
Appeal Decisions

Site visit made on 27 July 2021

by R J Perrins MA

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

Decision date: 11 August 2021

Appeal A Ref: APP/Y2810/C/21/3273485

Newnham Turn Farm, Main Road, Dodford, Daventry NN7 4SR

- 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 Nigel Witham against an enforcement notice issued by Daventry District Council.
 - The enforcement notice, numbered E/2016/106, was issued on 25 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the residential use of a mobile home caravan outlined in red on the attached plan.
 - The requirements of the notice are:
 - (i) Remove the mobile home/caravan in its entirety from the land;
 - (ii) remove all residential paraphernalia hatched in black on the attached plan associated with the mobile home/caravan from the land including decking area and porch structures on West side of mobile home/caravan and wooden sheds located to the immediate South of mobile home/caravan;
 - (iii) Remove any resultant debris and materials arising from compliance with steps (i) and (ii) from the land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) 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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Appeal B Ref: APP/Y2810/X/21/3276597

Newnham Turn Farm, Main Road, Dodford, Daventry NN7 4SR

- 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 Nigel Witham against the decision of Daventry District Council.
 - The application Ref DA/2019/1058, dated 10 December 2019, was refused by notice dated 7 December 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as residential use of caravan B for a period of at least 10 years.
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Decisions

Appeal A – the s174 appeal

1. The enforcement notice is quashed.

Appeal B – the s195 appeal.

2. The appeal is dismissed.

Appeal A – the S174 Appeal

The enforcement notice

3. The appeal under ground (f) suggests the Council have failed to identify 'the land' to which the requirements of the notice relate. There is, in the appellant's view, no notation on the plan attached to the notice or other identification of the land. In turn, the Council argue that whilst there is no notation on the plan making reference to the address of the site, that has been clearly stated on the enforcement notice and the plan is to be read in conjunction with that. Furthermore, the land and buildings identified on the plan show the correct site for the notice and its relationship with the B4037.
4. I accept that the plan attached to the notice allows one to ascertain the position of the mobile home/caravan¹ and those items described as 'residential paraphernalia' in relation to the land and the B4037. The caravan is outlined clearly in red and the other items are hatched in black and identifiable on the ground.
5. However, taking into account the notice as a whole, there are a number of corrections that would need to be made to ensure the notice was fit for purpose. It is incumbent on an Inspector at appeal to use the wide-ranging powers available to them to get the notice right. That process though should always be with one eye firmly on injustice not arising for any party.
6. The starting point for that, as confirmed by the courts, is the 'test' for validity. Namely "does the notice tell the person (upon whom it is served) fairly what he has done wrong and what he must do to remedy it?".
7. Turning first to the allegation; the matters which appear to constitute the breach of planning control. In this case the description is a simple one '*the residential use of a mobile home/caravan outlined in red on the attached plan*'. When read with the evidence it is clear the local planning authority believe this to be a material change of use of land. In the same way it is clear, when read with the evidence, that the local planning authority are seeking to enforce against the use of the caravan for residential purposes and those domestic items associated with that use.
8. However, enforcement notices are standalone documents which should tell the recipient fairly what they need to do without the need to consult other documents. On its face, the allegation is not something which requires planning permission. Whilst a notice alleging a material change of use need not recite the previous use, in this case the material change of use is simply not stated; the '*residential use of a mobile home/caravan*' is not something which is a breach of planning control.
9. The breach should read something to the effect of '*the material change of use of the land to use for the stationing of a mobile home/caravan for residential purposes*'. The lack of clarity and precision that stems from this

¹ As described in the notice although from hereon in I will use 'the caravan' for brevity.

omission means that the terms and scope of the deemed application under section 177 (5) cannot be established.

10. Furthermore, Part 2 4(c) of 2002 Regulations² is clear, setting out that the notice must specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. The Council have chosen to draw a red line tightly around the caravan, therefore the notice is confined to the land upon which the caravan sits. Ergo, the land currently prescribed does not include the land around it and upon which the Council have identified several domestic items hatched in black on the plan. Those items are therefore outside of the scope of the notice as drafted and so cannot be enforced against through it, or be considered under a ground (a) appeal if there were one. Furthermore, the caravan could simply be moved a few meters to comply with requirement (i) thus defeating the purpose of the notice.
11. These matters could perhaps be corrected but the lack of clarity does not end there. The notice alleges a 'residential use' but the requirements do not require the residential use of the land to stop. They require removal of a caravan which the Council accepts has been on the land in excess of 10 years and the removal of residential paraphernalia and resultant debris and materials. Whilst not uncommon requirements, the paraphernalia and resultant debris and materials do not sit within 'the land' as identified by the red line. They cannot form part of the requirements.
12. I have considered identifying a larger area and re-drawing the red line but that would undoubtedly lead to injustice. Furthermore, it is not clear to me, given the number of buildings and boundaries on site, where that red line should be. Therefore, although all the requisite components of the notice are in place, as I see it, the notice is defective in a number of important respects, not least the vague manner in which the allegation is framed, the absence of any requirement to cease the use, and the inadequacy of the plan. All this leads me to conclude that the defects are such that the notice fails to meet the 'test' and it is invalid as it stands.
13. Thus, for the reasons given above, and having regard to all the other matters raised, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the errors in accordance with section 176(1) (a) of the 1990 Act since injustice would be caused were I to do so. The notice is invalid and will be quashed.
14. In these circumstances, the various grounds of appeal as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Appeal B – the S195 appeal

Main Issue

15. In the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate, consideration rests on the facts of the case and on relevant planning law and judicial authority. For the avoidance of doubt,

² The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

arguments concerning planning merits and planning policies are not for my deliberations under this appeal.

16. The Planning Practice Guidance (the Guidance) sets out an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate. The Guidance says: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability". That is reflected by the judgment in *Gabbitas v SSE & Newham LBC* [1985] JPL 630.
17. Those sentiments apply equally to an Inspector at appeal stage and the tests relate in substance to the use at issue in this appeal. Therefore, in this case, the onus is upon the appellant to demonstrate, on the balance of probabilities, that the change of use, to the residential use of a mobile home/caravan, occurred 10 years or more at the time the application was made. The relevant date being 10 December 2009.

Reasons

18. Before I go to the evidence concerning the continuous use, the appellant has put forward an alternative proposition; the siting of the caravan constitutes operational development rather than a change in use. That is to say, the caravan does not meet the definition of a caravan because of its permanence citing the *Woolley Chickens* case³. That case sets out the well-established principles to be considered when deciding whether, in this case, the caravan is a building as set out in Section 55 of the Act. If that were so, the change of use of a building to a dwelling is subject to a four-year time limit for enforcement action. The appellant would only need to demonstrate four years of continuous residential occupation.
19. However, unlike a chicken shed, and for the purposes of the Town and Country Planning legislation a caravan is defined in section 29(1) of the Caravan Sites and Control of Development Act 1960 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 adopted. If it remains mobile the likelihood is that a use of land is involved.
20. The fact that the land was levelled and there was formation of a firm platform for the caravan to stand on does not infer a degree of permanence. Regardless of whether such an operation would normally be undertaken by a builder. Indeed, that could be said of every firm and level base constructed for each and every caravan across the land; it is a moot point.
21. Moreover, a caravan does not need to be mobile in the sense of being moved on its own wheels and axles. It will be sufficient that the unit can be picked up intact, including its floor and roof, and put on a lorry by crane or hoist subject to a number of considerations including its attachment to the ground and its permanence, as set out in *Measor*⁴

³ *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

⁴ *Measor v SSETR* [1999] JPL 182

22. To that end, I saw that the caravan has its wheels along with towbar and chassis. To one side are two timber framed structures, a porch and decking area, attached to the caravan and steps have been built alongside it. Access to the caravan is through the covered porch and the decked area provides a levelled area upon which to sit. I observed, and without evidence to the contrary, that these structures are not intrinsic to the mobile home. They could be readily removed with little fuss. They add little to the caravan's permanence or attachment to the ground.
23. Nevertheless, I accept that the caravan has not been moved within the land and is connected to services. However, that on its own does not somehow turn a caravan into a building. I also accept that some partitioning has been removed from within the caravan but there is no structural report before me to corroborate that the integrity of the caravan is now such that it would not withstand being moved without total collapse. I am not convinced, on the evidence before me, that even if it could not be towed that it could not be lifted and transported on a motor vehicle or trailer.
24. Thus, as a matter of fact and degree, I find that what is on site has not become a building or structure but remains within the definition of a mobile home/caravan. Therefore the ten year rule under s171B(3) of the Act applies as set out above and it is to that evidence that I now turn.
25. The appellant's case, as set out in a sworn statement dated 22 May 2020, is that he has occupied the caravan continuously since May 2013. Prior to that the caravan was occupied by a Mr Aslett (2008 to 2013). Mr Aslett has submitted a signed letter to that effect. In addition to that evidence is a signed letter from Mrs Witham, another from Vivienne Higgs, a number of photographs and other documentation in support of the appellant's case.
26. Some of the supporting evidence, including a PCN dated November 2007, goes to the fact that a caravan was in situ for some time before the salient date. The evidence is all set out in the Letter from DJC Associates dated 23 October 2020 concerning the LDC application. However, there is no dispute that the caravan has been in situ for longer than the required period; it is the use to which it has been put which needs to be examined in the context of this appeal.
27. To that end, alongside the evidence set out above, I am directed to some handwritten notes on Council letters to the appellant dated 14 October 2015 and 4 November 2016. Those letters followed visits to the site by the Council and the notes purport to dispute much of what was said. For example, in the letter dated 14 October 2015 next to the statement "you informed us that a lady uses this caravan to stay at weekends" is an arrow with a handwritten "No". In the letter dated 4 November 2016 there are also many annotations which appear to question the statements being made. Although the paragraph concerning the caravan only has an asterisk next to it.
28. Alongside that the agent considers as there was a complaint regarding residential occupation that points to something more than casual stays. In addition, there are anomalies and uncertainties around the identification, or not, of 'Mobile B' and further representations (unseen) that Mobile B and Mobile A were in residential occupation. Furthermore, the Council's monitoring and correspondence concerning the site cannot be the determining factor.

29. Taken on its face, this evidence paints a picture of continuous residential occupation for the salient period. However, as set out above, I must also consider the evidence of the local planning authority. Turning to that, the Council set out that continuous occupation has not occurred. In 2015 and 2016 detailed site visits were carried out and, as set out in the letters discussed above, the appellant informed them, amongst other things, that he allowed homeless people to stay in the mobile home and that it was used for occasional overnight stays. At each step officers did not consider that the caravan was being used for a permanent residence and the appellant was advised to regularise the ancillary use.
30. Furthermore, a PCN issued in March 2017 did not find a residential use and correspondence from the occupier of the nearby mobile home suggested the appellant has accommodation elsewhere and that was reflected in the residential address used for planning application and appeal forms, in 2015/16. All of these factors are at odds with the appellant's evidence.
31. Whilst I recognise the appellant disputes much of what is written in the letters following the site visits, the authors of the letters and those who attended the site visit have not given evidence or been examined under oath. This inevitably tempers the weight I can give to the appellant's criticism of them. In the same way I am unable to give anything but minimal weight to the statements submitted by the appellant. The appellant and those who have submitted sworn statements have not been cross-examined and I have been unable to ask questions where there is no clarity.
32. For example, Vivienne Higgs uses the phrase "as far as I am aware" which casts doubt on her knowledge of the domestic arrangements of Mr Aslett, along with the statement that the appellant lived in "the annexe at Weedon" at weekends. There is no clarity as to the frequency of that or what the annexe was and if that was the address sometimes used by the appellant. These matters cast doubt on any residential use being continuous as set out in Thurrock⁵. That being reflected by the Council's view that enforcement action was not necessary following site visits and investigations.
33. Thus, for the reasons set out above, and having considered all of the evidence available to me, there remains a degree of ambiguity and lack of precision in the appellant's evidence. It has not therefore been demonstrated, on the balance of probabilities, and the evidence currently available, that the use in question took place continuously throughout the relevant period.

Conclusion

34. 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 use of the property for as a single self-contained three-bedroom flat was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Richard Perrins

Inspector

⁵ *Thurrock BC v SSETR and Holding CA* [2002] JPL 1278