
Appeal Decision

Site visit made on 15 November 2016

by Martin Joyce DipTP MRTPI

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

Decision date: 5 December 2016

Appeal Ref: APP/R1010/C/16/3149450

Land lying south of 10 Vivian Street, Shuttlewood, Chesterfield S44 6QY

- 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 Carl Robert Taylor against an enforcement notice issued by the Bolsover District Council.
- The enforcement notice, Ref: E15/091, was issued on 14 March 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the use of the land for the siting of a static residential caravan.
- The requirements of the notice are to:
 - (i) Cease the use of the land for the stationing of a static residential caravan; and,
 - (ii) Permanently remove the caravan from the land.
- The period for compliance with the requirements is twelve weeks.
- The appeal is proceeding on the grounds set out in Section 174(2)(b) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Matters Concerning the Notice

1. The notice is headed "Material Change of Use" and states that the alleged breach of planning control is, without planning permission, use of the land for the siting of a static residential caravan. The notice does not, however, as a matter of fact, state what the use of the land has changed from or to, so it does not clearly identify the *material change of use* that is alleged to have occurred. This, in itself, is not fatal to the notice, and is not a specific requirement of Section 173 of the Town and Country Planning Act 1990 (The Act). However, it is necessary for me to have some certainty as to the actual change of use that is alleged to have taken place and I consider this below.
 2. Of greater significance, however, is the fact that the wording of the allegation is unclear, as the siting of a residential caravan is not, in itself, a use of the land, rather it is descriptive of the type of caravan that has been placed or sited on the land without specifying the use to which it has been put, and this matter needs to be addressed to determine whether or not the notice is void for uncertainty.
 3. The reasons for the issue of the notice state, amongst other things, that the siting of the caravan represents an unauthorised change of use of the land, that the caravan is designed for human habitation and has all the facilities associated with everyday living, and that the siting *and residential occupation*
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of a caravan (*my emphasis*) in this location has a significant impact on the amenity enjoyed at neighbouring properties contrary to policies in the Bolsover District Local Plan. This gives a clear indication that the Council consider that the caravan is being used for human habitation especially as a further reason for the issue of the notice states that no obvious building works are taking place that might indicate a need for temporary accommodation, or that it is sited within Schedule 2 of Part 5 of The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO). That provision, incorrectly cited as it should refer to Part 5 of Schedule 2, relates to use of land as a caravan site in the circumstances specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites & Control of Development Act 1960 (CSCDA). This Schedule sets out various temporary or seasonal uses of land as a caravan site that may be permissible, although it is clear that the Council do not consider any of those to be applicable in this case.

4. I have a duty to get the notice into order if that is possible¹. This would involve the use of the powers available to me under Section 176(1)(a) of The Act whereby I may correct any defect, error or misdescription in the enforcement notice provided I am satisfied that the correction will not cause injustice to the appellant or the Local Planning Authority. In this case, it seems to me that the notice should be alleging the material change of use of the land to use for the siting of a static caravan used for the purposes of human habitation as that appears to be the primary reason for the issue of the notice. Such correction would not overcome the fact that the Council do not specify, in the notice, what the alleged change of use is from, but I have taken account of their statement in relation to this appeal that the caravan has been stationed on undeveloped private garden land where a wooden shed was previously located. This indicates an acceptance that the land, albeit not part of the residential curtilage of No 10 Vivian Street, is used for horticultural purposes and this was confirmed at my inspection where I saw that it is principally laid out and used as a garden with areas for the growing of vegetables and flowers.
5. On a further matter concerning the wording of the notice, I note that the second requirement is to “permanently” remove the caravan from the land. This word is unnecessary having regard to the provisions of Section 181(1) of The Act which states that compliance with an enforcement notice, whether in respect of the completion, removal or alteration of any building or works; the discontinuance of any use of land; or, any other requirements contained in the notice, shall not discharge the notice. Section 181(2) confirms that any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, thus any resumption would be in contravention of the notice.
6. Drawing all of the above matters together, I have reached the conclusion that the notice should be corrected and that this can be done without causing injustice to either the Local Planning Authority or the appellant. Both main parties have based their respective cases upon the Council’s implied allegation that the caravan is being used for the purposes of residential occupation or human habitation, thus correction of the notice to allege a material change of use of the land to use for the siting of a static caravan used for human habitation can be made. I shall use my powers of correction accordingly and determine the appeal on the basis of this alteration.

¹ *Hammersmith LBC v Secretary of State for the Environment and Sandral* [1975] 30 P and CR19.

Appeal Site and Background

7. The appeal site is a roughly rectangular area of land on the southern side of Vivian Street, a cul-de-sac that runs south-west from Bolsover Road. The first section of the street is paved and adopted, serving six dwellings, but an unsurfaced area beyond is used for casual car parking and access to various garages on either side. At the end of the street is the appellant's dwelling, a detached two-storey house, and its associated garden. To the south-east of this plot is a continuation of the unsurfaced roadway, partly grass-covered, leading to two more garages. Beyond, to the south-east, is the appeal site.
8. The site is enclosed with fencing, walling and a high hedgerow, although the north-eastern boundary is undefined and an area of overgrown and derelict land borders an area containing further wooden garages in that direction. Within the site, the appellant has sited a static residential caravan, close to the south-western boundary. It is set on the partly concrete and partly gravelled base of wooden sheds that previously occupied this area. It is not connected to any services and rests on bricks, although its wheels are still in place.
9. The remainder of the site is used mainly for garden and horticultural purposes, although some cars were stored at the time of my inspection. A polytunnel is used for the propagation of plants and there are beds for the growing of vegetables and flowers, as well as a grassed area in front of the caravan.

THE APPEAL ON GROUND (b)

10. The appellant's case on this ground is, essentially, that neither he, nor anybody else, has used the caravan for residential purposes, and he has no intention of so doing. His plan has always been to use it to store garden tools and equipment and for potting plants, as well as for occasional rest from gardening activities in the former living room space. He contends that the caravan no longer has the facilities necessary for day-to-day living as it is not connected to any services and various fixtures, such as the cooker, hob and toilet, have been removed. The bedrooms are used for storage of lawnmowers, gardening tools and camping equipment. The alleged breach of planning control has not, therefore, occurred as a matter of fact.
11. The Council state that the caravan passes all the tests related to the definition of a caravan, as set out in the CSCDA, and that notable case law precedent exists which further defines a caravan. Furthermore, the caravan could be reinstated with all of the apparatus used for everyday living and connected to services, or use temporary solutions, to form a habitable dwelling, therefore, despite the changes made, it still falls within the legal definition of a caravan. They consider that the stationing of a caravan designed for modern day living, on undeveloped garden land, represents a material change of use of that land and is contrary to planning policy and the character and amenity of the area and its residents. The Council does not have the resources to undertake a series of intrusive site monitoring inspections to ensure that it is not used, at some time in the future for residential purposes thus, in all these circumstances, the appeal on ground (b) should fail.
12. In an appeal of this nature, on legal grounds, the burden of proof² lies with the appellant to show that, on the balance of probabilities³, the matters alleged in

² *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

³ *Thrasyvoulou v Secretary of State for the Environment* [1984] JPL a732.

the notice have not taken place as a matter of fact. In this case, the appellant has made a series of statements and supported them with photographs of the interior and exterior of the caravan that has been positioned on the land. Although he states that, having regard to the alterations made through removal of fittings, he doubts that it would now comply with the legal definition of a caravan, I am satisfied that it still meets the necessary tests as it is clearly a structure, of normal dimensions, that was designed for human habitation and can still be moved as a single structure. The fact that some fixtures have been removed and that it is not currently connected to services does not alter this fact. However, this, in itself does not mean that the appeal on ground (b) should fail. The crucial question is the use to which the caravan has been put since it was sited on the land. In this context, the judgement in *Restormel*⁴ is pertinent, as it found, in that case, that it is not possible to know whether the stationing of a caravan amounts to a material change of use without knowing the purpose for which the caravan was used, and whether that purpose fitted in with the existing use of land. The stationing of a caravan is not, therefore, a material change of use in itself, as also found in *Wealden*⁵.

13. The Council appear to accept that the lawful use of the appeal site is that of a private garden and the appellant has provided evidence to show his ownership of it, with a copy of the relevant title confirming that the land was purchased on 29 September 2010. There also appears to be no dispute that the caravan has been brought onto the land to replace some wooden sheds which were destroyed by fire. The appellant contends that the caravan has been used solely for storage of garden equipment and tools, as a potting shed, and for casual recreation associated with the enjoyment of the garden, and he supports this with photographic evidence that coincides with my observations at the site inspection. This evidence is also undisputed by the Council although they contend that the fixtures and fittings could easily be restored or reinstated, and that the caravan could then be used for human habitation.
14. An enforcement notice cannot be issued, however, in respect of a breach of control that has not yet taken place. There is no evidence before me to suggest that any residential occupation of the caravan has occurred, only that it has been used for purposes incidental to the use of the land as a garden, including for casual recreation, and the alterations made to the caravan support the appellant's contentions in this respect. Such usage does not require planning permission provided it remains incidental to the primary use of the land, and the Council would be able to pursue enforcement action if that situation changed. I appreciate that they have resource limitations which may restrict the monitoring of a particular site, but the fact that this site can be seen from the upper floors of dwellings to the south, as well as from the garage area to the north-east, suggests that any material change in the current situation would be liable to be reported by local residents. In any event, the appellant has given no indication of any intention to use the caravan as a separate dwelling, which is not surprising given the proximity of his own house.
15. I conclude that the matters alleged in the notice, as corrected, have not occurred as a matter of fact and that the static caravan, whilst clearly sited on the land, has not been used for human habitation. The appeal on ground (b) therefore succeeds and the notice will be quashed.

⁴ *Restormel Borough Council v Secretary of State for the Environment and Rabey* [1982] JPL 785.

⁵ *Wealden DC v Secretary of State for the Environment and Day* [1988] JPL 268.

Other Matters

16. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

Conclusions

17. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice, as corrected, will be quashed.

FORMAL DECISION

18. The enforcement notice is corrected by:

- a) the deletion of Section 3 in its entirety and the substitution therefor of the following allegation:

"THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission, the use of the land for the siting of a static caravan used for human habitation."; and,

- b) the deletion, in Step 2 of Section 5, of the word "Permanently".

19. Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

Martin Joyce

INSPECTOR