
Appeal Decisions

Site visit made on 28 February 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 16 March 2017

Appeal Ref: APP/N2739/C/16/3153492 & 3153493

Land at Roe Lane Nursery, Roe Lane, Hillam, Leeds, North Yorkshire LS25 5JJ

- 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 George and Mrs Lisa Sanderson against an enforcement notice issued by the Selby District Council.
- The enforcement notice, LPA Ref: ENF/2016/0009/ENF, was issued on 7 June 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the erection and siting of a building for residential use in the approximate position marked with a cross on the plan attached to the notice.
- The requirements of the notice are to:
 1. Cease the use of the building as residential accommodation; and,
 2. Permanently remove the building and all associated items, including the breezeblock base.
- The periods for compliance with the requirements are six months and seven months respectively.
- The appeals are proceeding on the grounds set out in Section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the applications for planning permission deemed to have been made under Section 177(5) of the Act as amended do not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Matters Concerning the Notice

1. There are two matters concerning the wording of the notice which require attention with a view to determining whether correction is needed, and could be made without causing injustice or prejudice.
 2. Firstly, the allegation states that the building in question is marked with a cross on the plan attached to the notice, but the plan is not so marked. There is, however, no doubt about the structure to which the notice relates, and I am satisfied that the appellants have not been misled in any way by this omission. A corrected plan can therefore be substituted for that attached to the notice, using the powers available to me under Section 176(1)(a) of the Town and Country Planning Act 1990 (The Act).
 3. Secondly, the second requirement of the notice states that the building shall be "permanently" removed. The use of this word is unnecessary having regard to the provisions of Section 181(1) of The Act, which state that compliance with an enforcement notice shall not discharge the notice. Again, I am satisfied that
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no injustice would arise through appropriate correction of the notice thus I shall take the necessary action accordingly.

Background

4. The appeal site lies on the western side of Roe Lane and comprises a roughly rectangular-shaped area of land used as a market garden, following a grant of planning permission in 2002.
5. The appellant purchased the site in 2006 and initially lived on the land in an L-shaped timber structure. This structure was replaced by a static caravan and then, in 2011, by a twin-unit caravan. The present structure, which is the subject of the notice, was brought onto the land in or around April 2015. The appellants refer to the structure as a "timber-clad mobile home", but other documentation refers to a "log cabin"¹, and it has the appearance of such as it looks like a large detached wooden cabin that rests on a low breeze-block wall. The structure measures about 15 in length, 6.6m in width and has an internal height of 3m from floor to ceiling.
6. Internally, there is a large living/kitchen/dining area, three bedrooms and a bathroom, as well as a small entrance lobby containing an immersion heater and various service connections including a fuse box. The property has electricity, through solar panels on the land to the west, mains water, and gas provided through a canister and pipe connection. Waste water is drained to a cess pit to the south-east. Heating is provided by a log-burning Rayburn stove in the kitchen.

THE APPEALS ON GROUND (b)

7. The appellants contend that the alleged breach has not taken place because the alleged building is, as a matter of fact, a twin-unit caravan, meeting all of the requirements within the definitions contained in the Caravan Sites & Control of Development Act 1960 (CSCDA) and the Caravan Sites Act 1968 (CSA). In particular they contend that it meets the size, mobility and construction tests set out in the legislation as confirmed in relevant case law² and other appeal decisions. Therefore, the appeals should succeed on this ground.
8. The Council accept that the mobility and size tests would be met, but not that of construction as the structure was not built in two sections which were then joined together as the final act of assembly. Therefore, it is a building and operational development, as alleged in the notice, has taken place.
9. I begin my deliberations on this matter by drawing attention to the fact that the burden of proof in an appeal on legal grounds, such as those pleaded in this case, lies with the appellants, having regard to national procedural guidance³, as referred to in the Planning Practice Guidance, and pertinent case law⁴. In respect of ground (b), they must show, on the balance of probabilities⁵, that the breach of control alleged in the notice has not occurred as a matter of fact.

¹ Appendix B to the appellants' grounds of appeal "Method Statement" prepared by Therma Timber Technology Ltd.

² *Wyre Forest BC v SSE & Allen's Caravans* [1990] 2 WLR 517 and *Byrne v SSE & Arun DC* [1998] JPL 122.

³ Annex E of Procedural Guide "Enforcement Notice Appeals – England", 23 March 2016, Planning Inspectorate.

⁴ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

⁵ *Thrasivoulou v Secretary of State for the Environment No 1* [1984] JPL a732.

10. In these appeals the issue before me revolves around the statutory definition of a caravan set out in the CSCDA, as revised by the CSA. The CSCDA defines a caravan as "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"⁶. Sub-sections 13(1) and 13(2) of the CSA relate to twin-unit caravans defined as: "A structure designed or adapted for human habitation which: (a) is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices; and, (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)" even if to move it on the highway when assembled would be unlawful, due to its size".
11. The CSA also set down maximum dimensions for the assembled caravan – length not to exceed 20 metres exclusive of any drawbar; width not to exceed 6.8 metres; and, the overall height of the living accommodation, measured internally, not to exceed 3.05 metres when measured from the lowest level to the highest level.
12. There is no dispute in these appeals that the detached wooden cabin meets the dimensional criterion, and the appellant has supplied a Method Statement for the removal of the structure which shows that it could be transported by being placed on a sub-frame and lifted. This Method Statement is accepted by the Council, therefore the only issue in contention is the test of construction.
13. In this context, I note that no drawings have been produced by the appellants to show the precise method of construction, or the physical structure that now exists, rather three photographs with a written explanation of the assembly process have been supplied. They claim that the structure is a mobile home bought from a site in Huntingdon, where it was accepted by the Local Authority as a caravan but, because of poor access, was dismantled in large panel sections to be reassembled on the appeal site in two halves. The base/floor was made up on site in two halves and then each part of the structure was assembled on top of the base with two separate clear sections. Bolts and clamps were put in place, but not tightened, to ensure a consistent level fit and the roof structure was completed in two separate sections with the ridge being in two halves again, with bolts loosely fitted to ensure a constant and level fit. The photographs show the base or floor of the unit being constructed, and the bolts of the two sections, and also the vertical upright in the gable end and the external timber clad with a defined split and the ridge beam split with a bolt through it. The base/floor was then placed on, but not fixed to, a dwarf wall which acts as a skirt around the property to prevent the entry of vermin.
14. It is clear, as a starting point, that the structure was not brought onto the appeal site in two sections, rather it was transported there in numerous parts, as observed by the Council's enforcement officer at a site visit on 8 April 2015 and shown in photographs dated the following day. That in itself is not, however, determinative on this issue, as it has been accepted that a twin-unit caravan may be brought onto land in sections and then assembled, but the final act of assembly must be the joining together of two separate sections.

⁶ Section 29(1) of the Caravan Sites & Control of Development Act 1960.

15. In this context, however, the Council's observations, at site inspections during the construction process, indicate that the main roof beams appeared to have been installed at the same time and were not in two separate sections that were bolted together upon completion. Indeed, they dispute that the structure was put together as two halves, rather it was built piece by piece. In particular, the roof timbers were erected on the structure early on its construction and bolted together, as shown at a site inspection on 14 April 2015, which revealed the timbers flush against each other and the bolt head flush with the timber, indicating that it was tightly, and not loosely, bolted.
16. The photographs of 14 April 2015 are compelling evidence that the building was not assembled in two halves or sections which were then joined together as the final act of construction. These photographs show the shell of the building, with external walls and some windows in place, and the overall roof framework, but not the roof covering, fixed and tightly bolted together. It is clear to me that there was no completion of two halves of the structure which were then brought together and finally joined. The construction method was essentially akin to that of the erection of a timber building with a basic framework to which was added walls and roof timbers. It follows from this that the appellants have not met the required burden of proof and shown, on the balance of probabilities, that the structure meets the relevant construction test and can therefore be defined as a caravan. It is, rather, a building which has been erected as operational development, as alleged in the notice. The appeals on ground (b) therefore fail.

THE APPEALS ON GROUND (c)

17. Having determined that the structure in question is a building, and not a caravan, the question falls to be considered, under this ground of appeal, as to whether planning permission is required for the development that has taken place. However, no arguments have been put forward to support a contention that the building does not require planning permission as operational development or that it would be permitted development under the terms of The Town and Country Planning (General Permitted Development (England) Order 2015 as amended.
18. There is some suggestion, although it is not clearly argued, that the building could be considered as a replacement for the structure that was in place when the appellant purchased the site in 2006. However, that structure was taken down and replaced by a static caravan and then a mobile home, as shown in the appellants' photographs, therefore the erection of new dwelling, as operational development, requires a grant of planning permission which has not been obtained. The appeals on ground (c) therefore fail.

THE APPEALS ON GROUND (d)

19. The appeals on this ground appear to relate to a claim that the appellants have lived on the site since 2006, as shown through the submission of relevant Council Tax bills for the period since then. They also suggest that the Council is confused in its interpretation of the four- and ten-year rules concerning immunity from enforcement action.
20. The time limits for the taking of enforcement action are set out in Section 171B of The Act. For a breach of planning control involving operational development, as in this case, the relevant time limit is four years, thus the Council has not

erred in their interpretation of the statutory provisions. The relevant time period for a change of use of land, including to that of the siting of a caravan used for residential purposes, is ten years, but that is not the breach of planning control before me in these appeals.

21. It follows that, for an appeal on this ground to be successful, the appellants must show that the building in question was substantially completed more than four years before the date of issue of the notice, that is before 7 June 2012. However, whilst it may well be the case that the appellants were living on the appeal site before that date, it is clear that the erection of the current building was not even started until 2015, as shown in the undisputed evidence of the Council. The appeals on ground (d) therefore fail.

Other Matters

22. 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 these appeals.

Conclusions

23. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with the corrections referred to above.

FORMAL DECISIONS

24. The enforcement notice is corrected by:

- (a) The substitution of the Plan attached to this decision for that attached to the notice; and,
- (b) The deletion, in Step 2 of Section 5 of the notice, of the word "Permanently".

25. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR

Plan

This is the plan referred to in my decisions dated: 16 March 2017

by **Martin Joyce DipTP MRTPI**

Land at Roe Lane Nursery, Roe Lane, Hillam, Leeds, North Yorkshire LS25 5JJ

References: APP/N2739/C/16/3153492 & 3153493

Scale: Not to scale

