

Appeal Decision

Site visit made on 19 August 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/B3438/C/24/3341049

Land to the rear of Tunstead House, Foxt Road, Foxt ST10 2HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Andrew Saxon against an enforcement notice issued by Staffordshire Moorlands District Council.
- The notice was issued on 8 March 2024.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a pole barn erected on a stone chip hardstanding and walled in blue tarp on 3 sides ("the Barn") on the Land. For the purposes of identification and the avoidance of doubt the Barn is shown in the attached photographs marked EN02 (barn under construction 09.12.2019) and EN03 (barn completed 10.10.23).
- The requirements of the notice are to:
 - 5.1 Remove the Barn from the Land along with the stone chip hardstanding on which it sits and any substructures.
 - 5.2 Remove from the land all building materials and rubble arising from compliance with requirement 5.1 above, and restore the land to its condition before the breach took place by levelling the ground and reseeding the Land with grass.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed and, subject to a correction, the enforcement notice is quashed.

The Notice

1. Regardless of the outcome of the appeal, I have a duty to get the enforcement notice (the notice) in order. The allegation set out in paragraph 3 of the notice states 'blue tarp'. For the avoidance of doubt, I shall correct this to 'blue tarpaulin'.

Application for costs

2. An application for costs is made by Mr Andrew Saxon against Staffordshire Moorlands District Council. This application is the subject of a separate Decision.

The ground (b) appeal

3. This ground of appeal is that the breach of planning control alleged in the notice has not occurred. In order to succeed on this ground, it would need to be demonstrated the erection of a pole barn erected on a stone chip hardstanding and walled in blue tarp on three sides has not occurred. The onus of proof lies with the appellant.
4. The appellant contends the blue tarpaulin was largely removed at the time the notice was issued on 8 March 2024. The photograph, dated 11 January 2024, submitted by the Council supports this, with only approximately half of the southern elevation covered with a tarpaulin.
5. However, the wording of section 174(2)(b) of the Town and Country Planning Act 1990 (the Act) is in the past tense. It is only concerned with whether the breach has occurred, not whether it was occurring at the time the notice was issued.
6. Therefore, whilst the alleged breach was not taking place at the time the notice was issued, because three sides of the pole barn were not covered by blue tarpaulin, the breach had nevertheless occurred. The pole barn had been erected on stone chip hardstanding and walled in blue tarp on three sides.
7. Accordingly, the ground (b) appeal fails.

The ground (c) appeal

8. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The onus of proof lies with the appellant.
9. The pole barn is a simple construction comprising timber pole stanchions with three cross beams supporting timber joists, covered with a corrugated metal sheet roof. There is no dispute the barn and the hardstanding it sits upon is development. There is no evidence before me that they benefit from planning permission. Therefore, they are a breach of planning control.
10. The appellant's case on ground (c) is whether the tarpaulin covering is a form of development.
11. The small section of remaining tarpaulin I saw during my site visit was composed of a flimsy material that was tied to the roof joists by what appeared to be baling twine.
12. The appellant confirms that when the barn was largely covered in tarpaulin it was done so to provide shelter for the building during the winter months and was only a temporary measure. The appellant states the tarpaulin was first attached in the winter of 2023. The Council disputes this by stating they have photographs dated 14 May 2021 that depict the tarpaulin. However, there are no such photographs before me dating back to this time. Given that such a photograph could support the Council's case, it is surprising it has not been submitted before me. The only photograph indicating the tarpaulin covering three sides of the building is dated 10 October 2023 and is attached to the notice as 'EN03'.

13. The correspondence between the appellant's agent and the Council following the service of the first enforcement notice, issued 7 December 2023 states '*I can also confirm that my client will be removing the blue tarpaulin from around the outside of the barn within the next week or so. Despite this being nothing more than a temporary weatherproofing*'. The reference to 'temporary' suggests the tarpaulin had not been in situ very long. Moreover, I note the appellant's willingness to remove it to amicably resolve matters. This suggests that the matter had not been ongoing for over two years from the date of 14 May 2021, from which the Council state that have a photograph of the tarpaulin.
14. Given the lightweight nature of the material; it's temporary method of fixing to the building by way of being tied to it with twine/rope; the limited expanse of the tarpaulin, due to the small size of the building; and, it only being intended to be in situ temporarily, I consider that, in this instance the covering of the three sides of the barn with tarpaulin was not an act of development in and of itself.
15. Accordingly, the ground (c) appeal succeeds in respect of the tarpaulin covering. However, it fails in respect of the pole barn and hardstanding.

The ground (d) appeal

16. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate that at the time the notice was issued it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (ie that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
17. The ground (d) appeal is made on the basis that the pole barn and the hardstanding on which it is sited have been in situ for in excess of 4 years prior to the date the notice was issued. An enforcement notice was issued 7 December 2023 for the same development, which was subsequently withdrawn. There is no dispute the issuing of the enforcement notice that is the subject of this appeal was issued under the 'second bite' provisions of section 171B(4)(b) of the Town and Country Planning Act 1990. Accordingly, the relevant date for the 4 year period of immunity from enforcement action is 7 December 2019.
18. The appellant states the pole barn was erected in the summer of 2019 and was complete by August 2019. They provide two photographs dated 30 August 2019 showing the barn constructed up to the point where the corrugated roof had been completed and a tractor, trailer laden with logs and a mini digger were being stored in it. The photograph, dated 9 December 2019, attached to the notice as EN02 is consistent with these photographs. Accordingly, there is no dispute the barn was constructed up the point where the roof was completed prior to 7 December 2019.
19. The crux of the ground (d) appeal is whether the tarpaulin covering was an integral part of the building and until such time as it was installed the building was not substantially completed.

20. By at least 30 August 2019 the building was being used for the storage of a tractor, trailer, logs and a mini digger. This is very similar to the way the building is currently utilised. The timber stanchions and the roof were in place. In addition, it seems the building remained in this form for a number of years before the tarpaulin covering was installed. Even taking the Council's argument that the tarpaulin was there on 14 May 2021, this is over 18 months later. Had it been the appellant's intention for the completed building to have walls covered with tarpaulin it seems unlikely they would have left the building without it for so long. Particularly so given its installation, by way of tying it to the building with string/rope, would take very little expertise or time to undertake.
21. Consequently, I find the barn was substantially completed by 7 December 2019. I have had regard to *Sage v SSETR & Maidstone BC* [2003] UKHL 22 in making this finding.
22. With regard to the hardstanding, there is no dispute the barn sits upon it and always has done. As I have found the barn to have been substantially completed in excess of four years prior to the notice being issued, the hardstanding must similarly have been in situ for at least the same time.
23. Overall, I consider the appellant's evidence is sufficiently precise and unambiguous to demonstrate that on the balance of probabilities the pole barn and hardstanding has been in situ for a period of four years prior to the issuing of the notice and therefore it was too late to take enforcement action against the alleged breach of planning control. The appeal on ground (d) therefore succeeds.
24. As the appeal succeeds on ground (d), I shall quash the notice. I need not go on to consider the grounds (f) and (g) appeals.

Other Matters

25. I note the concerns from the parish council and a local resident. However, the planning merits of the development are not for my consideration under the grounds of appeal that have been made.

Formal Decision

26. It is directed that the notice is corrected by the deletion of 'tarp' in paragraph 3 of the notice and substituting 'tarpaulin'.
27. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

A Walker

INSPECTOR