
Appeal Decisions

Hearing held on 23 August 2016

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 October 2016

Appeal Refs: APP/L3245/C/16/314075, 3142076 & 3142077
Land opposite Henlle Park Golf Club, Gobowen, Oswestry,
Shropshire SY10 7AX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr J Berry and Mr A & Mrs S Roberts against an enforcement notice issued by Shropshire Council.
- The enforcement notice was issued on 9 December 2015.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building for the purposes of residential use on the Land (shown approximately marked with a red cross on the attached plan).
- The requirements of the notice are to remove the building from the Land.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c) and (e) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals 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 of Decision: The appeal is dismissed and the enforcement notice is upheld with correction.

The appeals on ground (e)

1. The ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. Section 172(2) requires a copy of the notice to be served on the owner and occupier of the land and on any other person having an interest in the land and s172(3) requires service not more than 28 days after issue and not less than 28 days before the notice is to take effect.
2. It is not argued that either subsection was not complied with. Although at the hearing Mr Berry claimed that neither Mr nor Mrs Roberts continued to have an interest in the land; serving the notice on more people than required would not result in a failure to comply with s172. Moreover, both have lodged an identical appeal against the notice as Mr Berry's, using the same Agent, which they would not be entitled to do had they had no interest in the land at the time of service. The Council had issued a requisition for information under s330 of the Act which would have ascertained details of all with an interest in the land prior to the service of the notice but that was not returned despite the requirement in law to do so. Nonetheless if Mr and Mrs Berry do not have a right of appeal, this will have no impact on the outcome here as all 3 appeals are made on identical grounds and by the same Agent.

3. The appeal brought on this ground appears to be in relation to the inaccurate position of the red cross on the plan attached to the enforcement notice. There were three structures on the site comprising an amenity building close to the road frontage of one storey with a second storey within the pitched roof, a mobile home/caravan set further back, and a recently erected 2 storey building to the south west. The Council seeks to attack the recently erected two storey building and yet the cross is closer to the amenity building.
4. The Council accepts that the notice was poorly drafted in this respect. Nevertheless, the Appellants' hearing statement makes clear that their Agent was aware that the cross was in the wrong position because he drew this to the attention of both the Council's Development Manager and Enforcement Officer. Moreover, the Council had confirmed to him, albeit orally, that the notice was intended to address the recently erected two storey building.
5. At the hearing I was told that there had been conversations and meetings with Mr Berry in which the Council made clear its concern about the unauthorised erection of the recently erected two storey building prior to the issue of the notice. At the hearing, I found Mr Berry's answers to my questions to be evasive and contradictory but I was left in no doubt that he had been fully aware of which building it was that the Council sought to attack in the notice. Indeed the whole basis of the appeal on ground (e) is that the cross is in the wrong place which it would not have been had the notice been attacking the amenity building given that the notice says "shown approximately". Nonetheless, Mr Berry acted on the Council's error by demolishing the amenity building (closer to the red cross than the intended building) the Friday before the hearing so as to claim compliance with the requirements of the notice.
6. Such action might, at first sight, appear drastic. However, the planning permission granted on appeal on 19 March 2014 for the use of the land as a caravan site (APP/L3245/A/13/2196550) requires the development to be carried out in accordance with drawing 0950 and that shows the building at the front of the site to be removed with a replacement amenity block in a different position. Thus the building which Mr Berry has demolished had to be removed in any event and at the hearing he confirmed that he had put it into storage.
7. I am firmly of the view that both the Appellants and their professional representative were fully aware of which building it was that the notice sought to attack. Had they thought that the notice was intended to attack the building on the frontage then they would not have brought the argument under ground (e) that the cross was in the wrong place. Moreover I note that the "Reason for Issuing this Notice" describes the building as a dwelling which appropriately describes the recently erected building rather than the demolished amenity building.
8. The Appellants' appeal statement further reinforces my view that there was no misunderstanding as to which building was being attacked since the arguments under the grounds brought address the recently erected building and not the building just demolished. Moreover, even if there had genuinely been a misunderstanding about which building was being attacked, there was ample opportunity at the hearing to fully present the Appellants' case in respect of the recently erected building under each ground of appeal brought.

9. I therefore intend to correct by the notice by repositioning the red cross on the accompanying plan, exercising my powers under s 176 of the Act, as I am satisfied that no injustice will be caused by so doing.

10. The appeals on ground (e) fail.

The appeals on ground (b)

11. The ground of appeal is that the matter alleged has not occurred. At the hearing it was accepted for the Appellants that if the notice was corrected there would be no basis for an appeal on ground (b).

12. The building has clearly been erected as a matter of fact. The matter alleged has occurred and the appeals on ground (b) fail.

The appeals on ground (c)

13. The ground of appeal is that the matter alleged does not constitute a breach of planning control.

14. Section 55 of the Act sets out the meaning of development for which, s57 says, planning permission is required. The definition includes building operations. The Appellants claim that the recently erected structure is a caravan and thus not a building for which permission would be required. Permission for the stationing of a caravan on land is only required where a change of use is involved.

15. The definition of a caravan is set out in s29(1) of the Caravan Sites and Control of Development Act 1960 and the definition of a twin-unit caravan is given in s13(1) & (2) of the Caravan Sites Act 1968. The structure is composed of 4 sections bolted together and thus does not meet the definition of a twin unit which is limited to two sections. With regard to the definition in s29(1), whilst the Appellants claimed that the structure could be moved from one place to another in its four sections, I drew attention to the Court of Appeal judgement in the case of *Carter v SSE and Carrick DC* [1994] wherein it was held that the structure had to be capable of being moved by a single motor vehicle. The Appellants' agent confirmed that they were not arguing that the structure could be moved as a single piece nor were they bringing any evidence to demonstrate that it could be done. It is not a caravan and I note that even if it were the Appellants would then be in breach of a condition attached to APP/L3245/A/13/2196550 which restricts the number of static caravans on the land to one.

16. Having regard to the size of the structure which is the equivalent of a two storey house, its degree of permanence given the difficulty of moving it in a single piece, and its affixation to the ground by its own considerable weight, I find as a matter of fact and degree that the structure amounts to a building constructed on site and falling within the definition of development within s55 of the Act for which planning permission is required.

17. Mr Berry suggested that the building benefitted from the permission granted on appeal for the use of the land as a caravan site. Whilst that permission included an amenity block in a similar position to the recently erected two storey building, no evidence was brought to demonstrate that the building erected was that permitted. Indeed to the contrary, the Council produced a drawing of a single storey building entitled "Proposed Amenity Block" and dated

October 2012 which, it said, had been submitted in connection with that appeal proposal.

18. In an appeal on ground (c) the onus is on the appellant to make out his case. In this instance, the Appellants have failed to demonstrate that the structure is a caravan the siting of which for the authorised residential use of the site would not involve development (although it would be a breach of condition) or, failing that, that the building benefits from the grant of planning permission. The appeals on ground (c) fail.

Conclusion

19. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with correction.

Formal Decision

20. It is directed that the enforcement notice be corrected by the substitution of the plan attached to the notice by the plan attached to this decision. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

B M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr T Mennell	Appellants' Agent
Mr J Berry	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr I Kilby	Planning Services Manager
Mr M Southern	Planning Enforcement Officer
Mr J Taylor	Gypsy and Traveller Liaison Officer

INTERESTED PERSONS:

Mr C Roberts	representing Henlle Park Golf Club
Mr H Ellis	Chairman of Slattyn and Gobowen Parish Council
Mr D Lloyd	County Councillor

DOCUMENTS

- 1 Site plan and drawing 0950 submitted by the Appellants
- 2 Photographs submitted by the Council
- 3 Drawing 0761 submitted by the Council
- 4 Transcript of *Carter v SSE & Carrick DC* [1994] provided by the Inspector
- 5 E mail from the Council to Mr Mennell dated 17 December 2015
- 6 Transcript of *Bury MBC v SSCLG* [2011] EWHC 2192 (Admin) provided by the Inspector

Plan

This is the plan referred to in my decision dated: 7 October 2016

by **B M Campbell BA(Hons) MRTPI**

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Not to scale

