



Appeal Decision

Site visit made on 6 July 2021

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/C3430/C/21/3270628

Summer Leys, Strawmoor Lane, Oaken, Wolverhampton WV8 2HY

- 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 Philip Burrows against an enforcement notice issued by South Staffordshire Council.
 - The enforcement notice, numbered 17/00373/UNDEV, was issued on 10 February 2021.
 - The breach of planning control as alleged in the notice is *without planning permission, the unauthorised erection of a car port located in the area outlined in blue on the attached plan.*
 - The requirements of the notice are (i) *remove the unauthorised carport from the area outlined in blue on the attached plan; and (ii) remove from the Land all materials arising from compliance with step (i) above.*
 - The period for compliance with the requirements is *two months.*
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decision

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

Application for costs

2. An application for costs was made by South Staffordshire Council against Mr Philip Burrows. This application is the subject of a separate Decision.

Background

3. An application for planning permission to retain the carport¹ was refused by the Council on 13 November 2017. An appeal against that decision² was subsequently dismissed dated 3 July 2018.

The appeal on ground (b) and ground (c)³

4. An appeal on ground (b) is a legal ground of appeal and is a claim that the matters alleged at Section 3 of the enforcement notice have not occurred as a matter of fact. The appeal on ground (c) is a claim that the development does not constitute a breach of planning control. In pursuing an appeal on these legal grounds, the onus firmly rests with the appellant to show, on the balance of probabilities, that the matters stated in the notice have not in fact occurred

¹ LPA Reference 17/00836/FUL

² APP/C3430/D/18/3195053

³ There is significant overlap between arguments advanced on grounds (b) and (c) therefore I will combine them.

and, if they have, do not constitute a breach of planning control. The breach of planning control refers to the erection of a car port. The planning merits of the matter alleged do not fall to be considered under these grounds.

5. The appellant maintains that the car port does not constitute development as defined by s55 of the 1990 Act⁴ and therefore does not require express planning permission. This is because the car port is considered to be a free-standing structure which was substantially constructed off-site. It is claimed that the car port is capable of being moved within the site. It is not fixed to the ground or connected to any services, it has no foundations and therefore does not involve engineering or mining operations.
6. The term 'building operations' is defined for the purposes of the 1990 Act in s55(1A) as including (a) demolition, (b) rebuilding, (c) structural alterations of or additions to buildings, and (d) other operations normally carried on by a person in business as a builder. The list is not exhaustive. S55(1) and (1A) should be read with regard to s336(1) which defines a 'building' as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
7. Established case law⁵ as referred to by the Council, identified three primary factors as being relevant to the question of what was a "building". These are: (a) size - a building would normally be something which was constructed on site as opposed to being brought already made to the site; (b) permanence - has the structure been moved? Is it capable of being moved and, if so, how? Is it intended to be moved in practice? How long has it been, or will it be in one position? It should be noted that 'permanence' does not necessarily mean 'forever or indefinitely'. (c) physical attachment - how is it fixed to the ground? Does it need to be fixed, or will it rest by its own weight? Is it mounted on a permanent base? Is it attached to services? Has the placing of the building resulted in any physical change in the characteristics of the land?
8. The carport is of solid timber construction with a pitched timber framed roof and an open frontage. I am advised that the carport was constructed off-site and brought to the site in sections and assembled on site. To my mind, this would seem akin to erecting a building on site. Furthermore, the appellant argues that the carport is capable of being moved within the site thus supporting their claim that it is not a building. However, even though the carport appears not to be currently fixed to the ground⁶, it is of considerable bulk and mass, and it is apparent by its scale that its weight would 'fix' it to the ground. Furthermore, the size and design of the building suggests that it cannot easily be moved within the site, and there is no evidence to show that has happened since it was brought onto site some four years ago. Overall, it displays a sufficient degree of permanence, and I consider that the works carried out to construct the carport are capable of falling with s55(1)(A)(d) "other operations normally undertaken by a person carrying on business as a builder".

⁴ "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

⁵ Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, endorsed by the Court of Appeal in Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102

⁶ The Council and the previous Inspector note that the carport appeared to be affixed to the ground with metal brackets.

9. The Courts have made it clear that no one test is conclusive, but the degree of permanence may, in itself, tilt the balance when weighed with other factors. It is the Council's case that the carport has a degree of permanence and mindful of the matters highlighted above, I see no reason to disagree.
10. The appellant refers me to the case of "*Tewkesbury Borough Council v (1) Michael Keeley (2) Karen Adams (2004)* where it was held that the word "building" was defined as including any structure or erection (see Section 336 of the 1990 Act), and also incorporated structures which would not ordinarily be called a building. In that case it was clear from the facts that the mobile shed was not a large building. It was intended to remain permanently on site and was capable of being moved around. It was not attached to the land and had been substantially constructed off site and then towed on to the site. Its presence on the land did not affect the physical character of the land; its impact being merely visual. In the light of those findings, it was Held that the mobile shed was not a building and therefore the work done on site in assembling it did not constitute a building operation. It did not constitute development and did not require planning permission."
11. It seems to me that the case referred to a mobile shed structure that was considered not to be a large building and was designed to be moved around. Whereas the appeal before me relates to an undoubtably large and substantial structure. Nevertheless, I have not been provided with anything further than this summary to enable me to explore whether the judgement is relevant to the case before me.
12. The appellant refers to the previous Inspector's appeal decision where they considered that it "appeared" that the carport did not constitute development. However, the appeal was against the Council's refusal of the s78 application which sought planning permission for the development. As directed by the Inspector's procedural matters paragraph 3, "it is not for me, under a section 78 appeal, to determine whether or not development is lawful. To that end, it is open to the appellant to apply for a determination under sections 191 or 192 of the Act and my determination of this appeal under s78 does not affect the issuing of a determination under s191 or 192 regardless of the outcome of this appeal". The appeal decision focused on the planning merits of the development in this location within the Green Belt.
13. For the reasons above, I consider that, on the balance of probability, the structure is a building and comprises operational development, as alleged. Consequently, I find that the erection of the carport does constitute a breach of planning control and express planning permission, which has been refused, would be required for its retention.
14. Therefore, the appeal on grounds (b) and (c) fails.

S A Hanson

INSPECTOR