d) and (f) of the Act.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At my visit to the appeal site the door into the structure was locked and the appellant declined my offer for me to wait while he retrieved keys to allow an internal inspection. As such my decision is based on the parties’ submissions and an external inspection.
3. The appellant’s case includes legal grounds of appeal (b), (c), and (d). In these legal grounds of appeal the Courts of established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probability.

Appeal on ground (b)

4. An appeal on ground (b) is a claim that the alleged matters (i.e. those matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact. In this case therefore the appellant must demonstrate that erection of the structure alleged in the notice, marked in blue on the enforcement notice plan, has not occurred.
5. The structure subject of the notice has a footprint of approximately 7m x 7m and is primarily comprised of corrugated roof and walls over a scaffolding pole frame. The appellant’s evidence in his written submissions confirms the

¹ *Nelson v SSE* [1962] 13 P&CR 151

existence of the structure and it was clearly there at the time of my visit to the appeal site and in photographic evidence submitted by the Council.

6. Different to establishing that the structure had not been erected, his argument is that it is not a new structure, instead being the restoration and extension of an older smaller original building, as detailed in his written submissions². In effect, this argument is one which seeks to assert that not all of the structure constitutes a breach of planning control.
7. However, whether a part of the whole structure is not a breach of planning control, or whether the time for enforcement action had expired when the notice was issued, or whether the requirements are excessive, are matters relevant to grounds (c) and (d) and (f) respectively, which I deal with below.
8. For these reasons, even on the appellant's interpretation, there can be no doubt that a structure has been erected as alleged. The matters alleged have therefore occurred and the appeal on ground (b) fails.

Appeal on ground (c)

9. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control.
10. A breach of planning control is defined at s 171A(1)(a) of the Act to include the carrying out of "development" without the required planning permission.
11. Following on, "development" is defined to include the carrying out of "building operations" (s55(1)). Building operations include "demolition of buildings; rebuilding; and structural alterations of or additions to buildings" (s55(1A)).
12. Additionally, a "building" is defined (s336) to include "any structure or erection, and any part of a building". In this regard, the Courts³ have established that the question of whether a "structure" is a building or not should be determined in the context of its size, permanence and physical attachment to the ground.
13. In his statement of case (SOC)⁴ the appellant submits that the building is of a temporary nature, not anchored to the ground or fixed permanently to anything in any way, being essentially a container capable of dismantling and moving as a demountable structure.
14. However, contrary to the appellant's view, I find the structure as a whole is of a substantial size, mounted on a permanent base. It was constructed on site, as opposed to being something much smaller that might be capable of being brought to the site whole. As to permanence it appears to have been in the same place for some time and there is no evidence before me that it either has or is intended to change positions. Additionally, given the structure's overall size I consider it to be physically attached to the ground by sheer weight of materials alone. Having regard to the tests established by the Courts, referred to above, I conclude that the structure is a "building" as defined.
15. The appellant argues⁵ that part of the structure comprises the restoration and extension of the remnants of a smaller original building. However, the

² Appeal Form – paragraphs E.(b), E.(f) and F.1(b)

³ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by CoA in *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102

⁴ Appellant SOC, page 22

⁵ Appeal Form – paragraph E.(b) Appellant SOC, page 3 and

construction of a much larger new two-storey structure from the “remnants”, of a smaller single storey building, as described, represents the construction of an entirely new building, rather than the extension of an existing one. On the balance of probability there is no convincing evidence before me to show otherwise. As such, I find the whole structure constitutes a “building” and is “development” as defined. Consequently, it requires planning permission.

16. Since the development has taken place without planning permission it thereby constitutes a breach of planning control and the appeal on this ground must fail. Whether the breach of planning control is immune from enforcement action is dealt with in ground (d).

17. The appeal on ground (c) therefore fails.

Appeal on ground (d)

18. An appeal on ground (d) is that at the date the enforcement notice was issued the structure was immune from enforcement action due to the passage of time, in this case 4 years. The appellant therefore needs to show that the structure was substantially completed on or before 12 April 2018.

19. If a Council has no evidence of its own, or from others, to contradict or otherwise make an appellants’ version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant’s evidence alone is sufficiently precise and unambiguous.

20. There is no convincing evidence in the appellant’s SOC or appendices to indicate the structure was substantially completed by 12 April 2018. The chronology of works as set out in his submitted final comments are imprecise in terms of specific dates, but overall however he argues that all works were completed by the summer of 2017.

21. While independent corroboration is not necessary for an appeal to be successful, he has not submitted any corroborative documents indicating completion by 2017 (such as, for example, in the form of invoices/receipts for materials, or photographs).

22. I agree with the appellant that the Council’s aerial images are blurry and lack clarity. Nonetheless, I am satisfied that the 2017 aerial image⁶ is clear enough to show it is consistent with the linear photograph⁷ of the appeal site of the same year. These images together clearly show that the appeal structure, as exists now, was not substantially completed by 12 March 2017, hence leaving only a period of a few months if it were to be completed by summer 2017 as argued. However, such a concentrated scheme of works, carried out in a relatively short period of time of a few months, is ambiguous with the appellant’s description of works being carried out over a longer period of time.

23. While not conclusive evidence by itself, the appellant’s case is also contradicted by the Town Council’s submission that the *“large 2 storey structure appeared in the winter in the period between November 2020 to May 2021 in what was a mainly open storage area”*.

⁶ Council Appendix D

⁷ Council Appendix C – taken by civic society 12 March 2017.

24. The appellant argues that the Council have failed to prove their case. However, as I set out earlier, the burden of proof, tested on the balance of probability, falls to the appellant.
25. To conclude on this matter, I find the appellant's case is not sufficiently precise and unambiguous. It is also contradicted by evidence submitted by the Council and the Town Council. Overall he has failed to demonstrate, on the balance of probability, that the appeal structure was immune from enforcement action at the date the notice was issued.
26. For these reasons the appeal on ground (d) fails.

Appeal on ground (f)

27. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this regard the notice requires the removal of the structure from the land. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*.
28. The appellant's argument on this ground repeats his contention that part of the structure is not a breach of planning control. However, that matter has already been dealt with under ground (c) above.
29. The appellant refers to the Conservation Area and an Article 4 Direction. However, an Article 4 Direction only has relevance to buildings that have been constructed lawfully or have become lawful through the passage of time. I have found that not to be the case here as I have set out earlier.
30. The appellant also refers to the merits of retaining the structure and public support. However, no appeal on ground (a)/deemed application for planning permission has been made. Such considerations are not relevant to this ground (f) appeal which only relates to whether the requirements in the notice exceed what is necessary to remedy the breach of planning control.
31. Since the purpose of the notice is to remedy the breach of planning control it is clear that the requirement to remove the structure cannot be an excessive one, because it goes no further than remedying the breach. Any lesser requirement would not fully remedy the breach of planning control.
32. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR