The Planning Inspectorate

Appeal Decisions

Site visit made on 13 July 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 4 August 2020

Appeal A: APP/F9498/C/19/3242096
Appeal B: APP/F9498/C/19/3242097
Land at Four Acre, Broomstreet Lane, Oare, Somerset, TA24 8JR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr D Druiff and Appeal B by Ms J Murray against an enforcement notice issued by Exmoor National Park Authority.
- The enforcement notice, numbered ENF/0083/16, was issued on 24 October 2019.
- The breach of planning control as alleged in the notice is the unauthorised creation of a dwelling of timber construction, the erection of a wooden shed attached to the dwelling, a wooden staircase and a roof balcony/timber decking (the structure) and a concrete base with associated waste facilities (concrete base) as shown in the photographs attached to the notice.
- The requirements of the notice are;
  a) Remove the structure from the land
  b) Remove the concrete base and associated waste water supply
  c) Remove all associated fixings and supports
  d) Reinstate the land to be contiguous with that on site, reinstate the levels of the land with soil so that the reinstated land is level with the adjoining land on either side and reseed the land.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- **Summary of decisions: notice corrected and upheld with variations**

Appeal C: APP/F9498/X/19/3242095
Land at Four Acre, Broomstreet Lane, Oare, Somerset, TA24 8JR

- 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 D Druiff by Ms J Murray against the decision of Exmoor National Park Authority.
- The application Ref 6/25/18/102, dated 15 June 2018, was refused by notice dated 14 October 2019.
- 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 as a caravan site.
- **Summary of decision: appeal dismissed.**

Procedural Matters

1. I carried out an unaccompanied site inspection with the agreement of the parties. This took place on 13 July as I was in the vicinity of the site, rather than on 27 July as scheduled. I was aware of the matters raised by the appellants in their email of 22 July from other submissions and prior to the site visit. Although it was pointed out that access to the caravan would not be possible, it is not necessary for me to carry out an internal inspection in any event. Nevertheless, I was able to view its interior through the large windows.

2. Where legal grounds are pleaded, the onus of proof rests with the appellants and the level of proof is the balance of probability.

3. An application for costs was made by the appellants against the Authority. This application is the subject of a separate Decision.

The site and relevant planning history

4. The site is a small triangular area of land within the Exmoor National Park. The site is accessed over a parking space and through a gate from the lane. The site is bounded by fencing and hedgerows. Within the site is a timber clad and glazed structure of contemporary design which is described by the appellants as a caravan. It is situated on a concrete hard standing which extends beyond the structure by about 3 metres at its maximum extent. A small timber storage shed/wood store is adjacent to the north elevation and at the rear is a timber staircase of about 18 treads with metal handrail and used to access the roof of the structure. There is timber decking over about half of the roof.

5. In January 1996 an LDC was issued for an existing use for the retention of a mobile home (6/25/95/103). This certificate confirmed that it is lawful to station a caravan on the land known as Four Acre for holiday purposes. A caravan sites licence dated 7 November 1996 was transferred to the appellants on 17 March 2014 following their purchase of the site.

6. Following an enforcement investigation and the serving of a Planning Contravention Notice, an LDC application was made in June 2018 (6/25/18/102) for the existing use of the land as a caravan site incorporating the caravan with incidental storage facility and other infrastructure. This is the subject of Appeal C.

Appeals A and B: the appeals on ground (b)

7. An appeal on this ground is that the alleged breach has not occurred as a matter of fact.

8. The appellants state that there has not been the unauthorised creation of a dwelling or erection of a building as there is no unauthorised development. An existing caravan has been replaced and operational development associated with caravan site licence conditions carried out. They state that whilst the caravan may have the appearance of a building it falls within the statutory definition of a caravan.

9. The description of the breach is clear on its face and from my inspection of the site I am satisfied that there exists a timber clad dwelling, a shed, staircase, decking etc. Whether the development represents the creation of a dwelling and other operational development as alleged, or whether what has occurred

comes within the scope of the lawful use of the site is considered under ground (c).

10. The breach as alleged has taken place as a matter of fact and consequently the appeal on this ground fails.

Appeals A and B: the appeals on ground (c) and Appeal C

11. An appeal on this ground is that there has not been a breach of planning control. The main issue to be determined is whether the development represents the construction of a building and other operational development or whether what has occurred comes within the scope of the lawful use of the site for the stationing of a caravan.

12. The appellants state that the structure was designed by Mr Richard Shone (of Boutique Modern Ltd) in two sections to fall within the definition of a caravan in the Caravan Sites Act 1968 (CSA) and the Caravan Sites and Control of Development Act 1960 (CS&CDA). In November 2015 the sections were craned onto the land and bolted together. Services were attached. Subsequently, a set of steps and a roof deck were constructed, with the roof having been strengthened at the factory to accommodate this. Although Appendix 4 of the appellants' evidence shows design drawings of the structure, which sits on short legs, there is no indication of how and where the roof was strengthened.

13. The appellants refer to an email from Mr Robert Clout on 18 April 2018 (Appendix 5 of the appellants' statement) stating that he fitted the access steps and decking and that 'the access steps and decking are not attached to the main unit' and that the decking is laid on proprietary adjustable legs on a geo-textile material to protect the integrity of the roof'. Richard Shone in a statutory declaration dated 3 July 2018 (Appendix 7 of the appellants' statement), states that 'On top of the caravan roof, decking was laid over the existing surface. This was not fixed to the caravan and could very easily be lifted without any tools at all'. It is not clear to me how Mr Shone can be certain about this. The appellants refer to Figure 11 of their statement which shows a photograph of the top of the steps with a small separation between the landing of the stairs and the roof decking.

14. However, the photographs in Appendix A of the Authority's statement clearly show that on 20 February 2018, the landing of the staircase and the decking on the roof of the structure formed a single entity as the decking planks are continuous. The photograph dated 22 November 2018 clearly shows that the decking planks forming the landing had been sawn through such that the top of the staircase was detached from the decking on the roof (and as shown in the Appellants' Figure 11). This has removed any structural integrity that the staircase may have had as I was aware that there was considerable movement of the staircase on rising up it.

15. It is evident therefore that at some time during the Authority's enforcement investigations physical changes were carried out to the structure involving the separation of the staircase landing from the decking. The appellant accepts that these boards were sawn through at the point of the stairs and this was done in part to minimise the effects of expansion and also to 'reinforce the clear separation of the stairs and the caravans, so that there could be no element of dispute with the LPA over the question of connection between the caravan and the stairs'. It is also stated that this was done approximately a

year before the notice was served. I can only conclude that this was in an attempt to make the structure achieve technical compliance with the definition of a caravan and thereby avoid enforcement action. The effect of this work has been to reduce the structural integrity of the staircase which has been left with only flimsy support through wooden posts concreted into the ground.

16. Prior to its separation, the staircase and decking were physically attached to the structure, offering a degree of permanence to the structure as a whole and to the structural integrity to the staircase. Whilst the decking may not be physically attached to the roof, this does mean that it is not part of the structure nor does it materially affect the degree of permanence of the structure. It is understood that the decking had both timber and metal railings but these had been removed at the time of my visit.

17. Mr Stone also refers to the storage shed in his statutory declaration, which he states is 'not attached to the caravan and does not rely on the caravan for its structural integrity'. He refers to a power cable being the only link between the two. However, it appears that Mr Shone did not construct the shed which the appellant states was brought onto the land in May 2016 along with the decking and the steps. I noted that the Authority requested further information and closer inspection of the connection between the shed and the main structure through the removal of some cladding but this was not forthcoming. At my inspection a section of cladding had been removed which indicated a gap between the shed and the main structure although the shed abutted it at roof level and the sides also would have abutted the main structure had the cladding not been removed. The appellants state the shed is attached to the ground by metal screws.

18. The appellants usefully set out the definition of a caravan in the CS&CDA and the CSA, and refer to the definition sometimes including chalets or cabins, and reference is made to case law in support. It is argued that the stairs and shed are not intrinsically built into the structure and are capable of being separated and the unit moved.

19. The statutory tests for a caravan refer to a 'structure' and the application of the tests depends on what the structure is considered to be. In this case I consider the structure to comprise the main unit with the decking and staircase. It excludes the shed, which although it may not be physically attached to the main unit it abuts it and has the visual characteristic of being part of it.

20. When assembled the unit should be physically capable of being moved as a whole by road and not moving the component parts by it being dismantled[1]. Even having concluded that the shed does not form part of the structure, it is evident that the structure is composed of more than two sections and as such fails to meet the definition of a caravan in the CSA. It would also have exceeded the maximum height dimension of a caravan by virtue of the railings on the decking which have subsequently been removed with the exception of the safety railing at the top of the staircase.

21. The courts have held that the three primary factors considered to be relevant to the question of what constitutes a building: size, permanence and physical attachment to the land although no one factor is determinative. In this case, I

[1] Tyler v SoS & Woodspring BC [1990] and Carter & Another v SoS & Carrick DC [1994].

am satisfied that as a matter of fact and degree the structure is a building within the meaning of s336.

22. The appellant refers to the site licence and that anything required by the conditions constitutes permitted development pursuant to Class b of Part 5 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However as site licence conditions only apply on land being used as a caravan site and as I have concluded that the works constitute a building and not a use of land, the relevant PD rights cannot apply. Furthermore I note that the Authority draws a distinction between the date the hardstanding was laid (October 2015) and when the decking, staircase and shed were erected in May 2016, which is before the site licence was varied and the conditions upon which the appellants rely came into being.

23. I remain to be convinced that the staircase, bearing in mind its size and purpose, could conceivably be considered as falling within Condition 4.2 of a site licence when, by their very nature, caravans have a single floor.

24. I have had regard to the appellants' references to case law regarding to attachments to mobile homes and the capability of caravans being transported but the unique circumstances in this case have led me to the conclusions reached.

25. The appellants have not demonstrated on the balance of probability that the structure on the site meets the lawful use of the site for the stationing of a caravan. As the structure represents a building operation for which planning permission is required and has not satisfied the period of immunity from enforcement action specified in s171B(a), the development is unlawful.

26. The appeals on this ground fail.

Appeals A and B: the appeals on ground (f)

27. An appeal on this ground is that the steps required are excessive and that lesser steps would overcome the objections. The appellants consider that in the event that the unit is not regarded as a caravan, the situation could be reversed by the removal of those items attached to it.

28. Enforcement action is not to be punitive and in this case it is clear that a caravan has been stationed on the land quite lawfully for many years. Setting aside the shed, had the current unlawful structure not had a staircase and roof deck, the issue of its lawfulness would have been much clearer.

29. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice are excessive but can be varied to remedy the breach by the removal of those elements that are contentious.

30. Accordingly I shall vary the requirements by deleting (a), (b), (c) and (d) and replacing them with a requirement to remove the roof decking, staircase and safety railings in their entirety and for the resultant materials to be removed permanently from the site. Although the extent of the concrete hardstanding exceeds would normally be necessary to achieve its primary purpose, its

retention would not undermine the purpose of the notice. Similarly, the shed might otherwise have been considered as PD in different circumstances and its retention would not compromise the notice bearing in mind the lawful use of the site. I consider that the varied requirements represent a proportionate response to the harm that is caused by the development and recognises the lawful use of the site.

31. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

32. The appeals on this ground succeeds.

Appeals A and B: the appeals on ground (g)

33. An appeal on this ground is that the time for compliance is too short. However, as I intend to vary the requirements of the notice, they are not as onerous as they otherwise would have been. I see no reason why the varied requirements cannot be implemented well within the specified 6 month compliance period, notwithstanding the distance of the site from the appellants' main residence.

34. The appeal on this ground fails.

Conclusions

35. For the reasons given above I conclude that in respect of Appeals A and B that the notice is incorrect in its reference to the attachment of the shed and that the requirements are excessive. I am correcting and varying the enforcement notice accordingly, prior to upholding it. The appeals under ground (f) succeed to that extent.

36. In respect of Appeal C, for the reasons given above I conclude that the Authority's refusal to grant a certificate of lawful use or development in respect of the use of the land as a caravan site 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.

Decisions
Appeal A: APP/F9498/C/19/3242096
Appeal B: APP/F9498/C/19/3242097

37. The appeal is allowed on ground (f), and it is directed that the enforcement notice be:

i) corrected by the deletion of the words 'the erection of a wooden shed attached to the dwelling' in the allegation and their replacement with the words 'the erection of a wooden shed,'; and

ii) varied by the deletion of (a), (b), (c) and (d) in the requirements of the notice and the substitution of the following requirements:

(a) Remove the roof decking, staircase and safety railings in their entirety, and;

(b) Remove the resultant materials permanently from the site.

Subject to these variations the enforcement notice is upheld**.**

Appeal C: APP/F9498/X/19/3242095

38. The appeal is dismissed.

P N Jarratt

Inspector