
Appeal Decision

Site visit made on 28 April 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 8 June 2021

Appeal Ref: APP/E2205/C/19/3241598

Land at Caradon, Mill Lane, Pluckley, Ashford, Kent TN27 0SL

- 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 Mrs Victoria Buchanan against an enforcement notice issued by Ashford Borough Council.
 - The enforcement notice, numbered EN/17/00179, was issued on 22 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building (shown marked in the approximate position on the attached plan) ('the Building') used as an independent dwellinghouse.
 - The requirements of the notice are:
 - (i) Cease permanently the residential use of the building;
 - (ii) Demolish the building;
 - (iii) Remove permanently from the land all materials, waste and debris resulting from compliance with steps (i)-(ii) above.
 - The period for compliance with the requirements is:
 - Requirement (i) – one month
 - Requirement (ii) – three months
 - Requirement (iii) – four months
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mrs Victoria Buchanan against Ashford Borough Council. An application for a partial award of costs was made by Ashford Borough Council against Mrs Victoria Buchanan. These applications are the subject of separate Decisions.

Preliminary Matters

3. A certificate of lawfulness (LDC) was granted on 21 June 2016¹ for a log built mobile home for ancillary use to Caradon. The decision notice referred to the details that had been considered.

¹ Ref 16/00615/AS

4. Later in 2016, the timber structure that is the subject of this enforcement notice was noted on the site. In July 2017 the Council received complaints that it was being occupied as a separate dwelling. In January 2018 a Planning Contravention Notice (PCN) was issued and responses were provided. In July 2018 a planning application was submitted to seek permission for a log cabin annex and its ancillary use as staff accommodation in association with Caradon. This was refused in February 2019 and a subsequent appeal² was allowed in July 2020. The permission is subject to a condition that the development shall not be occupied other than for purposes ancillary to the residential use of Caradon. It was noted in the appeal decision that the structure was already on site and permission was being sought retrospectively.
5. A certificate of lawfulness application³ was refused in June 2019 for an existing outbuilding in the curtilage of Caradon, on the grounds that it had not been built for purposes incidental to the enjoyment of the dwelling.
6. As a result of the appeal decision, the structure as a 'building' now has planning permission for the stated use, as limited by the condition. However, the question of whether the structure came within the definition of caravan was not a matter that was before the Inspector, as the application was for a building rather than a mobile home or caravan, nor was the Inspector considering whether the use that led to the notice being served was as an independent dwellinghouse.
7. Section 180 of the 1990 Act provides that where planning permission is granted after the service of a copy of the notice for any development already carried out, the notice shall cease to have effect so far as it is inconsistent with the permission. This means that the permission overrides the notice to the extent that it authorises what is being enforced against. In this case, the permission that has been granted relates to a building, whereas part of the appellant's case is that the structure is a caravan. Furthermore, the use alleged by the notice is as an independent dwellinghouse, whereas the planning permission granted is for ancillary staff accommodation.

The appeal on ground (b)

8. The ground of appeal is that the matters stated in the notice have not occurred. In legal grounds such as this, the burden of proof lies with the appellant, and the test of evidence is on the balance of probabilities. The appellant's case is that the structure is not a building but a mobile home, and that the use as an independent dwelling has not occurred. I have determined the appeal on the basis of the facts before me.

Whether the log cabin is a building

9. The appellant claims that the log cabin is a caravan under the definition of the Caravan Sites and Control of Development Act 1960 (CSCDA) and the Caravan Sites Act 1968 (CSA) as established by the 2016 LDC. There is no dispute between the parties that the site is within the residential curtilage of Caradon and meets the size test to be considered a caravan.

² Ref APP/E2205/W/19/3235199

³ Ref 19/00583

Relevant legislative provisions

10. Case law⁴ has established that it is necessary to consider whether a structure is a caravan by considering it in the light of the statutory definitions. Subsection 29 (1) of the CSCDA says that a 'caravan' means 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, but does not include (a) any railway rolling-stock, which is, for the time being, on rails forming part of a railway system or (b) any tent. Subsections 13 (1) and (2) of the CSA define twin-unit caravans as follows: (1) 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 CSCDA by reason only that it cannot lawfully be so moved on a highway when assembled.
11. It is a well-established principle that when considering whether or not a structure is deemed to be a caravan, the commonly applied 'construction' and 'mobility' tests should be considered. The following are relevant considerations; there has to be a structure, it has to be designed or adapted for human habitation and it must be capable of being moved as a single structure. A structure composed of not more than two separately constructed sections which are designed to be assembled on site, and, when assembled, is physically capable of being moved by road, is not excluded from the relevant legislative provisions.

Relevant case law

12. In terms of the construction and mobility tests, the appellant has referred to case law. The case of *Byrne* is relevant⁵. Briefly, in that case an enforcement notice was issued requiring the removal of a log cabin on the basis that it was to be treated as a caravan. On appeal, the enforcement notice was upheld but corrected on the basis that the log cabin was a structure which had involved the carrying out of building operations on the land. It was considered that the structure was not a caravan within the meaning of the relevant legislative provisions and so the period for the taking of enforcement action was four years (s171B (1)) and not 10 years. Mr Byrne applied to the High Court to have that decision quashed. HH Judge Rich QC dismissed that application and held that the Inspector's conclusion that the cabin was not assembled on site out of two separately constructed sections (the construction test) was conclusive that s13 (1) (a) of the CSA did not apply and did not operate to deem the structure as a caravan.
13. Furthermore, on a proper construction of s13 (1) (b) of the CSA (the mobility test), the phrase "when assembled" required mobility to be tested by reference to the circumstances of where and how the cabin had in fact been assembled

⁴ *Wyre Forest BC v SSE & Allen's Caravans* [1990] 2 WLR 517; [1990] JPL 724

⁵ *Byrne v SSE and Arun District Council* [1997] 74.P&CR 420; [1998] JPL 122.

and did not simply mean “in its assembled state”. As such the cabin did not fulfil the mobility test. It was noted that consideration had to be given to the practicality of moving the structure as part of the mobility test. The appellant also refers to the case of *Brightlingsea*⁶. In that case it was considered that the test of mobility when assembled is that the structure must 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.

14. The appellant states that the structure is a prefabricated twin-unit mobile home. With regard to the mobility of the structure, timber frame structural calculations have been provided from a structural engineer⁷, to the effect that as a whole it is physically capable of being lifted and moved by road. There is no requirement in the legislation for the structure to be split into two units prior to transportation. On the basis of the evidence provided I am satisfied that the structure passes the mobility test, on the balance of probability.
15. With regard to the construction test, bearing in mind that the legislation defines a twin-unit as being composed of not more than two sections separately constructed and designed to be assembled on a site, it is necessary to consider, as a matter of fact and degree, whether the process of construction brings it within the definition of caravan. While I accept that there is no requirement for the process of creating the two separate sections to take place away from the site, there is a requirement that the act of joining the two sections together should be the final act of assembly. Details have been provided from the manufacturer as to the ability of the structure to comply with the construction test.
16. In this case, the appellant explains that due to the access constraints of Mill Lane, the two sections of the twin-unit were dismantled for delivery. A large lorry which contained all of the materials was parked and unloaded in the village, and a small lorry then delivered all the sections and materials in smaller loads. The installation of the mobile home took a week or so, with gaps when the installers went to complete other jobs. The appellant has provided a letter⁸ from a company specialising in mobile home transport, siting and groundworks. It refers to a site survey carried out on 12 November 2019, a full inspection of the interior, exterior and underside of the structure, and studying the technical drawings. The letter confirms that the structure has been constructed using four glulam beams underneath, running the length of the unit, to allow it to be split into two for transportation. Once assembled and joined, the two sections were covered in timber cladding to provide weather protection and for aesthetic reasons and it was fitted out internally.
17. Despite the assertions of the appellant, it is not clear to me that there were two units which were fully assembled prior to being joined. The appellant has not discharged the burden of proof in this regard. The delivery to the site of dismantled sections, the prolonged period for construction, the application of the timber cladding after the two halves were constructed, and the installation of the windows separately to the assembly of the two halves, make it more than probable that the structure was built on site, and that it was constructed as one building, rather than being two separately constructed units.

⁶ *Brightlingsea Haven LTD v Morris* [2008] EWHC 1928 (QB); [2009] 1 EGLR 117 (*Brightlingsea*)

⁷ Timber Frame Structural Calculations Thomas Consulting July 2016

⁸ L F Nicholls & Sons

18. I have had regard to the extracts from appeal decisions referred to by the appellant⁹. They confirm that while there is no requirement that the two units are assembled away from the site, it is necessary that the final act of assembly is the joining of the two sections. I note that there is reference to the evidence demonstrating that the two sections were constructed separately. However, in this case there is no such compelling evidence.
19. Having regard to the evidence before me, and as a matter of fact and degree, I conclude that the structure fails to meet the construction test. In order to meet the statutory definition of a caravan, there has to be compliance with all three parts of the test, and that has not been demonstrated to be the case. As such, on the balance of probability, I conclude that the structure does not amount to a twin-unit caravan, as defined by the CSA. I am therefore not satisfied that the appellant has discharged the burden of proof to demonstrate that the structure is a caravan in terms of its construction.
20. Given that the structure is not a caravan, it is necessary to assess whether it is a building. Section 336(1) of the Act includes in the definition of the word '*building*' any structure or erection, and any part of a building, as so defined. This description has been interpreted by the Courts¹⁰ to include structures which would not ordinarily be described as buildings. The primary factors that have been identified as decisive of what is a 'building' are as follows: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive.
21. The log cabin is of a size to be constructed on site. It is not physically attached to the ground, but could be considered to be immobile by its own weight, and given its scale, results in physical attachment to the ground. Its substantial size is consistent with a building. While I accept that it could be moved, there is no evidence that this has happened, nor that it is likely to happen, as it has been constructed on an area of hardstanding within the garden. On the particular circumstances of this case, as a matter of fact and degree, I conclude that the log cabin is a structure that falls within the definition of the word 'building' in s336(1) of the Act. I am therefore satisfied that insofar as it relates to a building, the alleged breach of planning control has occurred.

Whether the use as an independent dwellinghouse has occurred

22. The appellant's case is that the use of the log cabin has not been as an independent dwelling but has been in use for purposes ancillary to the use of Caradon as a dwellinghouse, and therefore the matters alleged in the notice have not occurred.
23. The log cabin contains two bedrooms, a bathroom with shower in the bath, a living room and a kitchen area. The appellant has explained that the kitchen was present when the log cabin was first constructed but that the cooking facilities have since been removed. The log cabin provided, when first constructed, the facilities required for independent day to day living. Nevertheless, it is the nature of the use of the log cabin that needs to be considered.
24. The appellant has provided a detailed account of its use since it was first constructed in 2016. For a number of months, it was used by the appellant's

⁹ APP/N1025/C/01/1074589, APP/Q1153/C/08/2064995&6, A/082064993/NWF

¹⁰ Including *Barvis v SSE* [1971] 22 P&CR 710

son as an area for playing his drums and to socialise with his friends. In March 2017 Karen Baker moved into the log cabin. This was initially on an informal basis as a guest, and later on a more formal basis as an employed housekeeper/nanny who provided help and care with the children, the house and the gardens. This continued until March 2018. A copy of a contract of employment between Karen Baker and the appellant has been provided. Since April 2018 the log cabin has not been occupied but has been used by the appellant's family for purposes incidental to the use of Caradon. By this I take the appellant to mean that it was no longer being used to provide sleeping accommodation.

25. During Karen Baker's occupation, the appellant explains that she used the main house (Caradon) for her cooking, meals, laundry, internet connection, land-line telephone, for storage and printing. The mobile home had connections for electricity and water but these were billed with the main house. The kitchen was already installed in the mobile home when it was delivered but has now been removed. The PCN response explained that Karen Baker assisted with the care of the children when their mother was away with business, provided specialist care, cleaned the main house and maintained the garden and grounds. Meals for the households were also made in Caradon by Karen Baker when needed, as well as all laundry and ironing for the household. The mobile home does not have a separate access from Mill Lane, and is accessed either through the house or through the side of the garden.
26. The Council refers to complaints regarding the use of the building during 2017 that have been received from neighbouring residents. These refer to correspondence between neighbours and the appellant regarding the nature of the use. The implication is that the property was being occupied as a dwelling independent from the use of Caradon, even though the contract of employment provided with the appeal documents was seeking to establish a link to show that the use was ancillary. However, it is clear that Karen Baker was initially staying as a guest, and that later Karen Baker became an employee. The fact that Karen Baker received visitors and kept dogs does not indicate that the building was being used as an independent dwelling. I have seen no firm evidence to make the appellant's version of events less than probable, and her account is precise and unambiguous. Moreover, it is clear from the various applications that the appellant has submitted that she did not intend to pursue the use of the building as an independent dwelling. I have seen no evidence that works were undertaken to create a separate garden area for the building.
27. The evidence provided by the appellant demonstrates that, as a matter of fact and degree, there was a functional relationship between the use of the log cabin by Karen Baker and by the appellant's family, and the use of the main house. The functional relationship is one which is normally found, and is ancillary to the use of Caradon as a dwelling. While I accept that the log cabin was capable of use as an independent dwellinghouse, I have seen no firm evidence that such a use has occurred in this case.

Conclusion in relation to ground (b)

28. Although I have found that the log cabin is a building, I have found that its use as an independent dwellinghouse has not occurred. To this extent the appeal on ground (b) succeeds.

29. I have considered whether I could correct the notice to refer to the use of the log cabin for purposes ancillary to the use of Caradon as a single dwellinghouse. However, as the building has permission through the Section 78 appeal, there is no breach of planning control and therefore no development to enforce against. Therefore, it would not serve a useful purpose to correct the notice using my powers under section 176(1) of the 1990 Act.
30. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (c) and (f) do not fall to be considered.

N Thomas

INSPECTOR