
Appeal Decision

Site visit made on 6 November 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Appeal Ref: APP/W1145/C/23/3318387

Land at Nutaberry Hill, Bideford, Devon EX39 4EA

- 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 Charlie Collins against an enforcement notice issued by Torridge District Council.
- The enforcement notice was issued on 24 February 2023.
- The breach of planning control as alleged in the notice is Without planning permission and within the last four years, operational development of the land consisting of the construction of a wooden structure the approximate location of which is identified by the blue rectangle on the attached plan (Appendix A) and shown as image 1 in the attached Appendix B.
- The requirements of the notice are (i) Dismantle and remove the wooden structure, (the approximate location of which is identified by the blue rectangle on the attached plan (Appendix A) and shown as image 1 in the attached Appendix B) from the Land.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The Council wrote to the Planning Inspectorate during the course of the appeal indicating that the object attacked by the notice had been removed. The appellant was given an opportunity to withdraw the appeal but has not done so and I therefore proceed to a determination.
2. The appellant makes various planning merits submissions in relation to the appeal development but these cannot be taken into consideration where the appeal is only made on ground (c).

The appeal on ground (c)

3. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probability.
4. The appellant submitted that the object attacked by the enforcement notice 'has no hard floor and can be lifted up completely' and is 'less permanent than

a shed'. Comment was made that the 'good quality' of the object lent it a permanent appearance but that it was no more than a 'lean to shelter' and a temporary structure with no hardstanding which was erected in less than a day. The object was apparently used for housing of the appellant's animals.

5. The Officer's Report from the Council commented that the object measured approximately 3.5m x 1.2m and was some 1.6m high, that it did not appear to be secured to the ground and that broken blockwork was used for levelling to the front of the object.

Whether operational development

6. In order to determine whether the object represented a breach of planning control, I must first consider if it was operational development requiring planning permission under s55 of the Town and Country Planning Act 1990.
7. Section 55 defines operational development as the carrying out of building, engineering, mining, or other operations in, on, over or under land. Connected to whether or not a building operation has occurred, section 336(1) of the 1990 Act states that a "building" includes "any structure or erection". The courts have held that regard must be had to size, permanence and degree of physical attachment in determining whether an item is a building. No single factor is decisive in the assessment, which is a matter of fact and degree in each case.
8. As to size and attachment to the ground, it appears that the object was of sufficient size as to be held by its own weight and that, although it was erected on site, it was of such a size that it could have been brought on site ready-made. It was apparently not otherwise physically attached and so could potentially have been moved from the site in one piece.
9. Turning to permanence, this should be construed in terms of significance in the planning context i.e. that an item is in situ for long enough to be of significance. The object has now been removed and the appellant described it as 'temporary'. However, it is unclear how long the object was originally intended to remain in situ in the absence of the enforcement notice having been issued. Similar objects frequently remain in place for a period of years, rather than months or weeks. It therefore was a type of object having more permanence than more obviously temporary items but less permanence than something which could only be removed by a process of taking down or pulling to pieces.
10. Drawing these matters together, on the very limited evidence before me I find that the object was not so small as to be precluded from being considered a building. It apparently was not physically attached to the ground but was held in place by its own weight. Whilst described as temporary, there is no indication as to why it would have been removed after a short period in the absence of the enforcement notice and certainly similar items remain in place for years.
11. For these reasons, I find the object was a building and I must therefore now assess whether it would have benefitted from permitted development ('PD') rights under Schedule 2, Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('GPDO').

Whether or not PD

12. Class E permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse, subject to various conditions and limitations contained within that class.
13. The Council disputes that the object was PD under Class E on the basis that it is not within the curtilage of the residential property at 4 Upton Road and that it is located on land intended for public access. The appellant highlights that the land falls within the title of No 4 and that there is another entrance to the alleyway and so access is not affected, and that the area was previously overgrown.
14. The term "curtilage" is not defined in the GPDO but has been held by the courts to mean ground used for the 'comfortable enjoyment' of a house and does not need to be enclosed or marked off but must serve the purpose of the house in some 'necessary or useful way'. It should have an 'intimate association' with the house in question and in assessing curtilage, regard should be had to (i) physical layout of the building and the land said to be in its curtilage, (ii) past and present ownership of the land and (iii) the use or function (past and present) of the land.
15. Whilst the appellant states that the land on which the appeal structure was built falls within the ownership of No 4, I do not have official copy entries from the land registry to evidence this. On the extremely limited evidence available to me, whilst relatively close to the rear elevation of No 4, it appears that this land has previously been used as an access alleyway until fairly recent times. As such, its use and function and the lack of intimate association would point towards this land falling outside of the curtilage of No 4. I find then as a matter of fact and degree on the limited available evidence that the appeal structure did not fall within the curtilage of No 4 and so could not have been PD under Class E.
16. Accordingly, the matters alleged do constitute a breach of planning control and the ground (c) appeal fails.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

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

V Bond
INSPECTOR