
Appeal Decisions

Site visit made on 8 May 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 19 June 2017

Appeal Ref A: APP/R1845/C/16/3165263

Appeal Ref B: APP/R1845/C/16/3165264

Land at The Granary, Barn 3, Hodge Hill Farm Barns, Birmingham Road, Kidderminster, Worcestershire

- 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 Giles Smith (Appeal A) and Mrs Michelle Smith (Appeal B) against an enforcement notice issued by Wyre Forest District Council.
- The enforcement notice was issued on 15 November 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey orangery/garden room and decking within the curtilage of the dwelling house.
- The requirements of the notice are to demolish the orangery/garden room and remove from the Land all materials resulting from the demolition and demolish and remove all decking from the Land.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld.

Appeals on ground (c)

1. The appeal on ground (c) is that the matter alleged in the notice does not constitute a breach of planning control. The onus is on the appellants to make out their case.

Is the alleged development a building?

2. The object, to use a neutral term, is single storey with a flat roof. It is clad in timber with glazed panels on three sides and is partly surrounded by timber decking which butts up to the object. There is a sunken fish pool at one end of the decking. At the time of my site visit the development was unfinished. The internal appearance includes a timber floor, painted walls, fixtures and fittings for electric plugs and lighting. I have been informed by the appellants that the electricity supply is to be provided via a "*proprietary waterproof socket connection which can be separated by merely pulling apart*".
3. The appellants state that the object has been "*constructed off a steel chassis in insulated timber and glazing*". Having regard to the appellants' photographs¹ it would appear that the object was constructed on site comprising steel chassis, timber floor and a number of separate elements used in the building of the

¹ Photographs 1 and 2, Page 5, Appellants' Statement of Appeal.

walls and roof. In that context my starting point is whether there has been a building operation? Section 55 of the Act sets out the meaning of development as the carrying out of building, engineering, mining or other operations in, on, over or under land.

4. I note the appellants' reference to the case of *Byrne v Secretary of State for Environment and Arun* [1997] 74 P. & C.R. 420 – “that a caravan can be manufactured on site, it does not have to be fabricated at another location”. *Byrne* concerns twin-units comprising two sections which are designed to be assembled by being joined together on site whereas the evidence in this particular case indicates that the object was constructed on site from numerous parts and went far beyond two sections being assembled together using bolts, clamps or other devices. Moreover, the appellants in their statement accept that the object is not a twin-unit. The end result is a substantial single object of some size which could reasonably be regarded as a building.
5. Having regard to the evidence, I am satisfied that the process of constructing the object on site from a number of separate components involved a building operation. Where there is a building operation it has to result in the creation of a building as defined. Section 336 of the Act defines “*Building*” to include “*any structure or erection*”.
6. The Council has referred to judicial authority² which identifies the three primary tests relevant to the question of whether something is a building. The *Barvis* case is strong authority for the view that the key elements in deciding whether or not something is a building are size, permanence and physical attachment.
7. As regard size, the appellants indicate that the object measures approximately 4.76m x 4.76m x 2.95m high. In this case the size of the object is not, by itself, a decisive factor as it is also of a size that could reasonably be regarded as a caravan.
8. Turning to permanence, the appellants state that the object could be taken with them should they decide to move house and it would not have to be included in the deeds of the house because it is not a permanent object. Whilst this could be taken to mean that it is not envisaged that the object would be an everlasting feature on the land, it does indicate the appellants' intention to retain the object in its current position for as long as they live at the property. To my mind this points to a degree of permanence.
9. With regard to the appellants' comments in relation to the caravans within the parking area of Hodge Hill Farm Barns, it is material that in *Skerritts*, a marquee sited in one particular location for 8 months of the year was held to be a sufficient length of time to be of consequence in the planning context. Permanence did not necessarily mean that the item must be on site for 365 days a year. However in this particular case there is no evidence that the object has moved since its construction or is likely to be moved. Moreover, in common with the finding of the Inspector, confirmed in *Skerritts*, the object does have a permanent rather than fleeting character.

² *Barvis V Secretary of State for the Environment* [1971] 22 P & CR 710, *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd* [1949]1 QB 385; *Skerritts of Nottingham Ltd V Secretary of State* [2000] 2 P.L.R 84 & *Save Woolley Valley Action Group Ltd v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin).

10. As to its physical attachment, the object is constructed off a steel chassis with lifting holes which sits on concrete blocks set into the ground³. The timber frame of the object is fixed to the steel chassis via bolts and I am informed by the appellants that the object has no physical attachment to the ground. Although I was unable to see underneath the object at my site visit, I have no evidence to dispute the appellants' claims. However, I did see that the surrounding decking which butts up to the object and covers the edges of the steel chassis appeared to a degree to be holding the object in place. In any event, whether or not the decking has the effect of physically attaching the object to the ground, the Courts have held that an absence of physical attachment is not decisive, e.g. the crane subject of *Barvis* was not itself fixed to the ground.
11. For the above reasons, I conclude that the process of constructing the object on site involved a building operation, which is development for the purpose of the Act. By reason of its size, permanence and limited attachment, I conclude, as a matter of fact and degree, that the object is to be regarded as a building for planning purposes.
12. In reaching this view I have taken account of the appellants' argument that the object has been designed to be lifted⁴. I have noted the previous appeal decision in 2002 and the case of *Carter v SSE and Carrick DC [1995] JPL 311*, wherein it was held that the object had to be capable of being moved as a whole by a single motor vehicle. I reject any inference that because the object has been designed to be capable of being moved in one piece and falls within the maximum size limits for a caravan that it is therefore a caravan⁵. I agree with the Council that a shed or summerhouse does not become a caravan once it has been assembled just because it sits on a base or is freestanding. Nor does such an object become a caravan just because someone puts a portable toilet and cooking facilities in it, even if it falls within the size limits and might be capable of being moved in one piece on a single motor vehicle. In any event, on the evidence, the mobility test is superfluous because the object is a building that has been constructed on site as a result of a building operation.

Other matters

13. I note the appellants' argument that as a caravan the object is intended to be "*used solely as incidental to the use of the main house*", and "*dependent on the facilities provided from the main house*" and "*guests or family members who use the caravan will have meals and store belongings in the main residence and will use it for daytime activities and occasional sleeping purposes*"⁶. To my mind, it is reasonable to assume that the term designed or adapted for human habitation is a place which has been designed or adapted for someone to live in i.e. a place someone can make their home. I saw at my site visit little evidence that the object has been designed or adapted as a place someone could make their home. It has no essential facilities for separate day to day living nor is there any evidence to suggest if and to what extent these facilities are to be provided within the object. The use of a portable toilet and cooking facilities as suggested by the appellants is not in my view within the spirit of

³ Photograph 1, page 5, Appellants' Statement of Appeal.

⁴ Appellants' letters to the Council dated 28 September 2016 & 30 September 2016.

⁵ Definition of caravan within s29(1) of the Caravan Sites and Control of Development Act 1960 & S13(1) of the Caravans Sites Act 1968 & the case of *Wyre Forest District Council v Allen's Caravans and Secretary of State for the Environment [1990] 2 WLR 517*.

⁶ Appellants' letter to the Council dated 21 April 2016

what is meant by 'designed or adapted for human habitation'. Thus, I am not convinced that the object has been designed or adapted for human habitation which is an essential ingredient of the definition of a caravan⁷.

14. For the reasons given above, I conclude that as a matter of fact and degree the alleged breach of planning control is a building and hence development for which planning permission is required under s55(1) of the Act. The appeals on ground (c) therefore fail.

Elizabeth Jones

INSPECTOR

⁷ Definition of caravan within s29(1) of the Caravan Sites and Control of Development Act 1960 & S13(1) of the Caravans Sites Act 1968.