
Appeal Decisions

Site visit made on 21 March 2017

by D H Brier BA MA MRTPI

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

Decision date: 31 March 2017

Land at Wright's Lane, Gayton, Northamptonshire NN7 3ES

Appeals made by Mr A Hollis

- 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 against 2 enforcement notices issued by South Northamptonshire Council on 16 May 2016.
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Appeal A Ref: APP/Z2830/C/16/3152302

- The breach of planning control as alleged in the notice is the change of use of the land from private leisure and recreation to a mixed use, including the use of land for the stationing of a portable cabin, a goods vehicle body used for the storage of goods, and the storage of a motor home.
- The requirements of the notice are remove from the land the portable cabin and its contents, the raised platform and access steps, the goods vehicle body and contents, and the motor home.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with corrections and a variation.

Appeal B Ref: APP/Z2830/C/16/3152303

- The breach of planning control as alleged in the notice is the erection of a building.
- The requirements of the notice are:
 - (i) Demolish the building to ground level.
 - (ii) Remove any materials on the land that constitute constituent parts for the building.
 - (iii) Remove from the land all the arisings resulting from requirement (i)
- The period for compliance with the requirements is 3 months (requirement (i)), and 4 months (requirements (ii) and (iii)).
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

The Allegation

1. The Council acknowledge that the goods vehicle body referred to in the allegation has been present on the appeals site for more than 10 years and so has become immune from enforcement action. Consequently, I have been invited to delete the reference to it from the notice. In addition, the allegation implies that the change of use is *from* the use of the land for leisure and recreation, whereas and as confirmed by what I saw on site, leisure and recreation is still a component of the mixed use of the land. In my view, the allegation should be amended to cover both these points and there should also be a related alteration to the requirements by deleting the reference to the removal of the goods vehicle body.
2. I have the power to correct the notice in this manner and I am satisfied that in this instance this can be done without causing injustice to the parties.

Appeal A – Ground (c)

3. As the appellant has indicated that the ground (c) appeal under Appeal A is only in respect of the motor home referred to in the allegation, I will deal with this part of the case accordingly.

Appeal A - 'Hidden' Ground (g) Appeal

4. No appeal has been made on ground (g), but I note that, insofar as the portable cabin is concerned, the appellant contends that the 3 month compliance period is unreasonable¹. I shall address this matter as though there had been a ground (g) appeal.

The Appeals Site and Background

5. The appeals site lies in the countryside about 1km to the north of Gayton. It is triangular in shape, being bounded by the Grand Union Canal towpath to the south, Wright's Lane to the west, and a tree plantation to the north.
6. The eastern part of the site is largely down to grass. At the time of my visit a tepee-like tent and what appeared to be a metal hammock type of device were sited here. Much of the western part of the land has an unconsolidated hard surface. Alongside the site's western boundary, to the south of the vehicular access onto Wright's Lane, I noted: a wooden shed about 4.5m by 2.5m (not mentioned in the notices); a 'portacabin' structure with associated timber decking and stairs; and, in the site's south-west corner, the van body referred to above.
7. The alleged building that is the subject of Appeal B is positioned alongside and parallel to the western part of the site's northern boundary. It is partially a constructed structure with walls and a floor, but no roof. In the vicinity of the building I noted a number of piles of materials which appeared to be linked to its construction. The motor home referred to in the Appeal A notice was parked just to the south of the building.
8. On 11 February 2016, that is prior to the enforcement notices being issued, the Council issued a Lawful Development Certificate (LDC) under section 191 of the

¹ Appeal Statement for Appeal A paragraphs 6.16 to 6.19.

Act in respect of the use of the land for "*Private recreation and leisure only limited to the named applicant [sic], their family and friends*".

Appeals on Ground (c)

Preamble

9. In order for the appeals to succeed on this ground it has to be shown that the matters alleged do not constitute a breach of planning control. Ground (c) is a legal ground of appeal, distinct from the planning merits and the Courts have held that the onus on proving it lies with the appellant.

Appeal A

10. The appeal on this ground only concerns the motor home. In essence, the appellant's case in respect of this and the alleged building, which is the subject of Appeal B, is the same. Both, it is said, fall within the definition of a caravan. They are incidental to the lawful use of the land for private recreation and leisure, and, as such, do not constitute a development under section 55 of the 1990 Act.
11. The appeal statement contains a section within which it is argued that the motor home is not operational development. While this argument is pertinent to Appeal B – a point to which I return below – it seems to me to be irrelevant insofar as Appeal A is concerned. It is not alleged that the motor home constitutes operational development.
12. I accept that a motor home is capable of falling within the definition of a caravan. However, the precise relationship of the motor home in question to the lawful recreation and leisure use of the site is not wholly clear. While it is stated that the motor home provides "*shelter and occasional overnight accommodation for the appellant*"², just how and to what extent it has been used in this manner is not elaborated upon. The same applies to the claim that it is used "*in association with*"³ the lawful use of the land; it is far from clear what this means.
13. This lack of clarity extends to the appellant's affidavit⁴. Indeed, the affidavit does not expressly refer to the motor home – it is not clear whether the "caravan" referred to is the motor home or the alleged building. And, although the affidavit is dated 11 August 2016, that is nearly 3 months after the notice was issued, the references to "use" in paragraphs 2 and 3 are framed in the future tense. To my mind this implies an intention; I am concerned that it is not necessarily indicative of the position at the time when the alleged breach took place.
14. It is not inconceivable that the storage of a motor home on the land could be incidental to its lawful use. However, from the somewhat limited and unclear nature of what has been put before me, I am not satisfied that the burden of proof that rests with the appellant has been discharged.

² Appeal Statement for Appeal A paragraph 4.35.

³ Ibid.

⁴ Appendix 4 to both appeal statements.

Appeal B

15. The nub of the appellant's case is that the alleged building does not constitute operational development – it is a twin unit caravan which is incidental to the lawful use of the land. As the construction of the structure has not been completed, it is nigh on impossible for me to reach a conclusion as to its functional relationship to the use of the appeals site. And, as the structure is no more than a shell without a roof, I find the submission that it "*provides shelter and occasional overnight accommodation for the appellant*"⁵ somewhat lacking in credibility. Irrespective of this though, I have strong reservations as to whether the structure can reasonably be regarded as a twin unit caravan.
16. As the appellant points out, section 13(1) of the Caravans Site Act 1968 is expressly directed at twin unit caravans. The relevant section is set out in the appeal statement, namely, "*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 a 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)."*
17. The current uncompleted state of the structure also makes it difficult to reach a firm conclusion as to whether the structure is designed for human habitation, but I accept that its general form and scale would not be inconsistent with this. However, while it is stated that the 'caravan' could be assembled by the manufacturer and delivered in 2 parts, this is not what has happened here. Instead, as acknowledged by the appellant, the structure has been supplied in ready cut sections and the assembly work has taken place on site. Moreover, it is stated that the 'caravan' has to be partially constructed as one unit, involving the creation of its external carcass. Upon completion of this carcass, the structure "*will be separated into 2 parts ready for final assembly*"⁶ in order for it to be split into 2.
18. The appellant's description of the construction process accords with both my own observation, and with the unchallenged detailed evidence regarding this matter contained in the Council's statement. In particular, I noted that the floor and the visible timber joist that supports it appear as a single entity, as does the structure as a whole. It may be that the intention is to split it into 2 to form 2 separate sections, but that is not how I perceived the structure in its current form. Constructing a single structure and then splitting it into 2 seems to me to be something of a contrivance that is far removed from the assembly of 2 separately constructed sections. Accordingly, therefore, I am not satisfied that the manner of construction accords with the provisions of section 13(1) a) of the 1968 Act.
19. As regards the 'transportability' of the structure, while it is claimed that it could be transported by road on a low loader, apart from a further reference to the structure being separated into 2 parts, just how this could be done has not been elaborated upon. As the Council point out in *Carter v Secretary of State*

⁵ Appeal statement for Appeal B paragraph 4.46.

⁶ Appeal statement for Appeal B, paragraph 4.28.

and *Carrick DC [1195] JPL 311*, it was held that the transportation criterion applied to the whole caravan structure and not to its component parts. Furthermore, I was unable to identify any chassis or other device that would enable the structure to be towed. Nor, is there anything before me that demonstrates that the construction of the structure is sufficiently robust to enable it to be lifted onto a low loader without causing serious structural damage to it. The appellant's case is silent on this point. As a result, I am not satisfied that the structure accords with the provisions of section 13(1) b) either.

20. As to whether the structure constitutes a building, the appellant *cites Barvis v Secretary of State for the Environment [1971] 22 P & CR 710*. Like the subsequent Court of Appeal judgement in *Skerrits of Nottingham v Secretary of State for the Environment Transport and the Regions (No.2) [2000] 2 P.L.R.* this endorsed an earlier judgement in *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd [1949] 1 K.B. 385*, which identified 3 primary factors as being relevant to the question of what was a "building", namely size, permanence, and physical attachment.
21. As regards size, the appellant indicates that, based on measurements taken by the Council, the structure is 17.86m long by 6.01m wide, with a maximum height of 3.64m⁷. It appears to have been built from scratch, albeit largely using prefabricated panels, as opposed to having been merely placed on the land after having been constructed elsewhere. The end result is a substantial single structure of some size.
22. Turning to permanence, it is said that the structure will be in situ for as long as is necessary to meet the needs of the appellant. While this could be taken to mean that it is not envisaged that the structure would be an everlasting feature on the land, it does not point to the presence of the structure being regarded as a temporary expedient either. To my mind this points to a certain degree of permanence – a factor to which I attach some weight.
23. As to physical attachment, according to the appellant, the structure rests on concrete blocks and is not fixed to the ground, nor is it connected to any services. On the face of it, this appears to lend some support to the claim that the structure is not a building. However, given the substantial nature of the structure, it seems to me that its very weight would be sufficient to secure it in place. And, there is nothing that shows that the structure has been moved or re-positioned whilst it has been on the site. Nor has any indication that this is what is intended been given either. To my mind, all this points to the structure being a substantial and significant physical presence too.

Overall

24. As noted in paragraph 14, I am not satisfied that it has been demonstrated that the storage of the motor home is incidental to the lawful use of the land. As a matter of fact and degree, I consider it is a component part of the mixed use alleged and, along with the other facets of this, it has materially altered the character of the land. As such, the use amounts to development for which planning permission is required. In the apparent absence of any such permission, I find that it constitutes a breach of planning control.

⁷ Appeal statement for Appeal B paragraph 4.20.

25. Similarly, for the reasons given above, I am not satisfied that it has been demonstrated that the structure in question is a caravan, or that it is merely a chattel that has been placed on the land. The circumstances of the case are such that, as a matter of fact and degree, rather than being a caravan, it is reasonable to regard the structure in question as a building. Accordingly, therefore, its erection is operational development within the meaning of section 55 of the 1990 Act for which planning permission is also required. In the apparent absence of any such permission, it also constitutes a breach of planning control.
26. The appeals on ground (c) therefore fail.

Appeals on Ground (a) and the Deemed Applications

27. The main issue is whether the character and appearance of the area would be adversely affected.
28. Planning policies for the area are contained in the West Northants Joint Core Strategy (JCS) and the Council's Local Plan (SNLP). JCS Policy S1 seeks to limit new development in the rural areas, and Policy S10, headed 'Sustainable Development', indicates that development will, amongst other things, protect and conserve the natural environment. A similar consideration is contained in Policy R2. SNLP Policy G3(a) indicates that development should be compatible with the existing character of the locality, something that is also reflected in Policy EV1 headed 'Design'. Policy G2 indicates that development in the open countryside will be 'severely restrained'. And, according to Policy EV2 planning permission will not be granted for development in the open countryside apart from certain exceptions. One of these is where the development is necessary for the purposes of recreation. Policy RC3 allows for new recreational facilities in the open countryside where they are dependent upon or especially appropriate to an open countryside location.
29. The approach outlined above is also reflected in the National Planning Policy Framework (The Framework), one of the core principles of which is recognising the intrinsic character of the countryside. Paragraph 28 offers support to sustainable leisure development that respects the character of the countryside and paragraph 109 indicates that planning should contribute to and enhance the natural environment.
30. The reasons for issuing the notices also refer to JCS Policies H3 and H4 and R1 and SNLP Policies H6 and H7, all of which are directed at housing. As the building is incomplete, and the appellant maintains that it is intended to be used in association with the lawful leisure and recreational use of the site, I consider they offer only limited assistance in this case.
31. As noted in paragraph 2, the appeals site lies in the countryside. And, apart from an equestrian establishment on the south side of the Grand Union Canal to the west of Wright's Lane, the immediate surrounds of the site are largely devoid of buildings. The structures referred to in the notice, together with the van body and the shed are concentrated in the western part of the site where the motor home was also parked. This concentration of items tends to make this part of the site appear very cluttered and built-up, in marked contrast to, and very much out-of-keeping with, the largely open nature of the wider surroundings.

32. Mindful of the restrictive planning policies that apply in this countryside location I regard the 'portacabin', the motor home and the partially constructed building as inappropriate and visually intrusive features. Both individually and collectively, they constitute a harmful encroachment into an area of predominantly open countryside.
33. I have read that the 'portacabin' was in place when the appellant bought the land. I also appreciate that its presence has afforded the appellant a useful opportunity to store equipment associated with a former business operated by him, and I acknowledge that the storage use is only intended to be a temporary expedient whilst the equipment is sold. Be that as it may, the storage use appears to be wholly unrelated to the lawful use of the land, or to any other rural land use. Indeed, the appellant accepts that the current use of the 'portacabin' does not fall within the lawful leisure and recreation use of the land.
34. The value of the facility to the appellant is not a matter I set aside lightly, and I am mindful that he intends to remove the 'portacabin' once the equipment has been sold and so only seeks a temporary permission – a 2 year period is mentioned. Beneficial though this may be to the appellant, I am not satisfied that this is sufficient to outweigh the harmful nature of this component of the development in question. Due to the size of the structure and the associated decking, together with its essentially utilitarian appearance, I regard it as an unacceptably intrusive feature in this location, out-of-keeping with its countryside setting.
35. As noted in the previous section, the evidence linking the use of the motor home to the lawful recreational use of the site is somewhat lacking. It may be that this vehicle is capable of providing some sort of facility associated with the lawful use of the land, but there is nothing that indicates that the presence of the motor home is necessary in this respect.
36. Turning to the partially erected building, while I acknowledge that it has replaced a caravan which was previously stationed in the same location, this is not a matter to which I attach much weight. To my mind, the removal of the caravan and its subsequent replacement by the structure in question marked a new chapter in the planning history of the site.
37. The partially constructed state of the building makes it difficult for me to conclude that it is intended to be a dwelling as the reasons for issuing the notice allude to. According to the appellant, the 'caravan' is required to provide shelter and occasional overnight accommodation when the site is used by his friends and family to "*relax and enjoy the open countryside*"⁸. Even though this is not dissimilar from the claim made in respect of the motor home, I accept that having such a facility could enhance the leisure experience for users of the site.
38. Useful though this may be though, I find it difficult to see how a structure such as this can reasonably be regarded as being necessary for the purposes of recreation at the appeals site, perhaps all the more so having read that the appellant lives relatively close to the land. The site is not vast – according to the appellant its area is approximately 1266m². However, my impression was that in all probability the nature of the lawful leisure or recreational use of the

⁸ Appeal statement for Appeal B, paragraph 6.4

land is likely to be fairly low-key and informal. In these circumstances, it seems to me that the structure in question is disproportionately large, despite the appellant's claim that it only accounts for a relatively modest proportion of the site's area. In this respect, the appellant indicates that its approximate area is 47m²⁹, but how this figure has been arrived at is not clear. In particular, it does not appear to relate to the unchallenged dimensions noted in paragraph 21 which suggest that the floor area of the structure is in excess of 100m². Either way, the structure would tend to consolidate the built-up nature of the western part of the site, to the detriment of its rural character.

39. The site is bounded by trees and hedgerows which are likely to provide a good degree of screening when they are in leaf, and there is a solid fence alongside the site's frontage to Wright's Lane. The neighbouring tree plantation also limits views from the north and the structure of the canal bridge tends to obscure the site from view for travellers approaching from the direction of Gayton. However, while I note that the appellant is prepared to accept a condition requiring additional boundary and on-site planting, I do not consider relative inconspicuousness is a good reason for permitting the development in question in this countryside location.
40. In my view, the disputed development would have an unacceptably harmful effect on the character and appearance of the area. As such, it would be contrary to the relevant provisions of the development plan. And, while elements of the development are linked to the leisure use of the land, for the reasons given above, rather than respecting the character of the countryside, it detracts from it, and so is also contrary to the relevant provisions of The Framework. I have had regard to the conditions put forward by the appellant and have noted his willingness to accept them, but neither they nor those suggested by the Council would overcome my concern.
41. In the light of the foregoing, the appeals on ground (a) fail and planning permission will not be granted on the deemed applications.

'Hidden' Ground (g) – Appeal A

42. No claim is made that the 3 month compliance period is insufficient insofar as physically removing the portable cabin or the associated raised platform and steps are concerned. Rather, a longer period – at least 12 months - is sought to enable the appellant to arrange for an alternative storage facility.
43. As no evidence regarding the availability or otherwise of such facilities in the area has been put forward, this makes it difficult to take a view as to whether 12 months or longer would be a more reasonable compliance period. That said, a period longer than 12 months would be virtually tantamount to granting a temporary planning permission which, as I have already indicated, would not be appropriate here.
44. I do acknowledge that looking for an alternative location and making any necessary arrangements related to this could well take longer than 3 months. While 12 months would be too long in my view extending the period to 6 months would help the appellant by giving him a more reasonable opportunity to look for somewhere to accommodate the stored items. I shall therefore vary

⁹ Ibid paragraph 6.11.

the notice accordingly. Had there been a ground (g) appeal it would have succeeded to this extent.

Other Matters

45. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decisions

Appeal A Ref: APP/Z2830/C/16/3152302

46. I direct that the notice be:

A. Corrected:

- (a) In section 3 by the deletion of "a Goods Vehicle Body" from the allegation.
- (b) In section 3 by the insertion of "private recreation and leisure and" between "including and "use".
- (c) In section 5 by the deletion of "the Goods Vehicle body and contents" from requirement 5 i).

AND.

B. Varied in section 5 by the deletion of "3 calendar months" as the period for compliance and its substitution by "6 months".

47. Subject to these corrections and variation, I dismiss the appeal and uphold the enforcement notice as corrected and varied. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/Z2830/C/16/3152303

48. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D H Brier

Inspector