



Appeal Decision

Site visit made on 24 November 2020

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 11 March 2021

Appeal Ref: APP/R3650/C/20/3250425

4 Quartermile Road, Godalming, GU7 1TG

- 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 made by Mr John Crawford against an enforcement notice issued by Waverley Borough Council.
 - The enforcement notice, numbered EN/2020/01, was issued on 6 March 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a building ("the building"). The Building is marked in the approximate position 'A' on the attached plan.
 - The requirements of the notice are:
 - (i) Remove the Building from the approximate position marked 'A' on the attached plan.
 - (ii) Remove all materials from the Land resulting from the compliance with the above step.
 - The period for compliance with the requirements is eight months after the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended (the 1990 Act) for the development already carried out, namely the erection of a building at 4 Quartermile Road, Godalming, GU7 1TG as shown in the approximate position marked 'A' the plan attached to the notice and subject to the following conditions:
 - (i) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 4 Quartermile Road, Godalming, GU7 1TG.
 - (ii) The building shall not be occupied until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The building shall be finished in accordance with the approved details prior to its occupation.

The Appeal on Ground (b)

2. To succeed on ground (b) the appellants must prove on the balance of probability that the erection of a building has not occurred. The basis of the

appellant's case is that the structure¹ has been designed and constructed to ensure that it complies with the tests set out in the Caravan Sites and Control of Development Act 1960 (CSCDA 1960) and the Caravan Sites Act 1968 (CSA 1968) and is therefore a caravan, not a building.

3. The term 'caravan' is defined in s29(1) in the CSCDA 1960 as meaning "*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)...²*". S13(1)(a) and (b) of the CSA 1968 provide that a twin-unit caravan designed or adapted for human habitation "*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 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)...³*". The whole unit must be transportable – but the legality of such transportation on the public highway is irrelevant.
4. These prerequisites are usually referred to as 'the construction test' and 'the mobility test'. There is also a 'size test', but it is undisputed that the structure is within those size limitations. There is also no dispute it could be regarded as being designed or adapted for human habitation.
5. The appellant explains that the structure was constructed on site by creating panels out of pieces of timber which had arrived pre-cut and that the panels were then assembled to create the two separate halves. On the construction test, it is the appellant's argument that the CSA 1968 does not prevent a caravan from being constructed/manufactured on site, rather the wording requires the unit to be composed of no more than two sections which are separately constructed.
6. To that end, I have noted the appeal decisions³ submitted by the appellant where the appointed Inspectors found there to be no requirement that the process of creating the two separate sections must take place away from the site on which they are joined together.
7. However, in the Oxford appeal decision⁴, referred to by the Council, the Inspector states:

"The two sections should be "separately constructed" and designed to be "assembled on site". In other words, there is an element of pre-fabrication built into the definition whereby the two separate sections should be constructed and then "assembled" on site by being bolted, clamped or joined together. The act of joining the two parts together is the element of work that is envisaged on the site and vice-versa, it appears to me that the implication in s13(1)(a) is that the structure should be brought to site in not more than two sections."
8. I'm very mindful of the importance of consistency but I've been provided with appeal decisions which can reasonably be taken to support the opposing arguments. To my mind this demonstrates that the issue is not simply a matter of whether or not construction needs to take place off-site. It is a matter of fact

¹ I use the word structure as neutral term, which could be applied to a caravan, mobile home or building, without any inference that it is any one

² It goes on to list exclusions which are not relevant in this appeal

³ Appeal References: APP/B5480/C/17/3174314; APP/N1025/C/01/1074589; APP/K2230/X/19/322256; and APP/T0355/X/19/3237532

⁴ Appeal Ref: APP/G3110/X/17/3181229 – paragraph 28

- and degree and, if works do need to be carried out on the site, then that may show that something more complex is being constructed.
9. The photographs provided by the Council show the structure in its early stages of construction, the earliest of which with the timber frame partially erected. Behind the base of the structure there appears to be a stack of lengths of timber and there are off-cuts strewn on the base. There doesn't appear to be any pre-fabricated sections of the timber frame to be added. Other photographs show a more advanced stage of construction but still with several stacks of differing types of timber placed around the structure.
 10. I have noted the appellant's statutory declaration, engineering report and evidence from the timber frame designers, as well as the opinion of the Council's Building Control Officer regarding the build method – whether it be 'panel built', 'platform frame built' or 'stick built'. Nevertheless, it is apparent that the structure has been constructed on site from many different timber parts, some of which have been cut on site.
 11. The fact that timber has had to be cut on site means that those parts, when sent to the site, had not been purposely designed to be assembled on site by means of bolts, clamps or other devices. That has increased the complexity of the work on site and the likelihood that building operations have taken place by a builder or skilled tradesman. I also saw that there remains the need to apply external and internal finishes and fixtures.
 12. Given the extent of works undertaken/to be undertaken on site, I fail to see any significant difference to that which would have been involved in the construction of a conventional timber frame building.
 13. Whilst, as explained by the appellant, the result of the works carried out were to create two parts rather than one continuous structure, it appears undisputed that the only reason for doing so is an attempt to meet the definition at s13 of the CSA 1968. In this respect, I am satisfied that the structure is composed of not more than two parts. However, it does not strictly follow that they have been separately constructed. I consider that aspect to be blurred in this case because the parts were constructed at the same time, on site and in their current and potentially final positions, only a matter of centimetres apart. That means that they have never existed in a state in which they did not effectively form one whole structure. On a fact and degree basis, that further supports the Council's position.
 14. Therefore, although the final act of construction is capable of being two sections assembled by means of bolts, clamps and other devices, in my view, what is involved prior to that point goes beyond that envisaged by s13 of the CSA 1968. I have noted the appellant's reference to *Byrne*⁵ but I do not consider that judgement specifically deals with the extent of what should and should not take place on site.
 15. The appellant has provided a significant amount of evidence in relation to the mobility test. This includes engineering calculations and drawings and confirmation from a structural timber design business that the lifting calculations show how the structure can be moved and lifted by a crane using a steel cradle and straps. The same business also confirms that the structure has

⁵ *Byrne v SSE & Arun DC* [1998] JPL 122

been designed to be manufactured and transported independently in two sections and when connected together by means of bolts and clamps as a whole unit. Two letters are also provided from specialist transport businesses confirming that each section is capable of being transported from one location to another by road.

16. Although the Council has raised concerns over the size and weight of the structure, taken together, the appellant's evidence demonstrates, on the balance of probabilities, that the two parts are physically capable of being moved by road from one place to another, thereby meeting the mobility test.
17. Nevertheless, for the reasons explained, the structure fails the construction test. In order to meet the statutory definition, there has to be compliance with all three tests and that has not been demonstrated to be the case. As such, on the balance of probabilities, I find that the alleged structure does not amount to a twin unit caravan, as defined by the CSA 1968.
18. Given that finding, it is appropriate to assess whether the structure would amount to a building. Established case law⁶ has set down three primary tests for doing so: size, permanency and the degree of physical attachment. No one factor will be decisive and any assessment will be a matter of fact and degree in the given circumstances.
19. At around 15m in length, 6.6m in width and 3m in height, the structure is of significant size, involving a degree of construction on site that was likely undertaken by a builder or similar tradesman with specific skills - having regard to the definition of building operations at s55(1A)(d) of the 1990 Act.
20. In terms of permanence the structure is to be occupied by the appellant and his wife whilst the bungalow is occupied by their children and grandchildren. It is explained that the appellant and his wife would provide childcare assistance and in turn they would be provided with assistance from the family as they got older. Consequently, the structure is likely to have a substantial degree of permanence.
21. It is acknowledged that all services are provided underground. Whilst I accept that it would be relatively straight forward for those services to be disconnected, the fact that they have been provided in that manner further points towards a substantial degree of permanency.
22. The Council refer to the appellant's construction drawing which shows holding down straps forming an attachment between the structure and the base. However, the appellant explains that the straps have never been included or used and that the structure is not physically attached to the ground. It appears therefore that the structure, which sits on a base, is held in position by its own substantial weight.
23. Taking account of all three factors, in addition to the method of construction, I am of the view that the structure would, on the balance of probabilities, amount to a building for the purposes of the 1990 Act. The appeal on ground (b) therefore fails.

⁶ Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, endorsed by the Court of Appeal in Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

24. The main issue is the effect of the alleged building on the character and appearance of the area.

Reasons

25. The appeal site is situated in an established residential area where the pattern of development in the main comprises detached houses and bungalows fronting towards the street, with relatively spacious rear gardens.
26. The appeal property is generally characteristic in this regard, and comprises a bungalow with a large rear garden, which is visually separated into two parts by a feature hedge running across its width. The building which is subject of the notice is positioned in the rear part of the site, close to the rear boundary.
27. I accept that the garden is physically able to accommodate the building without appearing unduly cramped. However, it introduces a substantial building into a setting largely characterised by either the absence of structures or by small domestic sheds and greenhouses. Consequently, it does not relate well to its surroundings and appears incongruous and physically domineering in this garden setting.
28. Accordingly, the building is harmful to the character and appearance of the area, contrary to Policy TD1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites February 2018, Policy GOD 5 of the Godalming and Farncombe Neighbourhood Plan 2017-2032 and Policies D1 and D4 of the Waverley Borough Council Local Plan 2002. These policies require, amongst other things, new development to be of a high quality and inclusive design that responds to the distinctive local character of the area in which it is located.
29. However, the 'fallback position' or what is likely to happen if the enforcement notice were to be upheld is an important material consideration on the merits of a deemed planning application. In this case, the appellant has a clear desire to occupy the building with his wife to provide a reciprocal arrangement of care with their children and grandchildren who occupy the bungalow. To that end, the appellant has already sought and had granted a Certificate of Lawful Use or Development⁷ (LDC) for the siting of a caravan for ancillary use at the appeal site. Therefore, there is a very realistic prospect that if I dismiss the appeal, and the building is removed, that it will be replaced by a caravan.
30. The size limitations of a caravan set out in the CSA 1968 are 20m in length, 6.8m in width and 3.05m in height. The above stated dimensions of the building would fall slightly below those parameters in terms of its height and width. However, a replacement caravan could increase the size of the structure on site from around 15m in length to 20m. The harm I have described would therefore be increased. Moreover, the ability to control the external finishes in a manner sympathetic to its location through condition would also be lost.
31. Consequently, I find the fallback position to be less desirable than that which is the subject of the deemed planning application. There are further mitigating factors in this case in that the building is not visible from the street, even

⁷ Application Ref: WA/2018/1533 granted 22 October 2018

during the winter, whilst the extent of enclosure in and around the garden limits views of the building from neighbouring properties.

32. Therefore, taken together, the material considerations in this case outweigh the conflict I have found with the development plan. Although the appellant also states that the Council cannot currently demonstrate a five year supply of housing land, I have no evidence to this effect. In any case, given my aforementioned conclusion, it is not necessary that I consider this matter further.

Conditions

33. The reasons for issuing the enforcement notice include that the building is intended to function as a self-contained, independent dwelling. However, the Council's evidence confirms that the building would be for the purpose of ancillary residential accommodation. In any case, the Council has requested that in the event that the appeal is allowed, that the *"proposal is worded that the building is to be used as ancillary residential accommodation"* and that a condition to this effect is applied.
34. I agree that such a condition is necessary to ensure that it is not used as an independent, separate dwelling. The appellant has also confirmed he is agreeable to it. Such a condition would also address the precedent concerns of neighbouring residents.
35. On that basis, it is not necessary to change the wording of the deemed planning application (presumably by correcting the allegation) as suggested by the Council. Moreover, the enforcement notice is concerned with operational development rather than use.
36. The appellant also argues that the materials of a replacement caravan could not be conditioned. I have agreed that such control in the deemed planning application amounts to a benefit over the fallback position. Consequently, a condition which controls the external finishes of the building is necessary to help minimise the effect on the character and appearance of the garden setting. For the reasons explained, the inclusion of such a condition will not come as a surprise to the appellant.

Conclusion

37. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a building as described in the notice.
38. The appeal on ground (f) does not therefore fall to be considered.

Richard S Jones

INSPECTOR