



Appeal Decision

Site visit made on 25 August 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 19 October 2020

Appeal Ref: APP/M1595/C/20/3249047

Land at Sumet, Mucking Wharf Road, Stanford-le-Hope SS17 0 RN

- 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 by Kevin Peter Leyland against an enforcement notice issued by Thurrock Borough Council.
- The enforcement notice, ref. 18/00124/BUNWKS, was issued on 14 February 2020.
- The breach of planning control alleged in the notice is the erection of a Residential Bungalow in the Metropolitan Green Belt and within the curtilage of a Grade II* listed building.
- The requirements of the notice are:
Within a period of 3 months of the Notice taking effect to undertake the following actions:
 - (i) Remove the Residential Bungalow from the Land in its entirety.
 - (ii) Remove all materials arising from Requirement (i) from the Land including the concrete slab.
 - (iii) Reinstatement the Land to its grassed condition that existed prior to the unauthorised development taking place.
- The period for compliance with the requirements is immediate on date from which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:
OMISSION OF THE WORDS '*3 months*' from the requirements; and,
SUBSTITUTION of the words '*6 months*'.
And corrected and varied by:
OMISSION of the period for compliance as '*immediate on the date from which the notice takes effect*'; and,
SUBSTITUTION of *6 months*.
Subject to these variations and the correction the enforcement notice is upheld.

The enforcement notice

2. I note that the requirements in paragraph 5 of the notice state the various actions must be undertaken within a 3-month period of the notice taking effect, whereas the compliance period in paragraph 6 is '*immediate on date from which the notice takes effect*'. It is apparent from appeal submissions that both parties consider 3-months from the date the notice takes effect to be the

relevant period. I consider I can correct the notice in this respect, and that no significant prejudice will be caused to any party by this action.

Background matters

3. The appeal structure stands close to the north-western corner of the churchyard of the church of St John the Baptist, a Grade II* listed building. It comprises a timber clad element at its western end, of roughly half the length of the entire structure, with a mono-pitch slate roof over the half of the roof facing the road, and a flat roof to the rear. The eastern end is a similar timber clad structure with a flat roof. Between these two sections is a flat roofed two-storey element clad at the front with mosaic stone 'tiles'. At the rear there is a flat canopy at roof level projecting about 1.7 metres beyond the face of the structure and extending for perhaps one-third the length of the structure.
4. On my visit the dimensions of the structure were measured, and it was found to be 20 metres long by 6.75 metres wide. The flat-roofed section 2.85 metres is high above the top of the blockwork forming the base. The two-storey section is approximately 2.4 metres above that, giving a maximum height of 5.25 metres. The peak of the mono-pitch roof is at more or less that same height.
5. Inside there is a living/dining room at the eastern end, a separate kitchen and entrance area towards the centre. At the western end are two bedrooms and a bath/shower/WC, and a larger third bedroom with en-suite shower/WC. The upper storey is accessed from the flat roof, and I understand houses a boiler and water storage. The structure is attached to water and electricity main supplies and is connected to rainwater and sewage drainage.

The appeal on ground (b)

6. This ground is that the development has not occurred as a matter of fact. In an appeal on ground (b) – known as a 'legal' ground, the burden of proof is on the appellant to show that on the balance of probabilities this is the case.
7. The appellant argues that the structure enforced against is not a bungalow but is a caravan or mobile home. As such it comes within the definition of a twin-unit caravan set out in the Caravan Sites Act 1968 as amended¹ (the CSA). S.13(1) of that Act provides that a twin-unit caravan is:
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 highway when assembled.
8. The structure is clearly designed for, and in use as human habitation. I could also see that the main body of the ground floor consists of two sections, very probably separately constructed and assembled on site. The dimensions are within the limiting dimensions for twin-unit caravans set out in CSA s.13(2).

¹ I appreciate that the appellant refers to the Caravan Sites and Control of Development Act 1960. However I can find no reference to twin-unit caravans in that legislation.

9. However, the upper storey appears to me to be a third element of the make-up, built above and across the other two. It connects them together by means of this further element, clearly constructed on site, which cannot be regarded as an 'other (connecting) device' in the terms envisaged by CSA s.13(1)(a). This results in an effectively permanent structure. The entire construction sits upon scaffold poles laid on a blockwork base, and theoretically would be moveable.
10. Taken as a whole, the structure is of such size and permanence that as a matter of fact and degree it should be regarded as a building, and its construction seen as operational development. I do not find the Council's description of it as a bungalow to be inaccurate. On the balance of probabilities I consider the matters alleged in the enforcement notice have occurred as a matter of fact. The appeal on ground (b) therefore fails.

The appeal on ground (d)

11. This ground is that the alleged development is immune from enforcement action by reason of the passage of time. Again, this is a 'legal' ground of appeal. The appellant argues this ground on the basis that the allegation should relate to a material change of use of the land to use as a residential caravan site, rather than the operational development of erection of a bungalow. The immunity period would then be 10 years of continuous use (as a residential caravan site) prior to issue of the notice.
12. It is claimed that the previous owner had lived in a caravan on the site, originally on a temporary planning permission granted in April 2000², which expired in April 2003. However, the then owner had continued to live in the caravan until January 2015 in breach of the time limit condition on the temporary permission. No enforcement action was taken against this breach. There was then another occupant until late 2017, when the original mobile home was replaced by the existing structure, and other occupants have lived there up to the present.
13. However, I have found that the development should be considered as operational development to which the 4-year time limit applies. This took place in 2017 or early 2018, and as accepted by the appellant, the requisite 4-year period had not elapsed by the 14 February 2020 when the enforcement notice was issued. On the balance of probabilities the development is not immune from enforcement action, and the ground (d) appeal therefore fails.

The appeal on ground (g)

14. This ground is that the compliance is too short, and a longer period should be granted. The appellant says that the current tenants and their two daughters have been in occupation since March 2018. They are established in the area, and one daughter is in full-time education nearby. The 3-month compliance period would cause them disproportionate disruption, and a 12-month period should be allowed.
15. The Council say that a 12-month period is excessive, that the unlawful development is harmful to heritage and Green Belt interests, amongst other things, and should remain no longer than necessary. Furthermore, it would not be unusual for there to be a one-month notice period on let accommodation,

² Decision notice ref. 00/00170/FUL, dated 20 April 2000.

and no evidence has been submitted regarding personal circumstances other than that of the youngest child, or regarding other potential rental property in the neighbourhood. Nor did the owner give notice to the tenants when he became aware that enforcement action would be likely.

16. I concur with the view that the unlawful development should not remain for an unnecessarily long period. However, I consider the appellant could reasonably wait for the outcome of his appeal before giving notice to the tenants, and that sufficient time should be allowed for the tenants to give the appropriate notice and to find alternative accommodation in the neighbourhood. In these circumstances I consider a period of 6 months should be allowed for this to happen. The appeal on ground (g) therefore succeeds, and I shall vary the enforcement notice accordingly.

Reasons

17. For the reasons given above I conclude that a reasonable period for compliance would be 6 months. The appeal succeeds to this limited extent under ground (g). I will make the correction noted above, and vary the compliance period, prior to upholding the notice.

Stephen Brown

INSPECTOR