



Appeal Decision

Site visit made on 18 October 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/R1038/C/23/3315551

Land to the North West of Orchard Court, High Lane, Ridgeway, Derbyshire

- 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 Mark Taylor against an enforcement notice issued by the North East Derbyshire District Council.
 - The enforcement notice was issued on 13 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, building operations comprising the erection of a timber cabin, timber gazebo, and the laying of paving materials to form a patio and path, shown and annotated for the purposes of identification shaded black on the attached plan reference 22/00348/OD hereinafter referred to as the "unauthorised development".
 - The requirements of the notice are:
 - (a) Demolish the timber cabin, timber gazebo, and take up the paving materials from the patio and path;
 - (b) Remove all materials arising from compliance with step (a) from the land;
 - (c) Reseed the (sic) all areas of disturbed ground resulting from compliance with step (a) above with an agricultural grass mix.
 - The period for compliance with the requirements is 3 months for step (a) and 4 months for step (b). The compliance period for step (c) states: *During the first seeding season after the completion of step a) – e) above. A seeding season is between 1 February and 30 April or 1 October and 30 November each year during a period of no ground frost or areas of standing water.*
 - The appeal proceeds on the grounds set out in section 174(2) (d) and (f) of the Act.
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Decision

1. It is directed that the notice be varied by:
 - deleting all of the words in Section 5(c) and substituting instead the following words: "Restore the land to its condition that existed prior to the breach of planning control taking place.
TIME FOR COMPLIANCE: 11 months."
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

Appeal on ground (d)

3. The appeal on ground (d) is made in respect of the timber cabin only. It is argued that the building is immune from enforcement action due to the period of time that has elapsed since its substantial completion, being at least 4 years before the issue date of the enforcement notice, hence before 13 December 2018 (hereafter referred to as the relevant date "RD").

4. The Court has established that the burden of proof, tested on the balance of probability, falls to the appellant¹. The approach to be taken is set out in the PPG² which itself reflects long established Court judgments³. Accordingly, the appellant must provide sufficient evidence in making his case. If the local planning authority has no evidence itself, nor evidence from any others, to contradict or otherwise make his version of events less than probable, there is no good reason to dismiss the appeal provided that the appellant's evidence alone is sufficiently precise and unambiguous.

Analysis of appellant's evidence

5. The appellant's Appendix A appears to be a copy of a mobile phone screenshot of an undated email from a contractor (Buckley) to the appellant who erected the cabin. It states that he arrived on (sic) "11th 12th to install it". However, while it states the contractor's dates of arrival it does not specify a date of completion. Moreover, it is in response to an earlier email from the appellant, which is not before me and so I do not know the full context of the conversation.
6. Another email (Appendix B) from the manufacturer similarly does not provide a completion date. It is not an invoice or receipt. Moreover, it is from a person who does not appear to have been at the site to witness construction first hand, and gives no explanation of, or reference to, any company records that would show he was able to "confirm" installation. There is similarly no further clarification on his ability to confirm dates, or otherwise how "confirmation" was evidenced, in the person's later telephone conversation⁴ with the appellant's agent.
7. The appellant states the cabin sits upon a raised platform supported by railway sleepers upon a paved base⁵ all of which were installed more than 4 years prior to the RD. However, there is no evidence submitted to support this statement.
8. The dates of payment and cash withdrawal in Appendices C and D also do not provide evidence or clarification of when the building was substantially completed. Appendix E is an image taken after the RD on 18 December 2023.
9. Notwithstanding all of the above, I turn to the rear element of the building referred to as an extension. It is stated this extension element was supplied separately on 18 December 2023 (hence, after the RD) as an add-on to the main cabin which had already been constructed.
10. In this regard, despite the main cabin and the extension being two separate elements in the appellant's mind, that is not the case in planning terms. The extension as completed is a substantial and integral element of the finished building both internally and externally and there is no doubt that it was added very soon after construction of the main cabin. As such the whole of the building (as finished) was constructed and completed as a single project. Given that the rear element did not arrive on site until 18 December 2023 the final building could not have been substantially completed before the RD.

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)

³ *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

Thrasyvoulou v SSE & Hackney LBC (No1) [1984] JPL 732

Gabbittas v SSE & Newham LBC [1985] JPL 630

⁴ Appellant's rebuttal statement paragraph 2.10

⁵ Although later described in the appellant's rebuttal statement as a pea gravel base boxed in by timber sleepers

11. To conclude, the appellant has failed to show, on the balance of probabilities, that the cabin was immune from enforcement action at the RD. For these reasons the appeal on ground (d) fails.

Appeal on ground (f)

12. When a ground (f) appeal is made it is essential to first understand the purpose of the notice. Section 173(4) (a) and (b) of the Act provide that the purpose is (a) to remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.
13. Given that the requirements require the complete removal of the development carried out and restoration of the land, the purpose of the notice clearly falls within section 173(4)(a) since it seeks to fully remedy the breach of planning control that has occurred.
14. With regard to the notice requirement in Section 5(c) it is sufficient to require restoration of the land to its former condition prior to the breach occurring, whether that be by seeding with an agricultural grass mix, or otherwise. The appellant is best placed to know the former condition, and the Council can take further action if there is a failure to comply with the requirement.
15. The compliance periods for enforcement notice requirements need to be specified as specific periods of time. Given the date of this decision and the 3 months period allowed for 5(a) a period of 11 months would allow for any form of restoration, including seeding seasons if re-seeding is appropriate.
16. With regard to 5(c) above I will vary the notice requirements accordingly. However, other than as varied it is clear the notice requirements go no further than remedying the breach of planning control. As such, they are not excessive.
17. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR