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# Appeal Decision

Site visit made on 9 August 2017

**by K R Saward Solicitor**

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

**Decision date: 17 August 2017**

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**Appeal Ref: APP/G2245/X/16/3160695**

**Hazeri, Button Street, Swanley BR8 8DY**

- 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 use or development (LDC).
  - The appeal is made by Mr E Newman against the decision of Sevenoaks District Council.
  - The application Ref SE/16/01258/LDCEX, dated 20 April 2016, was refused by notice dated 27 July 2016.
  - The application was made under section 191(1)(a)&(b) of the Town and Country Planning Act 1990 as amended.
  - The development and use for which a certificate of lawful use or development is sought is the formation of a dwellinghouse by adaptation of a mobile home and the residential use of resulting building and associated domestic garden.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The Council's decision was taken with reference to section 191(1)(b) of the 1990 Act which relates to existing operations. However, the application not only sought a LDC for the formation of a dwellinghouse, but also for the residential use of a building along with the use of associated domestic garden. An application to ascertain whether any existing use of buildings or other land is authorised falls to be considered under section 191(1)(a). Although this section has not been explicitly cited, it is clear from the Council's decision and the Council Officer's report that consideration was given to whether there has been a material change of use. My decision shall be taken with reference to both section 191(1)(a) and (b).

## Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

## Reasons

### *Background*

4. The background to this appeal is not altogether straightforward and warrants summary before addressing the substance of the appeal.
5. When the appellant and his wife acquired the appeal site in 1966 it formed part of the land and buildings now known as Hazelcourt Kennels. The complex

included a house, kennels and cattery buildings plus a mobile home occupied by the manager and her spouse. By a decision dated 22 April 1987<sup>1</sup>, temporary planning permission was granted for the "replacement of mobile home and continued use in connection with kennels". It was limited by condition to 5 years. Upon expiry of that period the mobile home was required to be removed from the site unless, upon prior application having been made, the period had been extended by the Council. Another condition limited the occupation of the "caravan" to a person solely employed in connection with the running of 'Hazelcourts' boarding kennel business.

6. The planning permission was implemented later in the autumn of 1987 when a replacement mobile home was brought onto the site. A brick skirt, porch and conservatory were added a short time afterwards in 1987/1988. The appellant maintains that those works amounted to building operations and the mobile home became a dwellinghouse. The Council says it remained a mobile home. Whether or not it is a dwelling or a mobile home is the nub of the dispute. I shall refer to Hazeri as a 'unit' being a neutral term that can encompass either.
7. The business and house were subsequently sold by the appellant and his wife in 1989 who retained ownership of a plot of land which included the unit. During 1989 they commenced residential occupation of the unit.
8. Subsequently, an enforcement notice was issued on 11 January 1996 under section 171A(1)(b) of the 1990 Act for failure to comply with the condition attached to the 1987 planning permission which required removal of the mobile home after expiration of 5 years. The requirements of the notice were "(1) Remove the mobile home from the land; or (2) the mobile home shall remain on the land on condition that its retention shall be limited to the period for which it is required to be occupied by Mr E. Newman and/or Mrs H. Newman, after which the *caravan* [my emphasis] shall be removed from the site."
9. No appeal was made against that notice which came into effect on 16 February 1996. The unit has remained on the site ever since. It is now occupied solely by Mr Newman who seeks a LDC on the basis that it is not a 'mobile home' but constitutes a building which has been occupied as a dwellinghouse since the works took place and with the surrounding land having been in use as associated domestic garden. Thus, it is claimed that there is operational development in the form of construction of a building and a material change of use of the land to a dwelling with a further change of use of the surrounding land to domestic garden.

### *Analysis*

10. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development applied for would be lawful at the time of the application.
11. The appellant submits that neither the works nor the uses constitute a contravention of any of the requirements of the enforcement notice. That may well be so because the way that the enforcement notice is drafted, there would be no breach of the requirements whilst the "mobile home" to which the notice is directed "is required to be occupied by Mr E. Newman".

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<sup>1</sup> Council ref: SE/87/166

12. In effect, the position taken by the appellant is that the enforcement notice does not bite because it concerns the use of land for the stationing of a mobile home in breach of condition rather than building operations to form a dwellinghouse and its associated uses.
13. Pursuant to section 171B(1) where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed. A change of use of any building to use as a single dwellinghouse becomes immune from enforcement action after the end of the period of 4 years beginning with the date of the breach (section 171B(2)). In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of breach (section 171B(3)).
14. If this is a building then the appellant argues it became immune from enforcement action 4 years after the alterations and its change of use to a single dwelling was also immune after the same period of time. A change of use to domestic garden attracted a 10 year immunity period.
15. Whilst both parties have made detailed submissions on whether it is a mobile home or building, the starting point in my consideration of this appeal is the status and effect of the enforcement notice.
16. Even if the unit is a 'building' and the notice was incorrect to refer to a mobile home/caravan, that does not mean that the notice is a nullity or ineffective. In the *Miller-Mead*<sup>2</sup> judgment it was held that a notice would be a nullity if it was hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or failed to comply with a condition or that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breach.
17. In this case, it cannot be said that the appellant was unaware of what was being attacked by the notice or what was needed of him to ensure compliance with the requirements. From the submissions made, the appellant clearly knew the notice concerned the mobile home to which he had made additions.
18. Both parties indicate that there has been no material change in circumstances since the issue of the enforcement notice. Indeed, the appellant emphasises how the works to the twin unit mobile home brought onto the site took place in 1987/1988 i.e. a significant time before the notice was issued in 1996.
19. The point of the matter is that a replacement mobile home was brought onto the land in pursuance of a planning permission and which required the mobile home to be removed after a period of 5 years. When the enforcement notice was issued it required that same mobile home to be removed within either the 1 month compliance period or when it was no longer required by Mr Newman and/or Mrs Newman. It matters not that there have been additions to the mobile home as the stationing of that main structure is what benefits from planning permission howsoever it is now described.
20. Furthermore, the 1990 Act provides the mechanism to challenge the validity and basis of an enforcement notice through an appeal to the Secretary of State

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<sup>2</sup> *Miller-Mead v Minister of Housing and Local Government* [1963] 1 All ER 4592

under section 174. There are various grounds of appeal. They include that the matters have not occurred or did not constitute a breach of planning control or that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

21. On appeal the appointed Inspector has wide powers under section 176(1) to correct any defect, error or misdescription in the notice. Had an appeal been made against the enforcement notice issued in respect of the "mobile home" and raised these same issues then it would have been within the Inspector's discretion to correct the notice if it was accepted that it is a building rather than a mobile home. The notice could simply have alleged the erection of a dwellinghouse without planning permission under section 171A(a) and required its removal.
22. The right of appeal was set out within the notice. No appeal was brought and the validity of the enforcement notice cannot be challenged on any grounds on which such an appeal could have been brought (section 285). The arguments now being advanced about the "mobile home" becoming a dwellinghouse could have been raised then, but they were not. Those arguments fall squarely within section 174(2)(b) i.e. that those matters set out in the notice have not occurred. Had an appeal been brought and succeeded without correction of the notice then the Council could have issued another notice attacking the operational development. Having failed to launch an appeal the appellant cannot now many years later argue that what was attacked by the notice was actually something different altogether which has gained immunity from enforcement action.
23. The notice was directed at the main unit as it still exists whether it is a dwellinghouse or a mobile home. The opportunity to raise the arguments now presented arose when the notice was issued under the statutory appeals procedure. That option was not exercised and the enforcement notice remains in force and effect. The structure and its use are unchanged from when the notice was issued. It was clearly understood to be a mobile home by both parties at that time. It is not now possible to look behind the notice to assert that there was in fact a different type of development than that described in the notice.
24. It may well be that the brick skirt, porch and conservatory could have been enforced against separately as operational development. That is a different issue concerning the extent of the enforcement notice that does not influence the outcome of this appeal.
25. Even though the requirements of the notice may not have been breached, the notice nevertheless controls the presence of the main unit on the land which is limited to the time it is required for occupation by Mr/Mrs Newman. The second requirement purports to give a conditional consent and could have been better framed, but it nonetheless restricts occupation and there is no reason to suppose that it would be ineffective.
26. Moreover, if a LDC were to be issued to allow the structure to remain on the site without limit on occupation then that would to my mind constitute a contravention of the requirements of the enforcement notice and would not be lawful as provided by section 191(2)(b).

27. Given that the appellant has the burden of proof, he has not provided any compelling reason why the notice should be disregarded in assessing the lawfulness of the development applied for.
28. Notwithstanding the above, I am unpersuaded on the evidence before me that the unit is a building rather than a mobile home.
29. There is no statutory definition of 'mobile home' or 'caravan' in the 1990 Act. In the same way that the 1987 planning permission and the enforcement notice refer to both a 'mobile home' and a 'caravan', the words are interchangeable.
30. In section 29 of the Caravan Site and Control of Development Act ('CSCDA') 1960 (as amended) "caravan" is interpreted to mean 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 any motor vehicle so designed or adapted.
31. Section 13(1) of the Caravan Sites Act 1968 defines a twin-unit caravan 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 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), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the CSCDA by reason only that it cannot lawfully be so moved on a highway when assembled.
32. At the time of issue of the enforcement notice, section 13(2) prescribed the maximum dimensions as: length 60ft (18.288m), width 20ft (6.096m) and overall height 10ft (3.048m). The original caravan, comprised of two sections, fell within those dimensions. It is only when the porch and conservatory are included that it fails to comprise two sections and the width exceeds 6.096m. With the additions, it also exceeds 6.8m in width if the current dimension, introduced in 2006, is applied.
33. On the other hand, section 336 of the Town and Country Planning Act 1990 defines a "building" as '*includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.*' There is not an exhaustive test of what amounts to a 'building', but the main characteristics found in the *Cardiff Rating Authority* case<sup>3</sup>, as endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No 2)*<sup>4</sup>, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. The Courts have made clear that no one test is conclusive.
34. In *Measor v SSETR*<sup>5</sup> the Deputy Judge said he would be wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a mobile home under s13(1) of the 1968 Caravan Sites Act could never be a building for the purpose of the 1990 Act. However, it would not generally

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<sup>3</sup> *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385

<sup>4</sup> [2000] 2 PLR 102

<sup>5</sup> [1999] JPL 182

satisfy the well-established definition of a building, having regard to factors of permanence and attachment. It would be contrary to the purposes of the 1990 Act to hold that because caravans were defined as "structures" in the 1960 CSCDA they fell within the definition of "building" in the 1990 Act.

35. The appellant considers the judgment in *Measor* to not be helpful as it does not address the particular circumstances of the case. However, it does provide a steer that if the unit falls within the statutory definition of a mobile home then it may well not be a building. For the purposes of this case, if the unit can properly be described as a caravan/mobile home then its use and presence on the appeal site is clearly captured by the enforcement notice.
36. In this instance, the unit falls outside the maximum dimensions for a caravan as defined because of the additions which also affect its mobility. However, it is not uncommon for an entrance porch or conservatory to have been added to a mobile home. Provided such structures can be easily detached, mobility of the main unit may not be affected. Here, the conservatory has been bolted to both the unit and the hard base beneath. The porch is a flat roofed structure of pre-fabricated appearance. It is mounted on a hard base with solid steps leading up. The method of fixation to the unit is unclear as both are covered in external render.
37. The appellant has drawn my attention to an Appeal Decision from 1997<sup>6</sup> in relation to a unit of residential accommodation known as 'The Moorings'. That case similarly involved what had started as a twin-unit caravan to which a porch had been added, the external walls rendered, a brick skirt added between the unit and concrete base and solid steps outside the porch.
38. In that case, the Inspector found that certain building operations had taken place with the building of the porch, base and steps. The Moorings was described as having the general appearance of a modern, well-appointed bungalow and the physical change involved had been of some permanence. In addition, the Inspector doubted whether it could be moved from one place to another as a single structure even with removal of the porch. The conclusion reached was that The Moorings was a building and not a caravan.
39. A key distinction is that The Moorings exceeded the maximum permissible width for a caravan prescribed by section 13(2) of the 1968 Act even if the porch was discounted. Without its porch and conservatory the unit in this appeal is within the size limits of section 13(2).
40. Moreover, the conservatory could easily be unbolted to detach it from the unit. In all likelihood the porch could also be removed without too much difficulty. There is nothing from their physical appearance and attachment that would cause me to conclude that these additions have become intrinsically connected and part of a single structure.
41. The appellant acknowledges that attachment to mains service such as water, sewerage and electricity is often cited by appellants in support of their case. Almost invariably detachment from such services is a simple matter which can be achieved within minutes.

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<sup>6</sup> Appeal Ref: APP/X/96/G2245/002661 dated 24 October 1997

42. In a situation such as this it may be that there is a mixed development, the caravan/mobile home comprising a use of land and the porch, conservatory and brick skirt with concrete base comprising operational development.
43. If a caravan/mobile home remains mobile then the likelihood is that a use of land is involved. "Mobility" does not require the caravan to be mobile in the sense of being moved on its own wheels and axles. It is sufficient that the unit can be picked up intact (including its floor and roof) and put on a lorry by crane or hoist. In *Carter v SSE*<sup>7</sup> it was held that the transportation criterion applied to the whole caravan structure and not to its component parts. It was accepted in that case that the stationing of a mobile home without wheels, which satisfied the definition of a caravan in section 29 CSCDA, would not amount to a building operation.
44. Once the porch and conservatory are detached, there is no evidence to show that the unit could not be moved in its totality with the use of appropriate machinery and transporter even if it was originally in two parts and assembled on site.
45. On the evidence before, and as a matter of fact and degree, I consider that the unit does fall within the definition of a 'caravan' and is properly so described.
46. Taking all of the factors into account, I find that the appellant has not discharged the burden of proof to demonstrate on the balance of probabilities that there has been the construction of a dwelling which is immune from the enforcement proceedings taken already. It follows that the application for the residential use of a building and use of associated domestic garden must also fail.

### **Conclusion**

47. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the formation of a dwellinghouse by adaptation of a mobile home and the residential use of resulting building and associated domestic garden 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.

*KR Saward*

INSPECTOR

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<sup>7</sup> [1991] JPL 131 & [1995] JPL 311