



Appeal Decision

Site visit made on 30 August 2022

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 28th September 2022

Appeal Ref: APP/M0655/C/22/3294175

**Holly Bank, Manchester Road, Rixton-with-Glazebrook, Warrington
WA3 6HU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mrs Maureen Fury of Fury Developments Limited against an enforcement notice issued by Warrington Borough Council.
 - The notice was issued on 20 January 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the construction of six chalet buildings sited on hardstanding, as shown on the photograph within the enforcement notice.
 - The requirements of the notice are to:
Remove the chalet buildings and hardstanding base upon which they are sited from the land.
 - The period for compliance with the requirements is: three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the 1990 Act. 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 1990 Act.
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Decision

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

The ground (b) appeal

2. To succeed on ground (b) the appellant would be expected to show on the balance of probability that the construction of 6 chalet buildings sited on hardstanding has not in fact occurred. The appellant argues that the alleged unauthorised development has not occurred because the chalets are not buildings, they are prefabricated caravans.
3. The Council maintains that *'the six chalet buildings have been constructed and the former touring caravan park in this part of the site is now in use as chalets, i.e. residential use'*. As such, the Council contends that the alleged breach of planning control in the notice relates to operational development and the use of the chalets. However, there is no reference to the use of the buildings or the land they are on even though the word *'chalet'* is cited within the description.
4. Moreover, the reasons for issuing the notice state that the breach has occurred in the last four years. Section 171B(1) of the 1990 Act states that *'where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed'*. Whereas, section 171B(3) which relates to any other

breach of planning control states that '*no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*'. Additionally those reasons only refer to the chalet buildings themselves and not their use.

5. Furthermore, the notice does not require the cessation of any use of the land/buildings. Therefore, it is reasonable, in my judgement for any recipient of the enforcement notice to consider that what they have done wrong is to construct 6 chalet buildings sited on hardstanding and that only relates to operational development. Moreover, it is reasonable to consider that it is alleged that the hardstanding forms part and parcel of the operational development that facilitates the chalet buildings as it is cited as a base for them. There is no evidence before me to indicate that the hardstanding was formed for another purpose.
6. Section 55 of the 1990 Act states, amongst other things, that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land. "Building operations" includes operations normally undertaken by a person carrying on business as a builder. A "building" is defined within section 336(1) of the 1990 Act to include any structure or erection. A caravan is defined at section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA) 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 adapted. It excludes (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.
7. Sections 13(1)(a) and (b) of the Caravan Sites Act 1968 (CSA) 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)...*". These prerequisites are usually referred to as '*the construction test*' and '*the mobility test*'.
8. Section 13(2) of the CSA confirms that, for the purposes of the CSCDA, the expression 'caravan' shall not include a structure designed or adapted for human habitation, where its dimensions, when assembled, exceed any of the following limits: 20 metres in length; 6.8 metres in width; a maximum internal floor to ceiling height in relation to the living accommodation of 3.05 metres. This is usually cited as the '*size test*' and based on the dimensions that were agreed on site¹ this test is met in this case. There is also no dispute that the '*chalet buildings*' have been designed or adapted for human habitation.
9. For there to be a caravan or a building there would need to be a 'structure' and there is no dispute that there are structures on the land. Therefore, I shall utilise this word to describe the alleged chalet buildings within this ground of appeal as it is a neutral term for both a building and a caravan.
10. I observed that the structures are composed of composite cladding to their walls and corrugated cladding to their roofs. They have double doors to one

¹ Width: 2.83m, length: approx. 5m and height: base of floor to roof (external) approx. 3m.

end (the front) and timber steps provide access to those doors. There is timber cladding between the base of the structures and the ground. As such, the hardstanding base and the areas under the structures are only visible via a 'hatch' in the end of the timber cladding at the rear. Through one of the hatches it was apparent that the structures rest on a metal chassis with axles and wheels. Legs/jacks are positioned at the corners and at various locations under the chassis. Connections to utilities were visible below the structures.

11. The appellant contends the structures have a tow hitch, were manufactured by Lakeland Leisure Ltd, were brought to the site as complete objects on low loaders and may be towed around the site and moved off-site on trailers. However, the Council maintains that no evidence is provided that the structures are physically capable of being moved without a very real risk of structural damage, the hardstanding could not be moved, they have appendages – the stairs and they are permanent features lived in as main places of residence.
12. Established case law, including *Cardiff Rating Authority v Guest Keens* [1949] 1KB 385 (*Cardiff*), has set down three primary tests for assessing whether a structure amounts to a building; 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. The question of whether a caravan would amount to a building has also been the subject of case law. In *Measor v SSETR & Tunbridge Wells BC* [1999] JPL 182 (*Measor*) it was found that a conclusion that all caravans are buildings would offend against the provisions of the 1990 Act and be contrary to common sense. That is not to say that a caravan could never become a building but generally a caravan would not constitute a building due to the factors of permanence and attachment.
13. The timber cladding around the base of the structures appears to be fixed to a framework and it is not clear if that framework is attached to each structure. The stairs are also timber clad, and I assume they are also fixed in some way to that framework. The wheels, axle and metal chassis of the structures do not appear to have been materially affected by the framework, timber cladding nor the stairs.
14. The Council have not specifically questioned whether the structures meet the construction test. Yet they have stated that the hardstanding cannot be moved and that the structures have appendages. This could reasonably be considered to mean that the structures have more than two sections as defined within the construction test. In *Brightlingsea Haven Limited v Morris* [2009] 2 P&CR 11 (*Brightlingsea*) the judgment considered whether items such as roof ridges, guttering, flues and floor coverings are to be treated as separate sections for the purposes of the construction test. It states that '*it is but common sense that there will be small pieces that are required to be added to the assembled sections to complete the structure as a home. They are not 'sections' and do not prevent the structure falling within the definition given by section 13.1. I consider that this covers items such as the roof ridges, guttering, flues and also the floors. By floors I do not refer to the underlying floor structure which is constructed in the factory which sits on the chassis. I refer to the floor which is designed to lie on top of that and to bridge the join between the two halves, which is fitted in the factory, removed and refitted on site.*'

15. There is no evidence before me to contradict the appellant's evidence that the structures, not including the framework, cladding and stairs, were manufactured by Lakeland Leisure Ltd and brought to the site as complete objects on low loaders. The appellant's version of events is precise and unambiguous. It does not need to be corroborated by independent evidence in order to be accepted especially where there is no evidence to contradict it. It is more likely than not that the framework, cladding and stairs were put in place after the structures were sited on the hardstanding. In my view, taking into account *Brightlingsea*, to form a 'section' of the structure, for the purposes of the construction test the elements in consideration should form an integral part of that structure.
16. Whilst the stairs assist in gaining access to the double doors the framework and cladding appears to be cosmetic to screen the area below the structures. The hardstanding appears to provide a level and stable base for the structure to be sited on. Based on my observations, the framework, cladding and stairs could be dismantled and removed from the structures relatively easily and without damaging them. Moreover, I see no good reason why the structures would not retain their structural integrity and/or could not be used for human habitation with those items dismantled/removed and if they were not sited on the hardstanding. As such, they reasonably cannot be treated as separate sections for the purposes of the construction test. Taking into account all of the above the construction test is, on the balance of probability, met in this case.
17. In *Carter v SSE* [1994] 1 WLR 1212 (*Carter*) the Court of Appeal clarified that, to be a caravan for the purpose of section 29(1) of the CSCDA, the assembled unit must be capable of being towed or transported as a whole by a single vehicle. The wording of section 13(1) of the CSA 1968 defines a twin unit caravan as one that is, "*when assembled*", physically capable of being moved by road from one place to another. Given my findings in relation to the construction test it is not necessary for the structures, framework, cladding, stairs and hardstanding to be capable of being moved as a whole for the structures to meet the mobility test. It is the structures, devoid of those items, that must be capable of being moved from one place to another as a whole.
18. Even though I could not view the towing hitches cited by the appellant, as the structures are on metal chassis with axles and wheels, there is little to indicate that the structures would not be capable of being moved from one place to another by being towed. In addition as stated previously, there is no evidence before me to contradict the appellant's evidence that the structures were manufactured by Lakeland Leisure Ltd and brought to the site as complete objects on low loaders. As such, I can see no reason why the structures would be structurally damaged by being put onto a low loader to be moved from the site to another place.
19. Furthermore, many park homes or static caravans with utility connections retain their status as caravans and these connections alone would rarely satisfy the permanency and attachment tests arising from *Cardiff* as they are generally easy to sever. I have also found that the framework and/or stairs could similarly be dismantled/removed relatively easily. The structures themselves are individual structures designed for human habitation which are capable of being moved from one place to another with no more than minor detachment works. As a result, I consider that, on the balance of probability, the mobility test is met. Consequently, the structures comply with the definition of a

caravan as set out in section 29(1) of the CSCDA, including section 13 of the CSA.

20. I acknowledge that the structures have not been moved since they were sited on the hardstanding and that, it appears, they are used as the occupiers' main place of residence. As stated above, their size meets the size test within section 13 of the CSA. As such the size of the structures is not, by itself, a decisive factor. Nonetheless, even though they are of a size that can be regarded as a caravan they are similar in size to some structures, such as garages and outbuildings, that can be regarded as buildings. Yet, there is no evidence to indicate that the formation/assembly of the structures, devoid of the framework, cladding and stairs, involved operations normally undertaken by a person carrying on business as a builder. Moreover, the degree of affixation of the structures to the land, which is almost entirely by virtue of their own weight, does not have the degree of permanence and physical attachment to the land necessary for them to be reasonably regarded as buildings. Consequently, as a matter of fact and degree the construction of 6 chalet buildings sited on hardstanding has not in fact occurred.
21. I have considered whether I could correct the allegation in the notice to address the breach of planning control that has occurred. It appears that the siting of 6 caravans used for residential purposes, facilitated by the laying of hardstanding has occurred. However, given the relatively complex planning history of the overall site I do not consider that I could correct the allegation and the notice without causing injustice. This is because there is insufficient clarity to determine whether the corrected allegation would constitute a material change of use and/or failing to comply with any condition or limitation subject to which planning permission has been granted.
22. In addition, it would fundamentally change the scope of the notice and cause injustice to the appellants and Council. I cannot be certain of what each party's case would be in the face of such a correction and in particular what grounds (under s174(2)) an appeal might have been brought by the appellant. My decision below to quash the notice leaves open to the Council the option of issuing a further notice with a corrected allegation.

Conclusion

23. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
24. In these circumstances, the appeals on grounds (a) and (c) 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.

D Boffin

INSPECTOR