

Appeal Decision

Site visit made on 10 January 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 16 January 2017

Appeal Ref: APP/J2373/C/16/3153330

50 Lyndhurst Avenue, Blackpool FY4 3AX

- 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 Paul Whilton against an enforcement notice issued by Blackpool Borough Council.
 - The enforcement notice was issued on 19 May 2016.
 - The breach of planning control as alleged in the notice is the change of use of the pedestrian passageway to form part of residential curtilage at 50 Lyndhurst Avenue and the siting of a static caravan within the pre-existing and extended curtilage at 50 Lyndhurst Avenue and use of the said static caravan for residential purposes independent from the main dwelling.
 - The requirements of the notice are i. Cease the use of the said static caravan for residential purposes independent of the main dwelling at 50 Lyndhurst Avenue; ii. Remove the said static caravan in its entirety from the land affected; and iii. Restore the boundary line of 50 Lyndhurst Avenue to its pre-existing line and remove all obstructions from the line of the pedestrian passageway between the pre-existing curtilage of 50 Lyndhurst Avenue and the rear boundaries of 49 and 51 Hemingway and the side of 13 Starbeck Avenue to enable unobstructed pedestrian passage along the said pedestrian passageway.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period so the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered.
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Decision

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

Reasons

2. 50 Lyndhurst Avenue is a semi-detached dwelling in a residential curtilage. To the south are amenity areas at 49 and 51 Hemingway, to the west is the amenity area of a property on Starbeck Avenue, and to the north, at the rear of the appeal dwelling, is the rear amenity area of 48 Lyndhurst Avenue. Between the appeal dwelling and the boundary fences to the rear amenity areas of 49 and 51 Hemingway is the static caravan that is a subject of the enforcement notice. It is about 20 metres long and 6.7 metres wide and is located less than one metre from the boundary fence and the south gable wall of the appeal dwelling.
 3. The appeal is proceeding on ground (b) only; that the breach of planning control has not occurred. The caravan blocks access to the aforementioned neighbouring properties because it is sited less than metre from the boundary fence to properties to the south. The Appellant maintains that only the owners of
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48 Lyndhurst Avenue are beneficiaries of a deed of conveyance dated 23 April 1971 that provides for a right of access over his property. The deed submitted in evidence refers to 'a right of foot way' but does not specifically refer to 48 Lyndhurst Avenue and it is unclear what rights of access are actually granted. Furthermore, rights of access are not necessarily gained only by being granted in a deed and may be gained through use over a period of time, and there is no plan attached to the deed showing the land conveyed.

4. In addition, a plan submitted with a planning application in 2005 for an extension to the appeal dwelling indicates that an access way about one metre wide would be maintained along the south and west boundaries of the appeal property 'for rear access'. This rear access, given that it was clearly intended to be used by owners of adjoining properties cannot then, or now, be claimed to be part of the curtilage of the dwelling at 50 Lyndhurst Avenue. The static caravan, as a matter of fact, is sited over the access way and has resulted in a change of use of the pedestrian passageway to form part of the residential curtilage at 50 Lyndhurst Avenue and the caravan is sited within the pre-existing and extended curtilage of the property. These elements of the alleged breach of planning control set out in the notice have occurred as a matter of fact.

5. With regard to the allegation that the static caravan has been used for residential purposes independent of the main dwelling the Appellant has only claimed that the Council admitted in the Magistrates Court on 15 May 2016 "...that they are aware and happy that the vehicle is empty and not in usage". But that admission, on the Council's evidence, was by Counsel who had not visited the caravan or site, and can be discounted. The Appellant does not dispute the Council's claim that the caravan has been occupied by the Appellant's parents (though his father has since sadly passed away) and it is the last known use, rather than a lack of use on the date of issue of the notice, that is relevant to consideration of a ground (b) appeal. On the evidence available the static caravan has been in use for residential purposes independent of the main dwelling.

6. The breaches of planning control alleged in the enforcement notice have, as a matter of fact, occurred. The ground (b) appeal thus fails.

John Braithwaite

Inspector