



Appeal Decision

Site visit made on 18 October 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2023

Appeal Ref: APP/C1570/C/23/3324819

Land East of Springwell Place, Walden Road, Little Chesterford, Saffron Walden CB10 1JE

- 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 Gary Cleary against an enforcement notice issued by Uttlesford District Council.
 - The enforcement notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is: without planning permission the stationing of field shelters.
 - The requirements of the notice are:
 - Remove the field shelters (bar one) from the land.
 - Remove all resultant debris from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) 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 as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be:
 - Varied by deleting the words "three months" within section 5 (what you are required to do) and its replacement with "six months".
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Procedural matters

3. I have also dealt with another appeal (Ref: APP/C1570/C/22/3310260) on this site. That appeal is the subject of a separate decision.

The Ground (c) appeal

4. In this ground of appeal, it is necessary to show that there has not been a breach of planning control. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.

5. Under this ground of appeal, it is argued that there has been no breach of planning control as the field shelters are an 'agricultural use of the land' (which is not development under Section 55 of the Act) and are not 'buildings'.
6. The appeal site comprises both equestrian and agricultural enterprises associated with breeding and sale of horses, sheep and goats. The appellant states that the owners have 6 field shelters in total and that 4 are approximately 4.8m x 3.6m in area and 2 are approximately 3.6m x 1.2m. However, during my site inspection I observed 7 field shelters in total comprising 5 of the slightly larger shelters and 2 of the slightly smaller ones mentioned above.
7. Section 336 (1) of the Act includes in the definition of the word '*building*' any structure or erection, and any part of a building, as so defined. This description has been interpreted by the Courts to include structures which would not ordinarily be described as buildings. Three primary factors were identified as decisive of what was a building: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive.
8. From the evidence submitted, I acknowledge that they did not require a builder to erect them. Nevertheless, the structures are substantial enough to have required construction from multiple component parts on site. I accept that they are not physically attached to the ground, nevertheless, given their size and scale they appear to be fixed in position by their own weight.
9. Whilst the appellant states that they are regularly moved, limited evidence has been submitted to demonstrate this, and the still photographs submitted do not show this. Furthermore, it is unclear how these timber structures can be towed around the site without collapsing or being significantly damaged in transit.
10. Indeed, whilst the structures are not connected to any utilities, their overall size and scale would be consistent with a building. Based on the particular circumstances of this case, as a matter of fact and degree, the field shelters are a structure that falls within the definition of the word '*building*' in s336 (1) of the Act.
11. In view of my findings, the field shelters are development that requires planning permission, either express, or through Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
12. The Council consider that many of these structures are used for the horses, and there is no evidence that they are used for agricultural purposes. Regardless of this, to benefit from Part 6 of the GPDO, the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. However, the field shelters have already been erected on site, and prior approval cannot be given for development that has already taken place. For the avoidance of doubt, I do not state or imply a view on the lawful use of the site.
13. Planning permission has thus not been granted for its erection by the GPDO or expressly by a planning application submitted to the local planning authority. As such there has been a breach of planning control.

14. The ground (c) appeal must fail.

The Ground (g) appeal

15. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 months to 9 months. In particular, the appellant states that there are breeding animals at the site and depending on the season there are young lambs, kid goats and foals on the site. As such a near farming calendar year is required to move the livestock and organise alternative premises, where supervision is available at critical times.
16. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements, and the requirements of the notice do not require the animals to be moved.
17. In my opinion, 6 months would strike a more reasonable and proportionate balance and would provide additional time for the appellant to seek planning permission for alternative structures, and carryout the necessary remedial works. I shall therefore extend the period from 3 to 6 months for compliance with the notice.
18. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a variation.

R Satheesan

INSPECTOR