
Appeal Decisions

Site visit made on 10 October 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal A: APP/W3005/C/23/3320396

96 Southwell Lane, Kirkby in Ashfield NG17 8EZ

- 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 Meaza Kahsay against an enforcement notice issued by Ashfield District Council.
 - The enforcement notice was issued on 23 March 2023.
 - The breach of planning control as alleged in the notice is the siting of an unauthorised building ("the caravan") in the approximate position cross hatched in black on the attached plan.
 - The requirement of the notice is to remove the unauthorised building ("the caravan") from the land.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/W3005/W/23/3318773

96 Southwell Lane, Kirkby in Ashfield NG17 8EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Meaza Kahsay against the decision of Ashfield District Council.
 - The application Ref V/2022/0664, dated 31 August 2022, was refused by notice dated 15 February 2023.
 - The development proposed is described on the original application form as static caravan to be kept in the side garden of property. Caravan to be used as future living accommodation.
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Decisions

1. Appeal A is allowed and the enforcement notice is quashed.
2. Appeal B is dismissed.

The appeal site and surroundings

3. The appeal property comprises a two-storey semi-detached dwellinghouse situated on Southwell Lane, adjacent to the junction with Occupation Lane. It is a corner plot and therefore benefits from a relatively large garden. The house is constructed with brick walls and a tiled hipped roof. The area is characterised by residential properties of similar age and materials, but some have been extended or altered over the years.

Appeal A on ground (c)

4. The ground of appeal is that there has not been a breach of planning control. Section 55(1) of the 1990 Act defines development as the “carrying out of building, engineering, mining or other operations in, on, over or under land”. Section 55(1A) states that building operations include the demolition of buildings, rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. In addition, section 336(1) defines a building as including “any structure or erection, and any part of a building, as so defined but does not include plant or machinery comprised in a building.”
5. It is clear to me that the basis of the Council’s action is that it considers that the development is a building for the purposes of section 55(1) of the 1990 Act due to its size, attachment and level of permanence and would therefore constitute operational development that requires planning permission.
6. The courts have held¹ that it is not possible to construct an exhaustive list of what is or is in the nature of a building or structure, but the main characteristics of a building are that it is of a size that it would normally be constructed, as opposed to being brought ready-made onto the site; it would cause a physical change of some permanence; and there would be physical attachment to the ground. In addition, it has more recently been held by the Courts² that the statutory meaning of a “building” has a wide definition which includes “any structure or erection”. The question as to whether a particular structure is a building is a matter of fact and degree to be determined on the basis of the evidence presented in each case.
7. The caravan is relatively large, but it has been brought onto the site ready-made as a single item. It can be seen on site where it has been towed onto the site through a part-demolished boundary wall. There is an electrical cable which could link the caravan to the host dwellinghouse, but there is no evidence of it being linked to any other services such as mains water, sewers and gas. The caravan sits on its own wheels which are situated along a main axle, its own stabilisers, a tow bar and a small supplementary jack.
8. It is my understanding that during a previous site visit with the Council, the appellant advised that the structure would share the host dwelling’s services and consequently, the Council states that it will therefore be physically attached to the site through the attachment to services such as the electric, water and sewage. That does not appear to have happened and enforcement action should not be taken on the basis of speculation of what may happen.
9. In relation to the degree of permanence, the evidence before me is that the caravan was first brought onto the site 15 July 2022 and has not been moved since that date. However, although it has now been on site for more than 15 months it could quite easily be moved by attaching it to a vehicle in one piece and towed off the site.
10. Therefore, on the basis that the Council has undertaken enforcement action for operational development I conclude that although it is a relatively large caravan, it does not have a significant level of permanence and is only attached

¹ Cardiff Rating Authority v Guest Keens [1949] 1 KB 385

² R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)

to the ground through its own weight. Therefore, on the evidence presented in this case, the development is not a building for the purposes of section 55 of the 1990 Act and does not constitute operational development requiring planning permission. For the reasons I have given and having taken account of the body of evidence submitted by the main parties, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

11. 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 as amended does not fall to be considered.

Appeal B

12. Although I have determined that the operational development the subject of the enforcement notice does not constitute development requiring planning permission, within the context of an appeal under section 78 it is not within my remit to formally determine whether the proposed development requires permission. Furthermore, the description of the proposed development the subject of the planning application is "static caravan to be kept in the side extension of the property". Irrespective of the basis on which the Council has determined the application, I interpret this as being an application for the material change of use of the land for the siting or stationing of a static caravan for purposes ancillary to the host dwellinghouse. That is materially different to the alleged breach of planning control described in the enforcement notice and forms the basis upon which I have determined Appeal B.
13. The main issue derived from the Council's decision notice is the effect on the character and appearance of the area.
14. The caravan in question measures approximately 11.5 metres in length by approximately 3.68 metres in width with an overall height of approximately 3.1 metres. It comprises pale cream external walls with a shallow pitched terracotta tile-effect roof. It is a relatively large caravan situated in the side garden close to the junction of Southwell Lane and Occupation Lane within a predominantly residential area of Kirkby in Ashfield. The immediate area is generally characterised by semi-detached brick-built houses with pitched hipped or gable roofs. Properties feature garden areas to the front or side.
15. The caravan contrasts greatly with its surroundings in terms of its design and materials and is sited in a highly visually prominent relatively open location close to the road junction. It constitutes a dominant feature within the local street scene and as a relatively large feature it is at odds with the garden and wider residential location in which it is situated.
16. Although the area is not designated within a Conservation Area or within the setting of designated heritage assets, the development is out of character with the residential area and is harmful to the character and appearance of the area. Therefore, it conflicts with Policy ST1 of the Ashfield Local Plan Review Adopted November 2002 and the National Planning Policy Framework. Among other objectives these seek to ensure that new development will not adversely affect the character of the environment. However, I find no conflict with Policy HG7 which relates to residential extensions.
17. The appellant argues that the appeal proposal represents a sustainable form of development; however, given my findings with reference to the harm to the

character and appearance of the area I do not agree that is the case. I have also taken account of the appellant's personal circumstances and her desire to provide additional residential accommodation for herself and her family, but that does not outweigh the harm I have found with respect to the character and appearance of the area. I have also considered whether conditions could be imposed which mitigate the harm I have found, but as a consequence of the degree of harm I have found to the character and appearance of the area, additional landscaping or other measures would not serve as adequate mitigation.

18. Therefore, I conclude that the development is harmful to the character and appearance of the area and having also taken account of other matters raised, conflicts with the development plan as a whole.

A A Phillips

INSPECTOR