The Planning Inspectorate

Appeal Decisions

Hearing Held on 28 January 2020

Site visit made on 28 January 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2020

Appeal Ref: APP/B9506/C/18/3210831 & 3213790
Land at Tanglewood, Twiggs Lane, Marchwood, SO40 4UN

- 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 & Mrs Baddams against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 17 August 2018.
- The breach of planning control as alleged in the notice is: Without planning permission the erection/siting of four buildings used as camping pods shown in the approximate positions coloured blue on the plan attached to this Notice.
- The requirements of the notice are: 5.1) Demolish/dismantle/remove the four buildings used as camping pods shown in the approximate positions coloured blue on the plan attached to this Notice to ground level. 5.2) Remove all materials and debris from the land affected arising from compliance with requirement 5.1) and restore the land to its former level and condition.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal 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.

Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Since there is no ground (a) appeal, and hence no deemed planning application, I cannot consider matters of planning merit such as whether the pods are discretely sited because they are not visible from the public highway and how they may contribute to the success of the camping and caravan site. Moreover, in legal grounds of appeal, such as in this case, there is no place to consider the implications of my findings under the Human Rights Act.

3. Part of the case made by the appellants is that the pods are caravans and not buildings. This is, in effect, an argument that the matters alleged in the notice have not occurred. As discussed at the hearing, this is tantamount to an appeal under s174(2)(b) of the 1990 Act. Although such an appeal was not made, given that the case for the appellants was set out on this ground from the outset, thus meaning that the National Park Authority (NPA) has been able to consider and respond to this evidence, there would be no injustice if I was to

consider this aspect of the appellants case under a ground (b) appeal. In my view it would be fairer to the parties to approach my reasoning in this structured way.

4. In legal grounds of appeal such as under s174(2)(b) and (c) of the 1990 Act, the burden to make out the case rests with the appellants.

Ground (b)

5. In law, a caravan is only a caravan, if it meets the criteria laid down in the Caravan Sites and Control of Development Act 1960 (CSCDA). There are certain dimensional tests. There is no evidence to suggest that the pods breach the size limits. Under the CSCDA a caravan means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle do designed or adapted, but does not include (a) any rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent. Whether the pods meet this definition is a matter of fact and degree judgement.

6. Focussing on the aspect of being designed or adapted for human habitation, the manufacturer advertises the camping pods as an original garden shed being an ideal place to store garden tools, bicycles or other belongings. I note that the details refer to letting children go camping in them during summer holidays or, if having a party, guests could stay in them. Nevertheless, although they do not have a conventional domestic garden shed appearance, they are similarly constructed out of timber with exterior bitumen roofing felt shingles. They are not insulated, and the doors and windows are not double glazed. There is no water supply, toilet or shower/bath and they do not have a kitchen area. There is nothing inherent to the pods, unlike conventional caravans, to show that they were designed for human habitation. At the hearing the appellants referred to the availability of pods that are so designed and have various in-built features. Such pods, in those circumstances, may constitute caravans, but that is clearly not how the appeal pods were designed.

7. I acknowledge that in the pods there is an inflatable bed, a corner shelf with a microwave on it, a kettle and there is a wall mounted heater. The pods also have electrical sockets. The pods can be hooked up to electricity supply points sited between each pair of pods. However, whilst having an inflatable bed, microwave, kettle and a heater may facilitate human occupation, they are not adaptions of the structure itself. Having an electric supply is much the same as many garden sheds and is not necessarily an installation for human habitation.

8. I have had regard to the appeal decision (Ref: APP/Q9495/A/09/2109582) relating to the siting of camping pods at a caravan park in Cumbria. However, that was an appeal made under s78 of the 1990 Act wherein the Inspector was not required to reach a decision about whether the pods were caravans. All he noted was that both parties considered the pods fell within the statutory definition and he saw no reason to take a contrary view. Moreover, apart from a description of the external appearance of the pods, there are no details about their design or any intended adaption. For these reasons I give the other appeal decision little weight.

9. Taking all the above in the round, as a matter of fact and degree, the pods do not meet the definition, in law, of a caravan as the structure was not designed

and it has not been adapted for human habitation. Given this finding, there is no need for me to consider, under this ground of appeal, whether the structures are capable of being moved from one place to another.

10. In the statement submitted at the hearing the appellants assert that the pods "are akin to a tent". There is no more information about this. As a matter of fact, given their construction, the pods are structures and not tents.

11. Against this background, the matters alleged in the notice have occurred. Consequently, the alleged breach of planning control in the notice does not need correcting, which is a matter explored at the hearing, and it is of no relevance whether the pods come within the land covered by the certificate issued by the Caravan and Camping Club.

12. The ground (b) appeal must fail.

Ground (c)

13. To decide whether there has been a breach of planning control, it is first necessary to determine whether the pods are development and, if so, whether they need planning permission.

14. S55(1) of the 1990 Act defines development as including the carrying out of building, engineering, mining or other operations in, on, over or under land. A building is defined by s336 of the 1990 Act as including any structure or erection. The notice alleges, in short, the "..erection/siting of four buildings..". Given the background to the appellants case that the pods are portable, I intend to examine whether the pods are building operations/buildings.

15. The base of the pod's measures 3m x 4m and they are just under 2.5m high. They may not be particularly big set against the larger dimensions of other buildings at Tanglewood. Nevertheless, each pod is a reasonable size and given their solid method of fabrication, to my mind they are structures.

16. I acknowledge that the pods were delivered to the site already constructed and they were offloaded into position using a lorry mounted crane. From the appellants evidence submitted at the hearing and what I saw at the site visit, I also accept that they could be similarly moved. However, they each weigh about 1.5 tons. Their weight alone holds them down and is enough in my view for them to be physically attached to the ground. Also, the weight and gear needed to lift them up means that it is unlikely that they would be moved.

17. Furthermore, they sit on pre-prepared concrete bases and each have a short section of decking in front of them. That may have been put down to bridge over drainage works at the front of the pods, but the deck is part of the entrance into each pod. Although not every person my wish to plug the pods into the electrical points referred to above, this facility would clearly be beneficial to the enjoyment of stopping in a pod. The combination of these features' further points to the finding that the pods are likely to remain where they are. This is borne out, in my view, in the NPA aerial photographs which show they have been in their current positions since at least 26 May 2017.

18. For the above reasons, as a matter of fact and degree, the pods have a sufficient size, degree of permanence and physical attachment to the ground to be buildings. Therefore, they are development as defined by s55(1) of the 1990 Act. Planning permission is required for development by virtue of s57(1)

of the 1990 Act, subject to specific exclusions. The pods do not fall into one of these. Planning permission for the pods has not been granted by the NPA.

19. The appellants have referred to advice from the supplier of the pods about whether planning permission was needed for them. Information on the supplier's website states, "According to general planning permission rules, the single storey buildings having up to 4 metres height dual pitched roof or up to 3m height single pitched roof, up to 2.5m eaves, dot not require planning permission." These dimensions appear to refer to permitted development rights available under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the provision of buildings within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwelinghouse as such.

20. However, based on the available evidence and what I saw, the pods are well away from the curtilage of the house and even if they were within it, their use as part of the caravan and camping site could not be said to be for a purpose incidental to the enjoyment of the dwellinghouse as such. Consequently, the GPDO has not granted planning permission for the pods. It is not my place to answer whether the supplier's advice means the pods were sold inappropriately. I am also unaware of the specifics of other pods on a different caravan site where the owners of that have apparently advised that planning permission was not needed.

21. Given the above, the pods are development which need planning permission. That has not been granted. As such, there has been a breach of planning control and so the ground (c) appeal also fails.

Other Matters

22. There is no appeal, or case made out, under s174(2)(f) of the 1990 Act which is that the steps required by the notice to be taken, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by any such breach. I do note, however, that the appellants have expressed that the requirement to remove the sheds completely from the land is very extreme. Given that the steps in the notice require the buildings to be demolished/dismantled/removed and for all consequent materials and debris to be removed, it is clear that the purpose of the notice is to remedy the breach of planning control by restoring the land back to its position before the breach took place. The steps do no more and no less than achieving this purpose. As such, the steps are not excessive. Whether the notice would prevent the appellants from having a shed in their garden is a matter to be raised with the NPA away from this appeal.

Conclusion

23. For the above reasons, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr & Mrs Baddams	The appellants

FOR THE LOCAL PLANNING AUTHORITY:

David Williams	Planning Enforcement Manager
Lucie Cooper	Planning Enforcement Officer

DOCUMENTS:

Doc 1	Statement from the appellants
Doc 2	Appeal decision APP/Q9495/A/09/2109582
Doc 3	Lawful Development Certificate – siting a mobile home at Tanglewood
Doc 4	Planning permission for retention of hardstanding for caravans at Tanglewood
Doc 5	Caravan site licence information received after the hearing