



Appeal Decision

Site visit made on 16 May 2017

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 24 May 2017

Appeal Ref: APP/J9497/C/16/3162612

Hyner Vale, Lower Ashton, Christow, Exeter, EX6 7RQ

- 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 Teign Valley Cars against an enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice, numbered ENF/0234/14, was issued on 28 September 2016.
 - The breach of planning control as alleged in the notice is operational development to
 - i) Erect a tunnel-shaped, pre-fabricated building on the land; and
 - ii) Site a portacabin on the land
 - The requirements of the notice are permanently remove the development from the land, including all debris and materials.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: Appeal allowed in respect of the portacabin; dismissed for the tunnel-shaped building. Notice upheld following correction and variation.**
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The appeal property and relevant planning history

1. The site of about 0.86 hectares is in open countryside and is occupied by a mobile home, a number of dilapidated workshops, a number of containers, external storage and parking areas. There is also a portacabin used as an office and staff facility with WC and shower, and a curved metal building (described in the notice as a tunnel-shaped, pre-fabricated building) used as a vehicle repair workshop. Both these buildings are the subject of the notice.
2. To one side of the tunnel-shaped building is a new timber building that the appellant states is for staff and which has been sited on the land after the serving of the notice the subject of this appeal.
3. The site has a long planning and enforcement history with six separate investigations in respect of various activities and uses of the site. In 2010 an appeal was allowed in part for the residential use of a mobile home on the site¹ and in 2014 an enforcement notice regarding the erection of a large tunnel-shaped prefabricated building on the site was quashed following an appeal on ground (e)².

¹ APP/J9497/C/09/2102179

² APP/J9497/C/14/2214043

The appeal on ground (e)

4. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land.
5. S172(2) requires copies of the notice to be served on the owner and occupier of the land to which it relates; and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
6. Rebecca Lucy Aplin (married name Hearsurn) and Matthew James Aplin are the proprietors of Title No. DN172635 of the site and John Aplin and Stephen Aplin are the occupiers of the site. In July 2016, the Authority issued a Planning Contravention Notice and Form of Information required to Stephen Aplin, John Aplin, Rebecca Hearsurn and Matthew Aplin.
7. Stephen Aplin in response stated that Matthew Aplin and Rebecca Hearsurn are the owners of the land but indicated that their addresses were unknown. He confirmed that he and John Aplin occupied the appeal site.
8. The Authority instructed process servers to Trace Rebecca Hearsurn and Matthew Aplin.
9. In an application for planning permission in September 2016 completed by John Aplin, he certified that he had served the necessary notice on all landowners as listed on the form, these being Rebecca Hearsurn and Matthew Aplin. He did not state any other person had an interest in the land.
10. On 29 September 2016 a copy of the notice was served by agents on Rebecca Hearsurn at her Ipswich address by posting it through her letterbox following confirmation from neighbours that she lived at that address. On the same date the notice was handed to Matthew Aplin in Cheltenham. On 30 September, John Aplin and Stephen Aplin were handed copies of the notice.
11. The appellant questions why his father was communicated with when Teign Valley Cars is wholly the appellant's business and as a result failed to establish all the occupiers of the site. The appellant refers to Laura Chater who in a written statement attached as Appendix T to the appellant's statement indicates that she uses the portacabin as an office when she is not on the road in connection with her job in the food industry and has done so since 2015. The appellant claims that Rebecca Hearsurn was in the USA when the notice was served. Whilst this may have been the case the notice was nevertheless served to her home.
12. The appellant also states that Jason Hammond operated as a self-employed mechanic in the tunnel-shaped building from January 2015 to December 2016 and "As a result of not being served and thus not having the chance to appeal, and the uncertainty surrounding the future of a workshop at Teign Valley Cars he made the decision to move premises in 2016".
13. On the basis of the above statement it appears that Mr Hammond was aware of what was taking place and if there was any 'failure to serve a notice' (which I do not consider to be the case) then he was not precluded from making representations on the appeal in the same way that Ms Chater has done who is clearly aware of the situation. Even if they should have been served a copy of the notice, I do not consider that either person has been substantially

prejudiced. S176(5) enables me to disregard any non-service of a notice in such circumstances.

14. I am satisfied that the Authority has been diligent in serving the notice and met the necessary requirements. The appeal on ground (e) fails.

The appeal on ground (c)

15. An appeal on this ground is that there has not been a breach of planning control. The appellant claims that the tunnel-shaped building is permitted development as it is being used as a temporary workshop whilst planning permission is being obtained for a new workshop.
16. The Town and Country Planning (General Permitted Development) (England) Order 2015 at Schedule 2, Part 4, Class A permits the provision of buildings temporarily required in connection with operations on the land, but this is subject to the exemption where permission is not permitted if planning permission is required for those operations but is not granted.
17. No such permission exists and therefore the tunnel-shaped building requires planning permission.
18. The appellant also claims that the portacabin is being used as an office in conjunction with the lawful car repair sales business and that it is a permitted use of the land. However the appellant provides no evidence in support of such a position. Even had a fuller case been made, the fact that Ms Chater has used the portacabin for purposes unrelated to the car repair and sales business raises doubts over whether such a claim could legitimately be made.
19. Where legal grounds of appeal are made, the onus of proof is on the appellant and the standard of proof is on the balance of probabilities. This has not been achieved on this ground of appeal, which fails.

The appeal on ground (d)

20. An appeal on this ground is that it is too late to take action against the matters stated in the notice.
21. The appellant states that the tunnel-shaped building was completed in September 2013, albeit without ends, and that he regarded as a temporary workshop pending negotiations with the Authority for a replacement building.
22. In respect of the portacabin, the notice alleges operational development on the basis that the portacabin is attached to the ground by virtue of a mains water supply and a septic tank. A note by the Authority attached as Appendix O to the appellant's statement states that at a visit to the site dated 26 September 2011 "there was a portable cabin on site". Although the Council state that the portacabin has not been in the same position in excess of 4 years, they offer no evidence to support that view.
23. As the portacabin has been on site in excess of 4 years prior to the 28 September 2016, and I have no evidence to indicate that it has been in different locations on the site within that period, it is immune from enforcement action.
24. The appeal on ground (d) succeeds so far as it relates to the portacabin.

The appeal on ground (f)

25. An appeal on this ground is that the steps exceed what is necessary to remedy the breach of planning control. The appellant considers that the issue with the tunnel-shaped building is one of appearance and that it could be clad in wood in a standard shape in such a way as to be in keeping with the surroundings.
26. The Authority states that the objections cannot be overcome by external changes alone.
27. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
28. The appeal on ground (f) fails.

The appeal on ground (g)

29. An appeal on this ground is that the compliance period of 60 days is too short. The appellant refers to his endeavours to obtain a decision on a planning application submitted in September 2016 for a new building on the site to replace the tunnel-shaped building, portacabin office, and various other old and portable buildings, subject to a planning obligation.
30. The Authority regard the planning application to be a separate matter and points out that the appellant does not indicate that it is physically difficult to remove the buildings within the compliance period.
31. The Authority has not commented on why the planning application remains undetermined but it appears on the face of it that there has been an opportunity through the application and planning obligation to resolve the enforcement issues.
32. The tunnel shaped building is harmful to the character and appearance of the National Park and the public interest would be best served by its removal at the earliest opportunity. Against this the business needs of the appellant should also be considered.
33. I regard a compliance period of 6 months to be reasonable as this would provide the opportunity for the planning application to be determined. If positive action is then being taken by the appellant to remove the unauthorised building, the Authority has the power under S173A to extend the period of compliance, should the Authority determine that such a course of action would be appropriate.
34. The appeal on this ground succeeds.

Human Rights

35. The appellant claims that his human rights would be affected through the effect on the operation of his business of the loss of the portacabin and workshop. However, he fails to specify the Article or Protocol under which his rights or those of Ms Chater or Mr Hammond, would be affected.

36. Notwithstanding this, as the appeal to retain the portacabin succeeds and there are other buildings within the appeal site that are used for vehicle repairs, then it does not follow that the business would cease.
37. I am satisfied that my decision on this appeal is proportionate and necessary when balanced against the need to protect the public interest and would not result in any violation of rights.

Other Matters

38. The appellant makes reference to a Freedom of Information request but this is not a matter relevant to my determination of the appeal.

Conclusions

39. For the reasons given above and having regard to all matters raised I conclude that the appeal should be allowed insofar as it relates to the portacabin and the compliance period but dismissed in respect of the tunnel-shaped building. Normally when an appeal is allowed on ground (d) it is appropriate to quash the notice. However, this is not possible in this case as I shall uphold the notice in relation to the siting of the portacabin. I therefore propose to correct the notice by deleting that part of the allegation relating to the portacabin and to make consequential amendments to the requirements of the notice.

Formal Decision

40. I direct that the enforcement notice be corrected by the deletion of the words in section 3 of the notice "(ii) Site a portacabin on the land"; and, varied by the substitution of 6 months for 60 days as the period for compliance. The enforcement notice is upheld as corrected and varied.

P Njarratt

Inspector