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## Appeal Decision

Site visit made on 3 July 2019

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 July 2019**

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**Appeal Ref : APP/U1430/C/18/3201354**

**Land at 1 & 2 Lamberts Cottages, Battle Hill, Battle, East Sussex, TN33 0BL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Peter Arnold against an enforcement notice issued by Rother District Council.
- The notice was issued on 20 March 2018.
- The breach of planning control as alleged in the notice is without planning permission (i) the siting of a mobile log cabin/chalet within the curtilage of a listed building which has been adapted in a way that it now holds sufficient permanence requiring planning permission (the 'Chalet Unit') shown in the approximate position cross hatched and marked OPD1 on the plan attached to the notice, (ii) the erection of an ancillary office outbuilding within the curtilage of a listed building (the 'Office Outbuilding') shown in the approximate position hatched red and marked OPD2 on the plan attached to the notice and (iii) without planning permission the change of use of the land within the curtilage of a residential dwelling for the siting of a mobile log cabin/chalet (the 'Chalet Unit') used as a separate residential unit unconnected with the main dwelling house.
- The requirements of the notice are i) disconnect the Chalet Unit from the services and remove all wires and pipework associated, ii) dismantle and remove from the land the Chalet Unit and all associated development including the decking and steps area, iii) dismantle and remove from the land the Office Outbuilding, iv) remove any materials from the land accumulated as a result of complying with i), ii) and iii) above, v) cease the use of the land for residential purposes not ancillary to the use of the main dwelling, vi) remove all subsequent domestic materials items and chattels from the land which are associated with the Chalet Unit and Office Outbuilding and not used in connection with the enjoyment of the host dwellinghouse (1 & 2 Lamberts Cottages).
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as corrected in the terms set out in the Formal Decision.**

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### Application for costs

1. The Appellant has made an application for an award of costs against the Council. This is the subject of a separate decision.

### Preliminary Matter

2. In the representations before me the Appellant refers to seeking a certificate of lawful use or development. But this is an appeal against an enforcement notice and such a remedy is not within the remit of this appeal.

### **Ground (b) appeal**

3. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests on the Appellant and the test of evidence is the balance of probabilities.
4. The appeal site is an end of terrace Grade II Listed Building. The notice concerns a Chalet Unit and Office Outbuilding in the rear garden.
5. The Appellant's argument under this ground of appeal concerns the alleged material change of use only (cited at paragraph 4 of the notice). The Council accepts that the Chalet Unit is no longer used as a separate unit of residential accommodation and that the notice has been complied with. The Council offers no evidence to counter the Appellant's claim that the Chalet Unit has never been used as separate residential accommodation. The Council's report authoring the enforcement action states that the unit is occupied by the Appellant's mother as main living accommodation and whilst noting the absence of a cooker states that there is space for one.
6. The Appellant explains that for some time it was used by a relative suffering with dementia but as accommodation ancillary to the primary residential use of the main dwellinghouse. Since then it has been used by family, guests and for domestic storage and not for separate residential accommodation. He draws attention to the absence of cooking facilities other than a sink and kettle. He refers to his response to a planning contravention notice in which he states that the unit is not being used as a separate dwelling.
7. The Appellant's evidence does not need to be independently corroborated in order to be relied on. There is no evidence before me to cast any serious doubt on the Appellant's version of events. The Council offers no supporting evidence to support its assertion that the unit was used as main living accommodation by the Appellant's mother. The evidence before me shows a clear functional link between the Chalet Unit and the main dwelling and that the nature of the accommodation it provides is ancillary and subordinate to the primary residential use of the planning unit. I conclude that the Appellant's evidence is sufficiently precise and unambiguous to enable me to conclude on the balance of probabilities that the use of the Chalet Unit as a separate residential unit unconnected with the main dwellinghouse has not occurred as a matter of fact.
8. This ground of appeal succeeds and I shall use my powers of variation and correction to delete paragraphs 4 and 6(v) of the notice.

### **Ground (c) appeal**

9. This ground of appeal is that the breach of planning control does not require planning permission.
10. The appeal concerns only the operational development described at paragraph 3 (i) of the notice, namely the siting of the Chalet Unit. The Council argues that it has sufficient permanence to require planning permission.
11. Section 55 of the 1990 Act as amended sets out the meaning of development. It includes the carrying out of building operations. The Appellant's argument is that the Chalet Unit complies with the definition of caravan and that it is not a building requiring planning permission.

12. The term 'caravan' is defined by statute. It means a 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). The structure can comprise a twin unit caravan which is defined as one that is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices and is when assembled physically capable of being moved by road from one place to another. The structure must not exceed specified dimensions. These prerequisites are generally known as the size, mobility and construction tests.
13. There is no dispute between the parties that the Chalet Unit satisfies the size and mobility tests. I have no reason to disagree. The issue in dispute is whether the construction test is met on the facts.
14. The Appellant provides a certificate of compliance with legislative limitations from the supplier of the mobile home. But this does not address the construction test and provides little information about its actual assembly. The Appellant draws to my attention the VAT rate stated on the invoice. But this is not conclusive and not a factor that weighs heavily in favour of the appeal.
15. The evidence before me is that the unit was delivered on site in many parts which were assembled on site. There is no requirement for a caravan to be delivered in one assembled unit but there is insufficient evidence before me to enable me to conclude that the joining of the elements together was the final act of assembly. I have considered the manufacturer information before me but it is not conclusive on this point. I therefore cannot conclude with any certainty that the construction test is satisfied.
16. I have considered the appeal decisions referred to me but I do not know the particular circumstances of those cases and I have determined this case on its own particular facts.
17. On the evidence before me I am not satisfied as a matter of fact and degree that the Chalet Unit satisfies the construction test. The Appellant has not discharged the burden of proof that rests upon him in this appeal. I conclude that the Chalet Unit does not meet the definition of a caravan as set out in the Caravan Sites and Control of Development Act 1960 as amended by the Caravan Sites Act 1968.
18. Compliance with the definition of a caravan is a useful indicator as to whether operational development has taken place but it is not conclusive. Therefore I have applied the three primary tests established in caselaw for assessing whether a structure amounts to a building – namely size, degree of physical attachment and permanency.
19. The Chalet Unit sits on concrete plinths on gravel on the ground. Its size is significant but not excessive for a mobile log cabin. I note the connections to services which whilst significant appear capable of disconnection. It attaches to the ground by resting on its own weight. It has timber decking around two sides of the unit. Whilst the presence of decking may not prevent it from being moved it adds to its sense of permanency and there is nothing before me to suggest any intention to move the unit in the foreseeable future. Looking at these factors together I find that the Chalet Unit amounts to operational development requiring planning permission.

20. Concerns are before me about future use of the development but I must address in this appeal only the grounds before me and I have not speculated about future use or intentions.

21. For the reasons given above I conclude that the appeal should not succeed.

**Formal Decision**

22. It is directed that the notice be corrected by deletion of paragraph 4 and 6(v). Subject to these corrections the enforcement notice is upheld.

*S. Prail*

**Inspector**