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## Appeal Decision

Site visit made on 5 January 2022

**by Roy Curnow MA BSc(Hons) MRTPI**

An Inspector appointed by the Secretary of State

**Decision date: 17<sup>th</sup> January 2022**

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**Appeal Ref: APP/F0114/C/21/3283926**

**Parcel 0096, Ramscombe Lane, Batheaston, Bath and North East Somerset**

- 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 Thomas Jackson against an enforcement notice issued by Bath & North East Somerset Council.
  - The enforcement notice, numbered 21/00091/UNDEV, was issued on 20 September 2021 ('the Notice').
  - The breach of planning control as alleged in the notice is Without planning permission, the erection of a building sited in the approximate location marked as 'A' on the attached plan and outlined in red dashed line on the attached photo sheet.
  - The requirements of the notice is Demolish or dismantle the building marked in the approximate location as 'A' on the attached plan and outlined in red dashed line on the attached photo sheet and remove all resultant materials from the land.
  - The period for compliance with the requirements is Four months.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is dismissed and the enforcement notice is upheld.

### Reasons

2. An appeal made under ground (c) of S174 is that the matters alleged in the Notice (if they occurred) do not constitute a breach of planning control. In an appeal lodged on a legal ground, such as this, it is for the Appellant to prove his case.
3. Initially, I will refer to what is on site as a 'structure'. This should not be read as being supportive of either parties' position, it is merely used as a neutral descriptive term prior to setting out my finding on what this structure is.
4. From the evidence before me, including what I saw on site, what appeared to be a small touring caravan or trailer tent, (I refer to it as a 'touring caravan', below), was brought to the site in May 2018. It was to be used for purposes ancillary to the use of the land. Subsequently, television companies showed interest in the caravan with one asking that it be included in a programme that would upgrade it, to make it look more appealing and better able to withstand the elements. The Appellant agreed to this, thus gaining a financial injection and the benefit of the programme makers' experience. An internet link to this programme was given by the Council. However, as I cannot be sure whether the filming and editing accurately reflected the manner of the construction of the structure, I have not watched the programme.

5. The structure has two distinct elements of differing sizes. Both are finished with timber clad walls that are set below opposing mono-pitched roofs.
6. The smaller of the two has, at its heart, the touring caravan. This has been enclosed in four timber walls, two of which have window openings cut into them. Its longer walls are fixed to the side of the touring caravan, extending past both its ends and are linked by timber walls completing the enclosure. Parts of the touring caravan were still visible behind the timber walls. These included some of its original metal walls, its outer wheel and, by means of a flap in the timber wall at one end, its tow bar.
7. The evidence shows that the larger element has been created where the touring caravan's awning was. It is attached to a side wall of the caravan's timber enclosure. Photographs show that it was constructed from a timber frame and finished in similar timber cladding.
8. The larger element has the structure's external door. Internally, it provides what might be termed a 'living area'. Amongst other things, this had a settee, wood burner, dresser, a kitchen unit cupboard with small worktop, shelving, and chairs at a table fitted to a wall. An internal opening gave access to the smaller element, in which I saw three beds. The touring caravan's wheel arches were visible in the smaller element.
9. Neither element has been fixed into the ground. In addition to the touring caravan's wheels on the smaller element, I saw that the larger element was set onto wooden 'skids'.
10. The essence of the Appellant's case is that what is on the site is not a building but is a caravan. In this regard, he cites the Caravan Sites Act 1968 (the 1968 Act). In assessing whether the structure accords with the definition of a caravan, it is also necessary to refer to the Caravan Sites and Control of Development Act 1960 (the 1960 Act).
11. S29 of the 1960 Act defines a caravan 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).
12. S13 of the 1968 Act expands on this, by defining 'twin-unit caravans' as "(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 Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled".
13. Sub-section (ss) (2) of S13 sets out size limits, which a Minister might afterwards vary by virtue of ss (3) with ss (4) providing the legal framework for ss (3).
14. In order to be classed as a caravan, the Appellant must therefore show that the structure has been designed for human habitation, accords with the 'size test', 'construction test' and 'mobility test'.

15. There is no dispute that the structure has been designed for human habitation, nor that it accords with the size limits in the 1968 Act, and I have no reason to find otherwise.
16. That the two portions that form the structure were constructed on site, from many individual pieces, is not contrary to the terms of the 1968 Act. This does not specify that the two sections must be constructed elsewhere and brought to the site to be bolted together. As long as there are no more than two constituent sections at the point of fixing together to form a single entity, there is nothing in the legislation to say that those individual sections should not have been constructed on the land prior to being bolted together.
17. Whilst the caravan was brought to the land prior to the creation of the structure, my view is that it thereafter merely became one of the constituent parts of the smaller element.
18. In the light of the above, I find that the structure accords with the construction test in the 1968 Act.
19. There are two parts to the mobility test. Firstly, it should be physically capable of being moved by road, when assembled; and, secondly, that this movement should be by way of being towed or transported on a trailer.
20. The Appellant's argument that the 1968 Act does not require a caravan to actually be moved is correct. However, it is more than a hypothetical exercise, as he also claims. He needs to prove that, on the balance of probability, the form of movement required by the 1968 Act could be undertaken.
21. Save for the Appellant stating that the structure has been constructed in two parts and has been built to withstand high winds, little information as to its structural stability has been provided. For example, I have nothing from a structural engineer, or someone with similar qualifications or experience to support the contention that it can be moved in one piece without structural failure. The nature of movement expected by the Act is not to be read as being moved momentarily, but in the sense of being taken from one place to another. Being able to withstand winds on the site is one thing, but this is likely to be quite different from the stresses and strains of being lifted or winched onto a lorry or trailer and being driven from the site to another.
22. My confidence that this is possible is further undermined by the Appellant's comment that it would be "possible that the caravan can be split back into two sections, which would also aid transport". To my mind, this suggests that it might not have the structural integrity to be moved.
23. I have not been provided with sufficient evidence to show that the structure is capable of enduring such movement and, from the evidence before me, the Appellant has failed to show that the structure passes the mobility test.
24. Having found that what is on the land is not a caravan, it is necessary to assess whether it is a building, as alleged in the Notice. Established case law<sup>1</sup> has identified three primary factors as being decisive in determining whether something is a building: size, degree of permanence and physical attachment. None of the factors is necessarily determinative of itself, and an assessment will need to balance the findings for each.

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<sup>1</sup> *Skerritts of Nottingham Ltd v SSETR* (No. 2) [2002] EWCA Civ 5569

25. There can be little doubt that the structure is of a quite considerable size, providing space for three people to sleep and relax in while working on the land. In terms of permanence, I have no evidence before me to show that the structure has been moved since its construction. I have already found that it is not moveable, in terms of the 1968 Act, and from what I saw it is not intended to be moved in practice. In my view, this is a permanent structure. Although the structure is not physically fixed to the ground, it is to all intents and purposes by reason of its size and weight. The fact that it has been constructed on the site for purposes to provide accommodation ancillary to the use of the land indicates to me that it is intended to be retained in position and there is nothing in the submissions to suggest otherwise.
26. For the reasons set out, above, I find that the structure is not a caravan, as defined in the 1960 and 1968 Acts. It is a building, as defined in S55 of the 1990 Act, and as alleged in the Notice. As such, the Ground (c) appeal fails.

### **Other Matters**

27. The Appellant's submissions and third-party representations refer to the 'planning merits' of the case. Amongst the points made in support are the nature of the Appellant's business, environmental improvements he has made to the land, the sustainability of his activities and that what the Appellant is doing on the land accords with aims to control global warming. As no ground (a) appeal has been made, in which arguments on the planning merits of the case can be set out, I cannot take these matters into account. Similarly, I cannot take into account the planning arguments against the development. This is an appeal in which the only matter to be assessed is whether the matters alleged in the Notice constitute a breach of planning control.

### **Conclusion**

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

*Roy Curnow*

Inspector