



Appeal Decision

Site visit made on 7 January 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/K2230/X/19/3222526

Sheridan, Walnut Hill Road, Gravesend DA13 9HL

- 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 Rob Easter against the decision of Gravesham Borough Council.
 - The application Ref 20180695, dated 26 June 2018, was refused by notice dated 22 August 2018.
 - The application was made under section 192(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 stationing of a caravan (log cabin) to be used incidental and ancillary to the dwelling.
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Decision

1. The appeal is dismissed.

Reasons

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support his case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. The certificate seeks to establish that a log cabin, which the appellant considers to fall within the definition of 'caravan', can lawfully be stationed on the land for purposes incidental and ancillary to the residential use of the site. There is no dispute between the parties that the site is within the residential curtilage of the bungalow at Sheridan. The application was refused because the Council considered that the log cabin would not be a caravan as defined in planning law, that there was insufficient evidence to allow a definitive determination as to whether the proposal would be operational development or a use of the land, and finally, that it would not be likely to be used for purposes incidental to the use as a dwelling, rather it would be likely to be used as a separate residential unit. On this basis, I consider the main issues to be whether the log cabin would meet the planning definition of 'caravan', if not, whether it would be a building for planning purposes, and if not, whether its use would involve a material change of use of the land.

Relevant legislative provisions

4. Subsection 29 (1) of the Caravan Sites and Control of Development Act 1960 as amended ('the CSCDA') says that a 'caravan' means 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, but does not include (a) any railway rolling-stock, which is, for the time being, on rails forming part of a railway system or (b) any tent. Subsections 13 (1) and (2) of the Caravan Sites Act 1968 as amended ('the CSA') define twin-unit caravans as follows: (1) 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.
5. It is a well-established principle that when considering whether or not a structure is deemed to be a caravan or, as in this case, a twin-unit caravan, the commonly applied 'construction' and 'mobility' tests should be considered. The following are relevant considerations; there has to be a structure, it has to be designed or adapted for human habitation and that structure must be capable of being moved as a single structure. A structure composed of not more than two separately constructed sections which are designed to be assembled on site, and, when assembled, is physically capable of being moved by road, is not excluded from the relevant legislative provisions.
6. Section 55(2)(d) of the Town and Country Planning Act states that '(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land – (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such'.

Relevant Case law

7. In terms of the construction and mobility tests, the parties agree that the case of *Byrne* is relevant¹. Briefly, in that case an enforcement notice was issued requiring the removal of a log cabin on the basis that it was to be treated as a caravan. On appeal, the enforcement notice was upheld but corrected on the basis that the log cabin was a structure which had involved the carrying out of building operations on the land. It was considered that the structure was not a caravan within the meaning of the relevant legislative provisions and so the period for the taking of enforcement action was four years (s171B (1)) and not 10 years. Mr Byrne applied to the High Court to have that decision quashed. HH Judge Rich QC dismissed that application and held that the Inspector's conclusion that the cabin was not assembled on site out of two separately constructed sections (the construction test) was conclusive that s13 (1) (a) of the CSA did not apply and did not operate to deem the structure as a caravan.
8. Furthermore, on a proper construction of s13 (1) (b) of the CSA (the mobility test), the phrase "when assembled" required mobility to be tested by reference

¹ *Byrne v SSE and Arun District Council* [1997] 74.P&CR 420; [1998] JPL 122 (*Byrne*).

to the circumstances of where and how the cabin had in fact been assembled and did not simply mean “in its assembled state”. As such the cabin did not fulfil the mobility test. It was noted that consideration had to be given to the practicality of moving the structure as part of the mobility test. The parties also refer to the case of *Brightlingsea*². In that case it was considered that the test of mobility when assembled is that the structure must be physically capable of being towed on a road, or of being carried on a road, not momentarily but enough to say that it is taken from one place to another.

9. In terms of whether the use of the structure would be incidental to the dwellinghouse, the parties refer to the cases of *Uttlesford DC*³ and *Whitehead*⁴. *Uttlesford DC* concerned an appeal relating to the change of use from a detached garage to a granny annexe. The Court held that the Inspector had been correct in concluding that the garage with living accommodation would remain part of the same planning unit as the dwellinghouse and that there was, accordingly, no material change of use.
10. In *Whitehead*, the Court held that the use of a building within a domestic curtilage as live-in accommodation for a house-keeper would be for a purpose incidental to the enjoyment of the main dwelling, and an integral part of the main use of the planning unit as a single dwelling house.
11. The case of *Whitehead* also refers to *Emin*⁵, where the Court considered that the relevant consideration was the nature and scale of the activities taking place in the building, rather than the physical size of the building in relation to the size of the dwellinghouse. Size may be an important consideration but not by itself conclusive. The test is whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse.

Whether the log cabin is a caravan

12. The appellant states that the materials required for the construction of the single storey log cabin would be delivered to the site. It would then be constructed to form two halves which would be bolted together. It would not be fixed to the ground but would sit on jack legs on hardcore padstones with no permanent foundations or skirting. An area of decking would not be attached to the log cabin but would be freestanding and provide access. It would be connected to services including drainage but would be easily disconnected. The log cabin would have a steel channel chassis with timber bearers for the floors and walls with an angled pitched roof. The floors and walls would then be covered with marine ply-board and externally clad with timber boarding. The internal subdivisions of stud partitions would form part of the supporting structure. The chassis would be provided with towing hooks to enable the structure to be moved when required.
13. Considering first the Construction Test, there is no specific evidence to demonstrate that the log cabin would be formed of two halves. The drawings show four contiguous external walls with a continuous pitched roof. This evidence fails to support the view that the log cabin would actually be

² *Brightlingsea Haven LTD v Morris* [2008] EWHC 1928 (QB); [2009] 1 EGLR 117 (*Brightlingsea*)

³ *Uttlesford DC v SSE & White* [1992] JPL 171 (*Uttlesford DC*)

⁴ *Whitehead v SSE and Mole Valley DC* [1992] JPL 561 (*Whitehead*)

⁵ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

composed of two separately constructed sections. The evidence points to the probability that the log cabin fails the construction test in s13 (1) (a) to the CSA.

14. Turning to the Mobility Test, the appellant states that the two halves could be easily transported from the site when required. However, the test requires that the caravan should be physically capable of being moved from the site *when assembled* (my emphasis). Moreover, no detailed evidence has been provided to support the appellant's assertion that the log cabin would be physically capable of being moved from the site when assembled, beyond indicating that it would be towed through the provision of towing hooks and a chassis. It is not clear that the structure would be able to physically withstand being loaded onto a trailer or being towed. The structure therefore fails the mobility test in s13 (1) (b) to the CSA.
15. Both parties have referred to other appeal decisions which are stated to be relevant to this case. I do not find that APP/K2230/X/18/3212570 and APP/K2230/X/13/2190398 are comparable as they both relate to structures that were found to be caravans as they would be transported to the site as a complete unit and craned into place, and would remain capable of being moved in a similar manner. The case at Low Throston House⁶ related to a caravan that had been towed to the site. These cases do not therefore indicate that this appeal should be allowed.
16. The very limited evidence put forward in support of the contention that the structure is a caravan falls well short of discharging the burden of proof. On the particular circumstances of this case, I find that the log cabin would fail to satisfy the relevant legislative provisions set out above in relation to twin-unit caravans. The log cabin cannot be deemed to be a caravan or, as claimed by the appellant, a twin-unit caravan. I will next consider whether the log cabin amounts to a 'building' for planning purposes.

Whether the log cabin is a 'building'

17. Section 336 (1) of the Act 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. The primary factors have been identified as decisive of what is a 'building' 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.
18. The log cabin would be constructed on site. It would not be physically attached to the ground, but could be considered immobile by its own weight, and given its scale, would result in physical attachment to the ground. Its substantial size would be consistent with a building. There is no evidence that the building would be moved once it had been constructed. On the particular circumstances of this case, as a matter of fact and degree, the log cabin would be a structure that falls within the definition of the word '*building*' in s336 (1) of the Act.
19. In view of my conclusion that the log cabin would not be a 'caravan' but would be a 'building', it is development that requires planning permission, either express, or through the GPDO as a Class E outbuilding. It would not be

⁶ Appeal ref APP/H0724/X/17/3180717

appropriate, in the context of an application made under section 192 of the 1990 Act, to consider the matter further.

Conclusion

20. The basis of the application is that the proposal is not development for which planning permission is required, but I have found that it would be operational development requiring planning permission, either express or through the operation of the GPDO.
21. For this reason, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of stationing of a caravan (log cabin) to be used incidental and ancillary to the dwelling 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.

N Thomas

INSPECTOR