



Appeal Decision

Site visit made on 9 February 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2022

Appeal Ref: APP/Z5060/C/20/3266189

Land and premises at 53 Clemence Road, Dagenham RM10 9YQ

- 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 Nnadozie Emezie against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 3 December 2020.
- The breach of planning control as alleged in the notice is The unauthorised stationing of caravan to rear of house to provide living accommodation.
- The requirements of the notice are Cease use of the caravan as a residential unit; Remove the caravan; Remove all fittings and alterations related to unauthorised use of the caravan; Remove all subsequent waste material from the property.
- The period for compliance with the requirements is 1 month.
- The appeal is made on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Procedural Matters

1. The appeal is made on ground (a). However the appellant indicates within his grounds of appeal that the alleged breach of planning control, that is to say the stationing of a caravan to provide living accommodation, has not occurred; also that the caravan is a chattel and not permanent development, meaning that it does not require planning permission.
2. These points are 'hidden' appeals on ground (b), that those matters stated in the notice have not occurred, and ground (c), that there has not been a breach of planning control. Although these grounds of appeal are 'hidden', the Council has nevertheless had the opportunity to respond to the points made. I have thus considered these representations accordingly in my decision below.

The appeal on ground (b)

3. The appeal on ground (b) is that those matters stated in the notice have not occurred as a matter of fact. The appellant's case is that the caravan is solely being used to provide the appellant with home office facilities on a temporary basis. This was in response to the constraints on the use of space within the main dwelling itself, caused by the ongoing pandemic, for example because of the requirement for children to be taught at home. He says that the structure remains movable and is not being used as a separate dwelling.

4. The Council argue that the caravan, because of its size and available facilities, provides primary / segregated self-contained living space that is not considered ancillary or complimentary to the dwelling.
5. From my site visit it was evident the caravan is situated within the rear garden area of the appeal address. In terms of accommodation, the caravan has two bedrooms, which because of the absence of bedding and the lack of use of storage space did not appear to be in use. I had no reason to doubt that the caravan was in use as a home office as claimed by the appellant, with low-key use of the kitchen there for making refreshments. It was also apparent that the structure was connected to mains drainage.
6. Irrespective of how the structure may be used in practice, even if limited to occupation by a single family member for home office purposes, I am in no doubt that because of the presence there of cooking facilities, sleeping and washing accommodation and a living room area, the structure is capable of providing living accommodation for residential purposes. I am satisfied that the matter alleged in the notice as appearing to constitute a breach of planning control has occurred as a matter of fact. Accordingly the appeal on ground (b) must fail.

The appeal on ground (c)

7. The appeal on ground (c) is that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act and includes the carrying out of building operations on land, or the making of any material change in the use of the land.
8. The appellant argues that there is no power to require the removal of the caravan on the basis that it is a movable 'chattel' and not therefore a building. The Council does not suggest that the structure is a building.
9. From my visit it was apparent that the structure was mounted on wheels and rested on concrete blocks at each corner, through the use of jacks, in order to provide stability. There is no evidence to persuade me that the structure could not be easily disconnected from utility services and moved from one place to another, whether by being towed, or by being transported on a motor vehicle or trailer. There is no dispute that the structure falls within the legally defined size restrictions for a caravan. Furthermore, despite being in place now for a relatively lengthy period, I am not persuaded that the structure could be regarded as having sufficient permanence to be regarded as a building. I conclude that the structure is a caravan and does not constitute operational development. The Council does not say otherwise.
10. I turn to the question of whether the use of the caravan could be regarded as resulting in a material change in the use of the land. It is important to have regard to the concept of the planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.

11. The caravan appears as being within the rear garden of the dwelling, and I have no reason to doubt that they are within a single unit of occupation. There have not been any boundary features placed which serve to physically segregate the caravan from the rear garden area, such that it could be said to be sited on a separate plot. Whilst the caravan can be accessed via a side gate, without needing to go through the main dwelling itself, there would also be no physical obstruction to passing between the two. The physical relationship with the main dwelling would, in my view, be conducive to shared living activity.
12. In terms of functional relationship I have no reason to doubt that the caravan is being utilised as a temporary home office by the occupier of the main dwelling, in connection with the use of that dwelling, rather than by a separate household and / or as an independent unit of residential accommodation. From the drawings provided and my visit it is evident that cooking, washing and sleeping accommodation is present within the caravan. In total the structure therefore provides additional primary living accommodation, as opposed to accommodation that is simply incidental to the use of the main dwelling.
13. However, notwithstanding this, the aforementioned characteristics mean that the caravan and main dwelling maintain a close physical and functional relationship. I conclude, on this basis, that the caravan use does not form a separate planning unit to the main dwelling. As a matter of fact and degree I therefore conclude that a material change of use has not occurred.
14. As I have not found operational development or a material change of use of the land, I conclude that there has not been development requiring planning permission, and therefore not a breach of planning control in this case.
15. The appellant has expressed an intention to use the caravan for temporary accommodation, in the event that a planned extension to the dwelling goes ahead. However it is not clear from the information before me whether or when this proposed development will go ahead. Accordingly this specific expressed intention has not had a bearing on my assessment of whether there has been a material change of use in this case.

Conclusion

16. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.
17. I acknowledge that concerns have been raised by several local residents regarding the appearance of the structure and its effect on outlook from and privacy within their properties. However, my remit does not extend to considering these matters because I have concluded that there has not been a breach of planning control.

Formal Decision

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

Roy Merrett INSPECTOR