



Appeal Decisions

Inquiry Held on 4 August 2020

Site visit made on 13 August 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2020

Appeal A: APP/X0360/C/19/3221552

Appeal B: APP/X0360/C/19/3221553

**White Heart Grove, The Coombes, Coombes Lane, Barkham, Berkshire
RG41 5SU**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Candice Jules (Appeal A) and Mr Dean Jules (Appeal B) against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 23 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission the unauthorised construction of a timber building and its use as a dwelling.
- The requirements of the notice are (i) Cease the use of the building as a dwelling; (ii) Remove the building, including foundation, from 'the Land'; (iii) Remove the resultant materials from carrying out step (ii) from 'the Land'; (iv) Remove the residential paraphernalia associated with the residential use from 'the Land'.
- The period for compliance with the requirements is six months.
- The appeals were made on the grounds set out in section 174(2)(e), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld.

Applications for costs

1. At the Inquiry an application for costs was made by Mrs Candice Jules and Mr Dean Jules against Wokingham Borough Council. A counter application for Costs was made by the Council against the appellants. These applications are the subject of separate Decisions.

Preliminary Matter

2. Prior to the Inquiry, the appellants confirmed that the appeals on grounds (c), (e) and (f) were withdrawn. Accordingly the appeals proceed on ground (b) only.

The appeals on ground (b)

3. The ground of appeal is that the breach of planning control alleged in the notice has not occurred. The notice alleges the construction of a timber building and its use as a dwelling. There is no dispute that there is a structure on site, and that this was used as a dwelling at the time the notice was issued. The appeals turn on whether the structure in question constitutes a building, as the Council say, or whether it does not, and is instead a caravan, as is the appellants' case.

4. For the appellants to succeed on this ground, they would be expected to demonstrate that the structure constitutes a caravan (or that it is not a building). The onus of proof rests with the appellants and the standard of proof is the balance of probability.
5. A caravan is defined at s29(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 vehicle so designed or adapted. It excludes (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.
6. S13(1) of the Caravan Sites Act 1968 (CSA) defines twin-unit caravans thus: "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 Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a road when assembled.
7. S13(2) of the CSA confirms that, for the purposes of the CSCDA, the expression 'caravan' shall not include a structure designed or adapted for human habitation, where its dimensions, when assembled, exceed any of the following limits: 20 metres in length; 6.8 metres in width; a maximum internal floor to ceiling height in relation to the living accommodation of 3.05 metres.
8. In summary, and on its face, the aforementioned legislation introduces a 'mobility test' and a 'size test' that would apply to any case where there is a claim for caravan status. The CSA refers to a further 'construction test' which applies to twin-unit caravans.
9. There is no dispute that the dimensions of the structure are some 6 metres both in length and width, and that the aforementioned size test would be met.
10. Turning to the question of mobility, the appellants and Council dispute how the test should be applied. The Council submitted that the structure is of a size meaning that it could not be lawfully transported on the highway and as such cannot satisfy the requirements of section 29(1) of the CSCDA.
11. However the CSA expressly excludes 'lawful' movement from the test for a twin-unit caravan. There appears to be no dispute that the structure in this case would not constitute, or could not be interpreted as, a twin-unit caravan, and section 29(1) of the CSCDA is silent with regard to the lawfulness of movement in respect of a caravan that is not a twin-unit caravan.
12. Notwithstanding this, I concur with the appellants' view that if the Council were correct it would result in the anomalous situation that a larger twin-unit caravan would be a 'caravan', despite not being able to lawfully move it on the highway, whereas a smaller non twin-unit structure would not be 'caravan' because it could not be so lawfully moved.

13. This would be an illogical outcome such that in my judgement, not being lawfully able to move the structure on a road, when fully assembled, would not discount its status as a caravan. The correct application of the test is therefore one of the inherent capability, rather than legality, of movement, as reflected in case law¹.
14. I therefore turn to the question of whether the structure would be capable of being moved in principle. A significant amount of Inquiry time was spent considering how the structure was settled in place on the appeal site. Mrs Jules set out that this had been achieved through setting the structure on a separately constructed lattice timber subframe, which was itself positioned clear of ground level through the fixation of metal legs to brackets in the base of the subframe, themselves joined to a series of metal levelling plates which rested on concrete pads. Wheels had subsequently been added to the subframe.
15. It was her opinion that this form of construction would allow the structure to be winched; also that there was sufficient clearance for it to be lifted by a forklift vehicle, or hoisted by crane onto a vehicle for road transportation purposes.
16. With regard to mobility, it was pointed out by the appellant that the structure had been periodically lifted with a car jack to allow the aforementioned metal plates to be adjusted in response to ground movement. This had not resulted in damage to the structure. The appellant further set out in her evidence to the Inquiry that she was advised by the supplier of the structure that the company supply larger units with subframes, and had the appeal structure been supplied by the company complete with such a subframe, then it would have been regarded by them as a caravan. Furthermore the appellant claimed that the wheels attached to the structure would be sufficient to take its weight, in accordance with what she had been advised by the person from whom the wheels were purchased; also that numerous online videos were available demonstrating how similar structures could be hoisted for onward transportation.
17. The appellants submit that the Council did not say that Mrs Jules is wrong in what she says or that her evidence is incorrect; also that no evidence has been produced to contradict her. However as set out previously, the onus of proof rests with the appellant. I have no reason to doubt that the structure could be lifted to allow for temporary adjustments using a car jack. However it seems to me that the ability to physically raise the structure, without materially harming it, using a car jack, or its ability to withstand ground movement and settling does not necessarily translate into being able to tow the structure or to lift and transport the structure successfully, when potentially greater forces may come into play during such processes.
18. I noted during my visit that the structure appeared to be supported on the ground by a combination of two pairs of wheels, which were connected underneath the sub frame by axles, and by hydraulic jacks at two of the corners. The metal legs and concrete supporting pads, referred to in evidence, had been detached from the base of the subframe and pulling ropes had been wrapped around the structure. I was told that this arrangement had facilitated a degree of movement of the structure on the previous day.

¹ *Brightlingsea Haven Ltd v. Morris* [2008] EWHC 1928 (QB)

19. However even when discounting the legality of movement and the practicality of movement within specific site circumstances, there is no suggestion that the structure had been moved to any significant degree. Indeed it was not physically apparent to me that the structure had been moved at all. Even if it had been moved marginally, I am not persuaded that it follows that this must be sufficiently material to satisfy the mobility test. As per the *Brightlingsea* judgement the structure "must either 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...".
20. In my judgement, a structure that could withstand being moved a few centimetres may not fare so well if moved several metres, or indeed kilometres. Indeed from my inspection of the building interior, I noted a small gap between floorboards in one of the corners, such that daylight was exposed. What effect this might have on the mobility of the structure, or indeed whether it was caused by only a small amount of lateral movement is uncertain. However even if this gap was not present, it would not alter the concerns that I have regarding the ability to achieve any successful material movement of the structure.
21. It is true that the Council did not specifically say that the appellants' evidence that the structure could be moved was wrong. However, the Council did highlight, and I consider it to be significant, that there has been no technical or expert evidence provided, for example an opinion from a qualified engineering professional or a manufacturer's technical specification, to confirm the probability of successful towing or lifting and transporting the structure, as built, whilst ensuring that its structural integrity is not compromised. The structure, in totality, must be regarded as a bespoke construction due to the custom made subframe.
22. The online self-help construction videos referred to have not been submitted in evidence. It is unclear, due to a lack of persuasive evidence, whether the structures being moved in those cases, or indeed whether the sub-frames utilised by the supplier company in relation to their own mobile homes, would be sufficiently similar in design to the bespoke structure in this case to give confidence that mobility would be successful.
23. The significance or otherwise of the *Bury* case² has been referenced by both parties in submission. In that case it was found that there was no evidential foundation, technical, expert or otherwise for the Inspector to be justified in concluding that the structure in question met the mobility test.
24. The appellants say that in that case there was literally no evidence available to the Inspector, and accordingly it should be distinguished from this case where evidence was given by the appellants to the Inquiry. However I have explained above that what evidence has been given is insufficient to persuade me, on the balance of probability, that the mobility test is met. Therefore, for me to conclude that the structure could probably, that is more likely than not, be moved successfully would require me to make an instinctive leap, because there is an insufficient evidential base for such a conclusion. To make such a leap would, to my mind and despite any difference in circumstances, still be inconsistent with *Bury*.

² *Bury Metropolitan Council v SSCLG v Entwistle* 12/08/2011

25. The appellants have also referred to various previous appeal decisions in support of their case. However in the respective decisions the Inspectors, when considering the mobility test, referred to the availability of photographic evidence showing the company's units being lifted onto a lorry³; the Council not contradicting the appellant's statement⁴; the submission of structural calculations or a structural integrity and craning method statement⁵. These cases are therefore not only distinguishable from the present one but, in a number of the cases, also speak to the value of supporting technical evidence.
26. From the information and evidence before me it does not appear more likely than not that the structure would be capable of being moved from one place to another, in accordance with tests in the CSA and CSCDA. From all that I have heard and seen I am not therefore persuaded, on the balance of probability, that the specific structure subject to these appeals would meet the requirements of the aforementioned mobility test.
27. The so-called 'construction test' is set out in the CSA, and appears to relate specifically to twin-unit caravans. It states that the structure should be 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. The Council submit that the structure in this case fails the construction test, as it was built from many parts, rather than the joining together of two separately constructed sections.
28. There is nothing to persuade me that the structure would fall within the definition of a twin-unit caravan; indeed as set out above, neither of the parties appear to say either that it is, or could be interpreted as, such a structure. I therefore conclude that there is nothing specifically in the way the structure has been built that leads me to the finding that it is not a caravan. This, of course, does not overcome my negative finding with regard to the mobility test as set out above.
29. It is settled case law that the appropriate criteria for determining whether a structure constitutes a building are size, permanence and physical attachment.
30. In terms of size, I acknowledge that the structure is smaller in area than some caravans. However it is undisputed that it is of sufficient size to have been previously used as a dwelling for a family of five people. It is also notable that, despite being put together in a relatively short period by two unskilled people, the structure is substantial enough to have required construction from multiple component parts. I consider the structure to be of sufficient size to constitute a building.
31. With regard to permanence, I acknowledge that caravans may not be moved from one place to another over their lifetime. However the structure subject to these appeals has been settled in place for a considerable period of time, with the only suggestion of any modest degree of movement, since its construction in late 2018, being in relation to ground settlement and around the time of the recent Inquiry site visit. I consider that it has sufficient permanence to be regarded as a building.

³ Appeal Ref APP/L5810/X/15/3140569

⁴ Appeal Ref APP/J1915/X/11/2159970

⁵ Appeal Refs APP/X0415/X/17/3174735 and APP/B5480/C/17/3174314

32. In terms of physical attachment, whilst it would appear possible for the metal legs to extend down into the ground beyond concrete pads, this appears to me to be more to do with facilitating the levelling of the structure rather than affixation. I also acknowledge the lack of utility connections. Notwithstanding this, there is nothing that makes me consider that the weight of such a sizable structure would not be considerable and that it would not achieve the necessary affixation to the ground through its inherent weight.
33. As a matter of fact and degree I therefore consider that the structure meets all of the tests for being a building but does not meet all of the tests for being a caravan.

Conclusion

34. For the reasons given above I conclude, on the balance of probability, that the structure is a building and is not a caravan. The appeals on ground (b) should not therefore succeed.

Formal Decisions

35. The appeals are dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR

APPEARANCES

FOR THE APPELLANTS: Scott Stemp of Counsel

He called:

Candice Jules (Appellant)

John Gower (Agent)

FOR THE LOCAL PLANNING AUTHORITY: Matthew Lewin of Counsel

He called:

John Varley (Operational Manager – Development Management and Compliance)

INTERESTED PERSONS:

Mr Beech (Local resident)

DOCUMENTS SUBMITTED AT EVENT:

1. Appellants' Closing submission
2. Council's Opening and Closing submissions (including case law)
3. Letter of objection – Ellis's Hill Farm
4. Statement of Common Ground
5. Council's site photograph