
Appeal Decision

Site visit made on 26 June 2018

by **D E Morden MRTPI**

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

Decision date: 29 August 2018

Appeal Ref: APP/E2205/X/17/3179915

Corner House, Leacon Lane, Charing, Kent, TN2 0EE

- 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 & Mrs G Ridgen against the decision of Ashford Borough Council.
- The application Ref 17/00372/AS, dated 6 March 2017, was refused by notice dated 5 May 2017.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the siting of a mobile home in the garden as additional accommodation to Corner House.

Summary of Decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by Mr and Mrs G Ridgen against Ashford Borough Council. This application is the subject of a separate Decision.

Main Issues

2. The only point at issue between the parties in this case was whether what was on site was a 'caravan' or not. The other issue that needs to be considered is whether the caravan use, if it is a caravan, is ancillary to the residential use of the dwelling house on the land. I will refer to it as the cabin in this decision.

Reasoning

3. Turning firstly to that second main issue, the cabin on site is very large (some 11m long by 6.8m wide) and has a footprint almost the same size as Garden House itself. This point was only touched upon briefly in the representations (the Council's delegated report), where it stated that utilities would only be available through linkage with the main house. It has no laundry facilities; it has limited cooking facilities; the occupants socialise on a day to day basis with the occupants of the main house in the main house and the garden is shared by everyone who lives on the site.
4. On this basis the Council accepted that it was being used as ancillary accommodation and no objection was raised on that aspect. It would not be appropriate for me, therefore, to raise it as a live issue on the basis of the representations put forward; if that situation changed it would be something for the Council to consider at another time as the certificate, if I grant one, will

- be on the basis that it is sited there only for use as ancillary accommodation (which would be permitted development not requiring planning permission).
5. Turning to the first main issue set out in paragraph 2 above, a caravan is defined firstly, in Section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA) 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 any motor vehicles designed or adapted ..'.
 6. Section 13(1) of the Caravan Sites Act 1968 (CSA) widened the definition to deal with new types of caravan and specifically what had become known as 'twin unit caravans'. Section 13(1) 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) ...'.
 7. Section 13(2) of the CSA also set a size limit for all caravans whether they were caravans meeting the 1960 Act definition or twin unit caravans meeting the 1968 Act definition. Caravans cannot be more than 20 metres in length, 6.8 metres in width both measured externally and 3.05 metres in height measured internally from the floor at its lowest level to the ceiling at its highest level. It is not disputed that what is on site does not exceed these size limits.
 8. The cabin on site needs to meet all the criteria in either definition (that in the 1960 Act or that in the 1968 Act) to be a caravan. How it came to be there is also relevant in determining whether or not it is a caravan. The Council's reason for refusal refers to it not meeting the definition set out in the 1968 Act but that deals only with a twin unit caravan and the appellant does not claim that it is. That definition was concerned with a specific type of caravan that was made up/constructed in a specific manner and that is not what is on site. What is there may, however, satisfy the definition in the 1960 Act and needs to be considered against that.
 9. It is clear from reading the Council's case (its officers' delegated report) that it did not look at whether or not it met the 1960 definition (which is set out in paragraph 5 above). The appellant submitted all the relevant details with the application including drawings from the manufacturer that showed how it could be lifted up on to a trailer and taken away. It sits on a solid concrete base and whilst services are connected (water and drainage in particular) these are easily disconnected and do not prevent what I saw on site from being classed as a caravan at least by reason of it not being mobile/movable in its current state (as required by s29(1) of the CSCDA).
 10. As to the method of getting it into its current state and position on the site, the Council argued that it was constructed/put together just like one would if an operational development was being undertaken. As the drawings make clear it has a structural 'chassis' type base that forms an extra strong floor. It is, as it sets out in the definition at s29(1), designed so that once erected it can be lifted in one piece, put on to a trailer and moved elsewhere. The likelihood is that other structures unless designed in the same way (with a structural base) would break or come apart when lifted and hence not satisfy the definition.

11. The question that needs to be answered though is whether operational development took place in order for the cabin to be there rather than a change of use of the land. In my view it is not sufficient to say that what has ended up there can be lifted on to a trailer and moved. It is possible to actually raise a very old traditionally constructed building on to rollers/trailers and move it along to another site in one piece. That has occurred on more than one occasion with historically important buildings but no one would suggest they were caravans that were moved.
12. Section 336(1) of the Town and Country Planning Act 1990 (as amended) (TCPA) includes in the definition of the word 'building' any structure or erection, and any part of a building, as so defined. This description has been interpreted by the Courts to include structures which would not ordinarily be described as buildings. In *Cardiff Rating Authority*, which was endorsed by the Court of Appeal in *Skerritts*, three primary factors were identified as decisive of what was a 'building' and these are as follows: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive.¹
13. The cabin sits upon a purpose built solid concrete foundation. It can be considered immobile by its own weight and, given its scale, results in physical attachment to the ground. Its substantial size is consistent with a building; it is permanently located within the site and it does not have a fleeting or ephemeral character, because of its design and appearance. There is no evidence that shows that the log cabin has been moved since it was constructed and there is no intention to move it from its current location. On the particular circumstances of this case, the log cabin can reasonably be described as a structure that falls within the definition of the word 'building' in s336(1) of the Act.
14. The question as to whether or not the log cabin constitutes development as a building operation within the meaning of s55(1) is an evaluative one which requires an exercise of planning judgement. The erection of an entirely new building is not specifically mentioned as being within the term 'building operations' as set out in s55(1A) of the Act. However, the use of the word 'includes' shows that the words that follow it are not exhaustive of its meaning.
15. It is taking too narrow a view of 'development' (in this case building operations or other operations) to argue, as the appellant does, that it was constructed by persons employed by the manufacturer and not by persons carrying on business as builders. That is the phrase in s55(1A)(d) of the TCPA wherein 'building operations' are defined as including '(d) other operations normally undertaken by a person carrying on business as a builder'.
16. There were undoubtedly drawings of how the cabin should be constructed once the concrete base had been formed. There is much more than just putting together the wooden parts that make up the cabin. As in any house there is all the electrical work to provide lighting and possibly heating plus the connection of that to the grid even if that is via the main house; there is all the plumbing to provide water supply and a sink in the kitchen as well as water supplies to the toilet and bathroom/shower. There is all the drainage to take away waste from those facilities.

¹ See the case of *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385 and *Skerritts of Nottingham Ltd v SSETR* [2000] JPL 1025.

17. Whether that work is carried out by employees of the manufacturer or a registered builder they are all activities that in my view are firmly within what s55(1A)(d) refers to as building or other operations normally undertaken by a person carrying on business as a builder. The company no doubt is not registered as a builder but the activities undertaken to complete the provision of the finished cabin on site clearly come within that section of the Act. They are the activities that, in my view, an extremely minute percentage of the population would undertake themselves.

Conclusion

18. In all these circumstances I conclude that what has been put on site is a building and not a caravan that satisfies the definition in either the 1960 Caravan Sites and Control of Development Act or the 1968 Caravan Sites Act.

Formal Decision

19. For the reasons given above and on the evidence now available, the Council's refusal to grant a certificate of lawful use or development in respect of the siting of a caravan in the rear garden of Garden House as ancillary accommodation was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D E Morden

INSPECTOR

