

Appeal Decision

Site visit made on 14 December 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 11 January 2017

Appeal Ref: APP/D2510/C/16/3149275

St. Helens Cottage, Church Road, Stickford, Boston PE22 8EP

- 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 Peter Ellerby against an enforcement notice issued by East Lindsey District Council.
 - The notice was issued on 16 March 2016.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a building in the approximate position marked with a blue cross on the attached plan.
 - The requirement of the notice is: remove the building, shown on 'photograph A' attached, from the land.
 - The period for compliance with the requirement is 30 days after this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

Costs application

2. An application for an award of costs has been made by the appellant against the Council and is the subject of a separate Decision.

The Appeal on Ground (c)

3. On this ground it is for the appellant to show, on the balance of probabilities, that the matters alleged in the notice do not constitute a breach of planning control.
 4. The subject of the enforcement notice is a car port in the driveway that serves St. Helen's Cottage. It encloses space of about 24m² and is located in front of the main elevation of the dwelling. As such it is undisputed that the car port would not be permitted development as specified in The Town and Country Planning (General Permitted Development) (England) Order 2015. However the appellant contends that it is a portable and freestanding structure and consequently is not "development" that requires planning permission.
 5. By section 55(1) of the Act "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". "Building operations" includes other operations normally undertaken by a person carrying on business as a builder, but a structure is not excluded from
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the definition of a building merely because it could be installed and/or dismantled by non-builders. Indeed the term "building" in s.336(1) of the Act includes "any structure or erection", a description interpreted by the courts to potentially include structures not ordinarily described as buildings.

6. It is well established¹ that three general criteria apply in deciding whether something is a building for these purposes: whether it is of a substantial size such that it would normally be constructed on site, as opposed to being brought on to the site, its degree of permanence and degree of physical attachment to the ground. I consider each criterion in turn, recognising that no one factor is decisive and that whether or not the car port constitutes "development" within s.55 is an evaluative question, which requires an exercise of judgment.

Size

7. The car port is a large timber built structure with a shallow pitched roof about 6m wide, 5.6m long and 3m high with an eaves height of some 2.8m. It accommodates personal and business vehicles owned by the appellant. In the photograph attached to the notice it is shown housing a transit van of medium wheel base type and a people carrier.
8. The original components of the car port which included two roof sections and legs, were brought to the site on a lorry and assembled on site. Since then castor wheels have been fixed to metal skids and it can be removed from the site in a single piece and brought back to its normal position in the same state. Nevertheless this is a cumbersome manoeuvre. I saw six men move the car port from land on the opposite side of the road onto the site. It was clearly of considerable weight. Its width was marginally less than the entrance to the driveway which meant that some time was taken to align it properly with the obliquely angled entrance whilst it was still in the highway.
9. The appellant points out that the structure is below the maximum dimensions that would prevent it being transported on the road as a complete structure. The supporting information confirms this but also points up that it would be an abnormal load, requiring notice to be given to the police and so forth. I have no doubt that many people, as indeed was the case with the appellant, would choose to have it delivered to the site in parts "for ease of transport"².
10. Due to its substantial size, weight, design, and its appearance within the appeal site, it is reasonable to form the view that although some components are prefabricated, it would have been constructed on site. Whether it was assembled by builders or non-builders is not vital to the character of a building operation. I disagree that the work carried out to assemble or construct the car port is "no more difficult than a flat pack wardrobe". The work and resultant structure are capable of coming within the definition of a building operation.

Permanence

11. The appellant suggests that the car port's position within the site can be and is varied. However it was observed by the Council in the same position on

¹ See *Cardiff Rating Authority v Guest Keens* [1949] KB 385

² Email from appellant's agent, 3 December 2015

several occasions in the months between September 2015 and February 2016 as well as in March 2016 when the notice was issued.

12. Once in position in the corner of the plot, I saw that the scope for repositioning it within the appeal site is made impracticable by the layout of vegetation and boundary treatments within the space to the front of the dwelling. Moreover the car port is specifically sited in order to stop sap or dew dropping onto the appellant's parked vehicles from overhanging trees in the adjacent churchyard. These factors are of consequence in the planning context and the ability to move it off the site has not removed the significance of its on-site presence. The car port is to all intents and purposes permanently in place and there is no limit on the length of time it could remain there.

Physical attachment

13. Prior to the issue of the enforcement notice and as I have described, the car port was adapted such that it is fixed onto metal skids with castor wheels underneath to facilitate its mobility. It could also be picked up by crane or hoist and put on a lorry. No preparation of the ground is required and there would be no physical change in the characteristics of the land due to its presence. No services are connected to it and only the wheels rest on the ground. I do not consider it to be affixed to the ground by its own weight.

Assessment

14. The relevant case law and appeal decisions supplied by the main parties have been considered. Inspectors have no power to lay down policy or give a decision that could be regarded as a precedent for other applications. Although consistency is important like cases do not always have to be decided alike provided that it is explained why a different view is taken.
15. The Council submits an appeal decision³ that bears some similarities to the present appeal in that it involved a trailer with a welded metal frame clad in timber supported on castor wheels. The inspector found that a reasonable person would think that the structure had been erected on site and it had the appearance of a garage as it contained a pitched roof and a garage door. That it could be pushed around the site, albeit a cumbersome procedure, did not mean that it was not a building. The decision is not directly relevant as the car port has no enclosed sides or door. However, even without the vehicles underneath it, the car port has considerable bulk and mass in its own right.
16. The appellant drew attention to an appeal decision⁴ involving a field shelter with a similar degree of mobility to the car port. However it is clear from that decision that the Inspector regarded the shelter as "not large and...of no great weight" and that it was frequently moved over a wider area of land than is possible at the appeal site. These factors distinguish the decision from the instant case.
17. I have considered the comments made by interested persons in support of the appellant but they do not contain anything that would cause me to change the views I have expressed thus far. The car port is said to serve an occasional use elsewhere in the village. There is no firm evidence that substantiates this assertion but even so I am not persuaded from what I have read or seen that

³ APP/L3625/C/11/2165878

⁴ APP/B9506/C/14/2224711

the stationing of the car port is simply a temporary use of land, sojourns to the village fete or barbecue notwithstanding. It has, as it were, an ordinary place of residence to which it is intended it should return to fulfil its primary function. In my view it has sufficient permanence to be regarded as a building.

18. The appellant refers to the right to enjoy one's home and possessions. The European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998 is relevant when considering enforcement action. This includes the right in Article 8 to respect for the home and private and family life and the right to peaceful enjoyment of possessions in Article 1 of the First Protocol. The rights are not however engaged in this appeal as it is made solely on ground (c) which is simply concerned with the legal issue of whether there is a breach of planning control and not, for example, whether planning permission should be granted for the unauthorised development.
19. I find as a matter of fact and degree that the size of the car port, including its bulk and appearance, and degree of permanence are significant factors compared to the lack of physical attachment to the land, sufficient in my view for its construction to amount a building operation requiring planning permission. It is located in front of the dwelling at St Helen's Cottage and is therefore not permitted development. As no other planning permission has been granted there is a breach of planning control. The appeal on ground (c) accordingly fails.

Overall Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

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

Grahame Kean

INSPECTOR