
Appeal Decision

Site visit made on 20 June 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 03 July 2017

Appeal Ref: APP/V4250/X/16/3162115

Land off Higher Lane, Aspull WN2 1EA

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a Certificate of Lawful Existing Use or Development (CLEUD).
- The appeal is made by Mr J Charnock against the decision of the Wigan Council.
- The application, Ref: A/16/82510/LUCE, dated 13 May 2016, was refused by notice dated 20 July 2016.
- The application was made under Section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a CLEUD is sought is a mobile (wooden) building.

Summary of Decision: The appeal is dismissed.

Background

1. The appeal concerns a pitched-roof wooden building measuring about 6m in length, 4.5m in width and 3.35m in height to the ridge. It has no floor and is largely open on one side. It is not fixed to the ground, being mounted on a framework of metal skids with attached towing rings. At the time of my inspection, the building was sited close to the south-eastern boundary of the appeal site, within a grass paddock. The overall site is of about 2.2ha and comprises, in the main, a number of paddocks, separated by either post and rail or post and wire fencing. Access is from Higher Lane at the eastern corner of the site, with a yard area, surfaced with stone and hardcore, and a manege alongside the north-eastern roadside boundary. A row of four stables is located to the south, next to the south-eastern boundary, to accommodate the four horses kept on the land.

The Case for the Appellant

2. The appellant contends that, contrary to the view of the Council, the building in question has been specifically designed to be, and is, truly mobile. It has been purchased from a reputable firm who specialise in the construction of mobile equestrian buildings, for which there is a demand that reflects the need for flexibility in managing the welfare requirements of animals, and for ancillary storage and maintenance. Therefore it does not amount to development under Section 55 of the Town and Country Planning Act 1990 (The Act).
 3. The building has no degree of permanence in its traditional interpretation by way of attachment to the ground and is easily moved. The Council's case appears to be based upon the likelihood of the building remaining in its original position in the stable yard, on a stone/hardcore base, but surrounding fencing is easily dismantled and the building has been moved to a new position within a
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paddock without difficulty. It may well be moved around that paddock in the future to prevent the field becoming puddled. In all of these circumstances, therefore, development requiring planning permission has not taken place and a CLEUD should be issued.

The Case for the Council

4. The Council have assessed the appellant's case in relation to the statutory framework¹ and pertinent case law², specifically the three factors of size, permanence and physical attachment. In this context, it is considered that the building is not as easily moveable as suggested given its size and siting on a stone/hardcore base, and it appears to have been restricted to a position within the yard area for the duration of its presence on the site, limited only to a movement of about 2.4m for demonstration purposes. In this yard setting the structure is of a size to be of significance in the planning context.
5. It is noted that the appellant only intends to use the building as a field shelter but it is considered that it has a significant degree of permanence in planning terms. It is also noted that the building could not be moved onto adjoining fields without being dismantled, at least in part, due to the width of the adjoining field gate. Therefore, given its size and current operations at the site it is a building and its siting is a breach of planning control. A CLEUD should not be granted.

Appraisal

6. The main issue in this appeal is the question of whether or not the wooden structure is a building, and therefore development in terms of Section 55 of The Act, or whether it is a chattel because of lack of attachment and mobility. In considering this issue, it is necessary to state at the outset that the planning merits of the development are not before me in this appeal, only the question of whether or not the placing of the structure was lawful at the date of the application for a CLEUD. Further, I draw attention to the fact that the burden of proof in an appeal on legal grounds such as this lies with the appellant, having regard to national procedural guidance³, as referred to in the Planning Practice Guidance, and pertinent case law⁴, with the relevant test being on the balance of probabilities⁵.
7. In this appeal, the Council have correctly identified the pertinent case law applicable to a consideration of the question of whether or not the structure placed on the appeal site is a building, and I concur with the view that it is necessary to consider three principal factors – size, permanence and physical attachment. I also consider that no one factor is decisive.
8. In terms of size, the wooden structure is very similar to many typical stable buildings found on equestrian and agricultural sites. It is of a size comparable to a pair of the permanent stables already built on the overall site. It is also substantial enough to rest on the ground without the need for fixation,

¹ Sections 55, 57, 171A, 191 and 336 of the Town and Country Planning Act 1990.

² *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385, as refined by *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2000] JPL 1025 and *R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin).

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

- notwithstanding that the towing rings could be used to help tie it to the ground and provide additional stability.
9. With regard to permanence, the structure has been in its current position for some time, judging by the degree to which the surface of the paddock within the shelter has been trampled and the fact that it has started to sink slowly into the ground through its own weight, albeit only by a few millimetres. Additionally the marks left on the field from the act of dragging it into position, as shown in the appellant's photographs, are no longer visible. It has the appearance of a building that would be in position for some time or, at best, only moved on a limited number of occasions and then to another position within the same enclosure.
 10. As for physical attachment, the structure is not currently tethered to the ground, but merely rests on it through its own weight, albeit that it has started to sink as noted above.
 11. It has been held, in *Save Woolley Valley*, that the question of whether or not a structure is a building is an evaluative one, and that the term *building* in Section 336(1) of The Act has a wide definition which includes any structure or erection. It was further held that the issue of permanence has to be construed in terms of significance in the planning context. The structure in this case is intended to be a sizeable feature of the overall equestrian enterprise, used either for storage purposes or as an animal shelter. It has a significant presence in planning terms and this would not be altered by any repositioning within either the current enclosure or the wider unit. Wherever located it would be of visual significance and appear as a solid, sizeable wooden building.
 12. The appellant relies heavily on the ease of movement of the structure, and I do not doubt that it can be so moved without undue difficulty, albeit that damage to the land may now occur given the time it has obviously been in its current position. I was not, however, given a demonstration of the ease of movement at my inspection, because there are currently two swallow nests within it, but that further illustrates the degree to which it has permanence. I was shown the simplicity of removal of fence posts and rails so as to facilitate transfer between yard and paddock but this is of no great consequence in the overall assessment as to whether or not the structure is a building.
 13. As a matter of fact and degree I consider that the wooden building is a building for the purposes of Section 55 and that its placement on the appeal site is an act of development for which planning permission is required.

Conclusions

14. For the reasons given above I conclude that the Council's refusal to grant a CLEUD in respect of a mobile (wooden) building was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act as amended.

Other Matters

15. 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 this appeal.

FORMAL DECISION

16. The appeal is dismissed.

Martin Joyce

INSPECTOR