



Appeal Decision

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2021

Appeal Ref: APP/Z5630/X/20/3254407

14 Almshouse Lane CHESSINGTON KT9 2ND

- 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 Stephen Haskell against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 20/00475/CPU, dated 25 February 2020, was refused by notice dated 12 June 2020.
 - The application was made under section 192(1) of the Town and Country Planning Act 1990 as amended.
 - The matter for which a certificate of lawful use or development is sought is described as 'The provision of a hard surface within the rear garden of the residential dwelling (permitted development) in connection with the siting of a twin unit mobile home for use as additional accommodation as part of one planning unit (not operational development or a change of use)'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In order to minimise contact during the Pandemic, and given the nature of the issue in this case, I did not visit the appeal site.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well founded. This turns on whether the proposal would involve building operations taking place on the site and whether the proposed hard surface would be permitted development.

Reasons

General approach to LDCs

4. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant.

The log cabin

5. The appellant's case relating to the cabin is premised on the claim that it would not amount to development. The meaning of development is set out in s55 of the Act (as amended). At 55(1) it says:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

6. It is a point of agreement that there would be no change of use in this case. No mining, engineering or 'other' operations are proposed, so the sole consideration is whether building operations would take place.

7. Section 55(1A) says:

For the purposes of this Act " building operations " includes—

(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

(d)other operations normally undertaken by a person carrying on business as a builder.

8. Only point (d) is relevant in this case. It is therefore necessary to consider whether the proposed log cabin would result in 'operations normally undertaken by a person carrying on business as a builder'. Linked to this is the question of whether the cabin would be a building. Section 336 of the Act says:

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

9. It seems to me that the log cabin would have the appearance of a 'structure or erection'. However, the definition has been further considered by the courts. In particular, the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102*, endorsed the view that 3 factors needed to be considered in deciding whether something was a building – size, permanence and physical attachment.

10. The proposed log cabin would be about 9m long and 5m wide and a little over 3m to the ridge. Although smaller than many mobile homes and clearly subservient to the house in terms of scale, it would be larger than many buildings, such as many domestic garages, for example.

11. It would be mainly of wooden construction, as are many buildings. In my view it appears substantial and could be expected to stand for many years. Thus, it has a significant degree of permanence. There is nothing obvious about its appearance to suggest that it has been designed as a temporary structure.

12. The building would not be fixed to the ground in the sense of being bolted down or concreted in place. However, it would be substantial enough to be fixed in place by its own weight, as many buildings are. The fact that caravans are also held in place by their weight alone does not mean that a structure must be anchored by some additional means in order to be a building.

13. Thus, consideration of the 3 tests outlined in *Skerritts* as a whole suggests that the log cabin proposed may be regarded as a building.
14. As to its construction, the cabin would be formed of many interlocking wooden sections. The appellant advises that it, 'is designed to be assembled in two parts on site with the joining of these as the final act of assembly'. I take it from this that the cabin would arrive at the site in its component form and the components would be assembled into 2 units, which would then be joined together. The appellant indicates that the assembly would be carried out by the manufacturer, who is not a builder. Nevertheless, in my view fitting together numerous wooden parts and the other work necessary to create a log cabin can be regarded as 'operations normally undertaken by a person carrying on business as a builder'. Thus, it appears that building operations would take place on the site. Before a final view is reached on this point, however, it is necessary to consider the appellant's argument that the log cabin would be a twin unit caravan.
15. Whether or not the log cabin is a caravan in law is relevant to the question of whether it is a building; the judgement in *Measor v SSETR [1999] JPL 182* suggests that a mobile caravan would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment. However, in the same judgement the deputy judge also stated that he would be wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a mobile home under s13(1) of the Caravan Sites Act 1968 could never be a building for the purpose of the Town and Country Planning Act 1990. Thus, while relevant to the overall assessment, a finding that this structure is a caravan would not, on its own, show that it is not a building.
16. For planning purposes, 'caravan' is defined in s29 of the Caravan Sites and Control of Development Act 1960. Section 13 of the Caravan Sites Act 1968 (as amended) adds to the definition to address twin unit caravans, and so is also relevant in this instance. The issue of the definition of a caravan has come before the courts on numerous occasions and both parties have referred me to various judicial authorities and appeal decisions which address the matter. From this my understanding is that a structure can only be regarded as a twin unit caravan if it is:
 - designed or adapted for human habitation
 - 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
 - within the size limitations specified in the 1968 Act; and
 - 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). Whether or not movement on a road would be lawful is not relevant to the test.
17. The first 3 of these points appear straightforward. There is no suggestion that the structure proposed would not be designed/adapted for human habitation. I understand that it would have bedroom, bathroom and living room accommodation, as well as 'limited kitchenette facilities'. The drawings

submitted show that the cabin would be composed of 2 distinct sections. The 1968 Act (as amended) specifies maximum dimensions of 20m (length), 6.8m (width) and 3.05m (internal height) and the structure proposed would fall within these limitations.

18. As to movability, the proposed structure would not be on wheels and could not be towed. However, the definition explains that this is not necessary. Nor are the intentions of the owner/applicant relevant in considering the movability of the structure, or limitations on movement due to site constraints – a point made in Appeal decision Ref APP/Q5300/X/17/3183883, to which the appellant refers. Rather, the question is whether or not the structure is capable of being moved. To address this, the appellant has provided technical evidence in the form of 2 documents provided by the manufacturer intended to show that the structure proposed could be craned onto a lorry and moved.
19. However, neither document deals adequately with the particular structure at issue. The first, entitled 'Certificate of Legal Conformity' sets out the dimensions of the unit and states, amongst other things, that it is 'capable of being moved as one'. The evidence to support this is in the form of an appended document entitled 'Generic Interlocking Log Cabin Timber Frame Calculations' and a sketch showing how a building could be loaded onto a lorry with a crane. However, this information appears to be based on a generic interlocking structure and not the particular structure before me, which is composed of 2 separate elements which would be fastened together. This is a significant characteristic of its design and I cannot be sure that the assessment before me has taken it into account. Indeed, the sketch does not show a twin-unit structure.
20. Moreover, the sketch shows that 2 steel wire ties with tensioners would be attached to each support beam – 46 steel wires in total. These are clearly not part of the structure itself but appear to have been added to distribute loads during lifting. The need for the addition of these significant structural elements suggest to me that the structure in its unmodified form is not, in fact, capable of being moved without significant risk of damage or collapse.
21. A second manufacturer's report - *Structural Analysis of lifting and trailering a Typical Log Cabin Mobile Home* - has been provided. This shows a smaller structure, closer to the size of the appeal structure (although not of the same dimensions), with fewer steel wire ties. However, the same difficulties apply; the structure shown in the report appears to be a generic, 'single unit' structure and the 15 steel wire ties proposed appear to be a significant structural addition for moving purposes. Overall, therefore, I conclude that it has not been demonstrated, on the balance of probabilities, that the structure before me is capable of being moved. Accordingly, it does not meet the definition of a caravan.
22. The appellant has drawn my attention to the case of *Byrne v SSE & Arun DC [1998] JPL 122* and various appeal decisions in which the issue of constructing caravans on site is discussed. In Appeal Ref APP/L5810/X/15/3140569 the Inspector concluded that the structure would not be composed of more than two sections separately constructed and designed to be assembled on the site. In appeal Refs APP/N1025/C/01/1074589 and APP/B5480/C/17/3174314 the Inspectors concluded that a caravan could be assembled from many components on site. However, nothing in those decisions alters my view that

the particular structure before me is a building and not a caravan. Accordingly, I regard the assembly of the structure from its component parts as building operations and not the act of making a caravan, irrespective of whether the joining of the 2 main units is 'the final act of assembly'.

23. The 'Woolley Chickens' case referred to by both parties has no bearing on my decision, given the very different nature of the structures being considered in that case.
24. I conclude for the reasons set out above that the wooden cabin proposed would be a building and that building operations would take place on the site. Consequently, the appeal proposal would result in development taking place on this site. Since it is a matter of agreement that there are no permitted development provisions that are relevant to the cabin, it follows that planning permission would be needed to erect it on the site.

The hard surface

25. The proposal includes a hard surface. It is argued that this is development permitted by Schedule 2, Part 1, Class F of the *Town and Country Planning (General Permitted Development) (England) Order 2015*, which permits 'the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such'. However, the cabin and the hard surface are plainly part of the same overall scheme and there is no suggestion that the hard surface would be required for any purpose other than for the siting of the cabin. The appellant has explained that the cabin would not be used for purposes incidental to the enjoyment of the dwellinghouse but as primary living accommodation. Thus, used as proposed, and notwithstanding the Council's lack of objection to the hard surface in isolation, I am not persuaded that it would be development permitted by Class F.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the provision of a hard surface within the rear garden of the residential dwelling (permitted development) in connection with the siting of a twin unit mobile home for use as additional accommodation as part of one planning unit (not operational development or a change of use) 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 and dismiss the appeal.

Peter Willows

INSPECTOR