
Appeal Decisions

Site visit made on 18 October 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 12 December 2016

Appeals A & B: APP/M2270/C/16/3148955 & APP/M2270/C/16/3148956 Land at Beanfield Farm, Rogers Rough Road, Kilndown, Cranbrook, Kent TN17 2RP

- 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 Lee Wiggins (3148955, Appeal A) and Joyce Lucienne Wiggins (3148956, Appeal B) against an enforcement notice issued by Tunbridge Wells Borough Council.
- The enforcement notice, numbered 16/500079/ENF, was issued on 18 March 2016.
- The breach of planning control as alleged in the notice is: 'Without planning permission the construction of a residential dwelling (a wooden single storey construction with a pitched roof measuring approximately 15 metres by 7 metres) marked in the approximate location on the attached plan by a box outlined and filled in red'.
- The requirements of the notice are:
 - I. Demolish the unauthorised residential dwelling marked in its approximate location on the attached plan by a box outlined and filled in red.
 - II. Remove from the Land all resultant materials, rubble and rubbish arising from compliance with requirement (I) above.
 - III. Re-seed with grass the area of the Land as marked on the attached plan by a box outlined and filled in red.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (b) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period on Appeal B, the appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered in that case. Appeal B is therefore proceeding on ground (b) only.

Summary of Decisions: The appeals are allowed on ground (b) and the enforcement notice is quashed.

Procedural matters

1. The appeals against the enforcement notice on ground (b) were introduced by the Appellants at a late stage in place of initial appeals on ground (c), by means of an email dated 13 October 2016. The change was made at my prompting, it being readily apparent that the case put forward on the Appellants' behalf presented the accommodation as a mobile home rather than a dwellinghouse. The question thus raised was whether the matter stated in the notice (the construction of a residential dwelling) had occurred in fact, rather than whether it amounted to a breach of planning control.
 2. In the event that the appeals on ground (b) failed it would not be appropriate to then proceed to determine the initial appeals on ground (c). In such circumstances these would have to be approached on the premise that a
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residential dwelling had indeed been constructed rather than a mobile unit having been stationed on the land, this being a scenario that the Appellants have not chosen to accept or address.

3. Nor would it be appropriate in the event of success on ground (b) to correct the notice accordingly, so as to relate to a use of land rather than the construction of a building, and then go on to consider the initial appeals on ground (c) on the basis that such use may not have amounted to a breach of planning control. Such a correction would, in my judgment, bring to the fore issues which the parties have not addressed fully in their submissions to date, such as whether or not the unit on the land would then fall within the scope of planning permission ref no TW/10/03750/FUL/SJM¹ in terms of both its location and its present size².
4. Consequently it would give rise to injustice and thus exceed the corrective powers available to me under section 176(1) of the 1990 Act as amended which, in any event, are discretionary. I have therefore treated the appeals on ground (b) as superseding those on ground (c). Accordingly, should the appeals succeed on that ground I will quash the notice on the basis that it is beyond correction.
5. Following the replacement of ground (b) with ground (c) I invited the Council to submit further written representations addressing that change, with a deadline for submissions falling after the date of my visit. A brief response was received, on which the Appellants were invited to make final comments. In determining the appeals I have had regard to all comments received by the relevant deadlines.

The appeals on ground (b)

6. In appealing against the enforcement notice on ground (b) the onus of proof is firmly on the Appellants to demonstrate on the balance of probabilities that the matter stated in the notice had not in fact occurred. The judgment in *Gabbitts v SSE & Newham LBC* [1985] JPL 630 makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellants' version of events less than probable, there is no good reason not to grant a LDC, provided the Appellants' evidence alone is sufficiently precise and unambiguous.
7. The Appellants' case in this regard is based on the contention that the accommodation targeted by the notice is not, as alleged, operational development undertaken on the site but, instead, a mobile unit manufactured elsewhere, then imported to and stationed on the land. If the latter is correct then the matter stated in the allegation, if still considered to be a breach of planning control, should have been a material change of use of the land to use for the stationing of a mobile unit used as residential accommodation (or words to that effect).
8. The principal question before me is therefore whether the Appellants' actions amounted to the construction of a 'building' for the purposes of the 1990 Act as

¹ This is a permission granted by the Council on 28 January 2011 for development described as: 'Permanent retention of mobile home in connection with game-rearing enterprise at Beanfield Farm OS Plot 6267'.

² I am aware that the Appellants have addressed these questions in part. However, unsurprisingly given the format of the enforcement notice as issued, the Council has not.

amended. The relevant tests are found in case law arising from the judgment in *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385, as endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No 2)* [2000] 2 PLR 102. These indicate that the key considerations as to whether, as a matter of fact and degree, a 'building' exists are (a) physical attachment, (b) permanence and (c) that it was of a size to be constructed on site, as opposed to being brought on to the site. The Courts have made clear that no one test is conclusive.

9. That said, rather than applying the above tests, both main parties have instead focussed on the alternative question of whether the unit would meet the planning definition of a caravan or mobile home, as set out in section 29 of the 1960 Act as amended and section 13 of the Caravan Sites Act 1968 as amended. The latter specifies that for the purposes of Part I of the 1960 Act the expression 'caravan' (accepted in planning law as being interchangeable with the term 'mobile home') shall not include a 'structure' if its dimensions when assembled exceed 20 metres in length, 6.8 metres in width or 3.05 metres in height (the latter being measured internally from floor to ceiling).
10. There has been some disagreement between the parties as to whether the subject unit complies with these restrictions. The Council's enforcement notice states explicitly that it has a width of 7 metres and a length of 15 metres, thus falling outside the 1968 Act definition. The Appellants initially claimed dimensions of 6 metres by 17 metres as measured from the enforcement notice plan. However, this was clearly not a reliable way in which to assess the size of the unit and, indeed, their subsequent measurements on site have revealed actual dimensions of 7 metres by 15.5 metres when recently added timber cladding is included and 6.8 metres by 15 metres when excluded.
11. This points to a level of agreement on size between the parties, at least so far as the crucial width measurement is concerned. I am also mindful that in *Measor v SSETR* [1999] JPL 182 the Deputy Judge said that he would be wary of holding, as a matter of law, that a 'structure' which satisfies the definition of, for example, a mobile home under section 13 could never be a 'building' for the purpose of the 1990 Act as amended. However, it was also found that a mobile home would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment.
12. Nonetheless, notwithstanding this and setting aside the question of whether or not the existing unit falls within the scope of the 2011 permission (which was specifically for a 'mobile home'), compliance with the 1968 Act definition is clearly a lesser test that is not quite as 'on point' as those arising from *Cardiff Ratings* and *Skerritts*. In other words, the failure of a unit of accommodation to meet the statutory definition of a caravan or mobile home does not by default make that unit a 'building' for the purposes of the principal Act and therefore operational development rather than a use of land. Accordingly, I will instead apply the 'building tests' to the evidence before me.
13. Whether those tests are satisfied is a matter of fact and degree and requires a judgment to be made. In this regard I am mindful that the Appellants' case on ground (b) is reasonably precise and unambiguous, whereas the Council's submissions in relation thereto are particularly brief and perfunctory, despite the opportunity afforded to expand on them, and include little by way of contradictory evidence. Indeed, I am left with the impression that the Council

- has not properly addressed itself to the question of whether operational development, as distinct from a use of land, has in fact occurred.
14. That being so, having regard to *Gabbitas*, I find no sound reason to question the Appellants' contention that this unit was 'brought to the site' rather than constructed *in situ*. My own inspection confirms to my satisfaction that, as claimed, the unit is not physically attached to the land beneath it other than by means of utility connections. The Courts have long held that such connections do not in themselves have the effect of creating a 'building' as, almost invariably, detachment therefrom is a simple matter which can be achieved within minutes.
 15. Nor is there anything before me that refutes the Appellants' assertion that the external timber cladding was added after the basic unit was introduced to the site. However, whilst in this case the cladding appears to have increased the width of the unit such that what may have originally have been a 'caravan' no longer is, the Courts do not generally consider subsequent additions of this kind, including decking and entrance porches, to make the difference between a 'building' and a use of land. Nor would hardsurfacing around the unit have that effect.
 16. Cladding aside, I have seen nothing to suggest that this unit was not brought to site either in one piece or, alternatively, in two pre-manufactured sections that were merely pieced together. Lack of physical attachment in turn points to a lack of permanence. It goes without saying that a unit of this kind cannot be moved around with ease. Nonetheless, the same can be said for 'static' caravans and mobile homes found on residential caravan sites which are not readily transportable without the aid of cranes or lorries, yet are recognised in law as not amounting to buildings.
 17. I therefore conclude on the balance of probabilities, given the precision and lack of ambiguity in the Appellants' case and in the absence of any contradictory argument of substance from the Council or others, that the 'construction of a residential dwelling' has not in fact occurred. Accordingly, the appeals succeed on ground (b).
 18. However, my conclusion to that effect should not be taken as a finding that the subject accommodation is immune from enforcement action and therefore lawful. It remains open for the Council to continue to pursue this matter by means of a reframed replacement notice, having regard to the 'second bite' provisions of section 171B(4)(b) of the 1990 Act as amended, should it be considered expedient to do so. In considering that option there is potential for a number of matters to be explored which, by reason of the shortcomings of the notice as issued, fall outside my remit.
 19. These include whether the subject unit of accommodation cannot benefit from the 2011 permission by reason of its location outside the area edged red on the site plan that accompanied the original planning application; whether any perceived breach of planning control in that regard could be remedied by simply requiring the relocation of the unit by means of an enforcement notice; and whether exclusion from the definition of a 'caravan' by reason of its increased width now precludes the unit from meeting the terms of the 2011 permission in any event, irrespective of location. Whilst I am able to identify these potential points of interest for the parties' further consideration, I cannot explore them in the context of these appeals without giving rise to injustice.

Conclusion

20. For the reasons given above I conclude that the appeals should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal against the notice on ground (a) does not fall to be considered.

Formal decisions

21. The appeals are allowed on ground (b) and the enforcement notice is quashed.

Alan Woolnough

INSPECTOR