



Appeal Decisions

Inquiry held on 22 and 23 May, and 3 and 4 October 2023

Site visit made on 23 May 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal A Ref: APP/U1240/C/21/3288252

Appeal B Ref: APP/U1240/C/21/3288253

**Land at Nuts Landing, Newman's Lane, West Moors, Ferndown, Dorset
BH22 0LW**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr David Cailles (Appeal A) and Miss Carley Cailles (Appeal B) against an enforcement notice issued by East Dorset District Council.
 - The notice was issued on 4 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of open land for permanent residential purposes (human habitation), including stationing of a static caravan together with decking, hard surfacing for parking of vehicles, and a garden with domestic paraphernalia.
 - The requirements of the notice are to:
 - i. Cease to occupy the land for residential occupation (human habitation)
 - ii. Cease to station or store caravans on the land
 - iii. Cease to use the land as a garden
 - iv. Cease to use the hardstanding for parking of vehicles associated with the residential
 - v. occupation of the land
 - vi. Remove the caravan from the land
 - vii. Remove any means of drainage, sewerage and utility supplies associated to the use
 - viii. of the caravan
 - ix. Remove the decking from the land
 - x. Remove all domestic possessions from the land
 - xi. Remove any vehicle associated with the occupation of the caravan
 - xii. Remove all garden furniture and garden effects from the land
 - xiii. Remove the hardstanding
 - xiv. Remove all materials subject of the above requirements from the land to a suitable
 - xv. place of disposal.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended. 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 Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) & (g) 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 have lapsed.
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Summary Decisions: The appeals are allowed and the enforcement notice is corrected and quashed.

Application for Costs

1. An application for costs was made by East Dorset District Council against Mr David Cailles. This application is the subject of a separate decision.

Preliminary Matters

2. As reflected in the header above, both appeals had originally been made on grounds including that falling within section 174(2)(c) of The Town and Country Planning Act 1990 as amended (the 1990 Act). Appeal A was also to proceed under section 174(2)(a). The matter of the grounds on which the appeal was to proceed was discussed on the first day of sitting at the inquiry. My note of what the appellants said on this matter is that there is no ground (c) appeal and that the appeal on ground (a) is withdrawn. I have, therefore, determined both appeals on the basis of grounds (b), (d), (f) and (g).
3. The allegation includes reference to a caravan. One of the main disputes between the parties is whether or not what the notice describes as a caravan is, in fact, a building. In view of this, I will use the neutral term 'unit' from here on in to describe what is the subject of the notice.
4. All evidence given at the inquiry was given under oath.

The Notice

5. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. Powers transferred to me to correct or vary a notice can only be exercised where the correction or variation would not cause any injustice to either party.
6. The allegation refers to the 'stationing of a static caravan'. Ordinarily, such an action would not be defined as development for the purposes of section 55 of the 1990 Act. What is important is how a caravan is used. I acknowledge that the allegation refers to only one use, that is a use for 'permanent residential purposes (human habitation)'. Furthermore, there is no suggestion in the Council's evidence that the unit on site is used for any purpose other than for residential accommodation. However, the notice is not entirely precise in alleging that this is the purpose to which the unit is put. Indeed, the matter is muddled by a requirement in part 5 of the notice to 'cease to station or store caravans on the land'.
7. The appellants have understood that nothing but a use of the unit for human habitation is alleged, which is a term used in the definition of a caravan in section 29 of the Caravan Sites and Control of Development Act 1960 (the 1960 Act). Accordingly, no injustice would be caused were I to correct the allegation to include reference to this as the use to which the unit is put, as well as correcting the corresponding requirements so that these are consistent with the allegation.
8. On a separate matter, I find the description of the land to which the notice relates ambiguous. Three areas of land have been outlined on the plan attached to the notice. There is a wider parcel outlined in black and, within this, two smaller parcels outlined in green and red. It was confirmed that the identification of the green parcel on the enforcement notice plan is of no relevance to this case, and this is not mentioned in the notice. However, in its

identification of the land to which the notice relates, part 2 of the notice refers to both the land outlined in red and the land outlined in black.

9. The Council say that the material change of use has occurred only within the land outlined in red. The wider land was identified to reflect the parcel of ownership.
10. The notice would be more precise if it were to refer in part 2 to only one of the parcels identified on the plan. The appellants suggest that they had read the notice as relating to the wider parcel and I can see that their case was made on this basis. However, the appellants do not dispute that the unit used for accommodation and the other items listed in the allegation are all located within the land outlined in red.
11. In view of the above, I intend to correct part 2 of the notice so that the land to which it relates is identified as the wider parcel. I will also correct part 3 of the notice so that it is clear that the allegation relates only to the land outlined in red. For the reasons given above, I am satisfied that such corrections would cause no injustice in this case. Whether or not the allegation (as I intend to correct it) is correct, and whether the correct parcel of land has been identified as being subject to that allegation, are matters relevant to the ground (b) appeal.
12. My concerns regarding the remaining requirements of the notice relate to some of the matters raised by the appellants under their ground (f) appeal. It is, therefore, more appropriate to consider all of these matters together under ground (f).

Ground (b)

13. To succeed on ground (b) the appellants must demonstrate that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred.
14. It is the appellants' case that the matters stated in the enforcement notice are simply not correct, in that they do not reflect the development that has occurred on site. The appellants say that the unit on site is a building and that there has been a material change of use of this building to a single dwellinghouse.
15. Having regard to the above, important in this case is the definition of a 'caravan' provided at section 29 of the 1960 Act, which is '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)...'¹. In law, a caravan is only a caravan if it meets that description.
16. Also important is assistance in defining what is a building. The 1990 Act provides some definition of a building, which includes 'any structure or erection'². Also of relevance is the caselaw referred to by the parties. This includes *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, which was endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102. These identify three

¹ It lists exclusions to this, but these are not relevant to this appeal.

² section 336(1) of the 1990 Act.

- primary factors as decisive of what is a building. These factors are size, permanence, and physical attachment.
17. I have had regard to the appeal decisions that have been drawn to my attention, some of which consider whether or not the unit in question falls within the definition of a caravan, as well as whether or not the unit is a building. I will do the same.
 18. There is no dispute that the unit was designed for human habitation, that it was transported to the site as a single unit in around June 2012 and that, at that time, it was capable of being moved as a single unit from one place to another. In short, the agreed position is that, when it was brought onto the site, the unit was a caravan falling within the definition at section 29 of the 1960 Act. I have no reason to find otherwise.
 19. Notwithstanding the above, the appellants say that during the process of moving the unit into position, the axle broke, the wheels splayed and that the internal floor bowed upwards. The appellants say that works were carried out to put right this failure so that the unit could be used for its intended purpose. It is the appellants' case that, as a result of the failure of the unit and the subsequent works, the unit no longer falls within the definition of a caravan. They also say that these works were sufficient to render the unit a building.
 20. During the inquiry, Mr Cailles described the works that he undertook to the unit, assisted and/or observed by others, including his father. He said that the unit was elevated using jacks, which allowed him access to the supports that attach the axle and its wheels to the base of the unit. He forced these supports back into a vertical position. He said that the internal floor within the unit was cut away in the area of the axle supports, which allowed access to the axle supports and the ground below.
 21. Mr Cailles said that he then dug footings of around 3 foot in depth beneath the axle supports. These footings are shown on the diagram, drawn by Mr Cailles, which shows a cross section of the works he undertook³. On my inspection of the underside of the unit I saw two large, cylindrical, black tubes through which I observed what remained of the axle on either side of the unit. Mr Cailles described having cut the central part of the axle away. He said he put the cylinders into position on both sides of the unit, feeding a wire mesh into the cylinders and then pouring concrete into the footings and into the cylinder so as to encase the remains of the axle on both sides.
 22. Although I was not able to see the cement contained within the cylinders, at the site visit I saw the remains of the axle through the cylinders. This is also visible in the photographs provided in Mr Hoile's evidence. I have been given no reason to doubt Mr Cailles' evidence with regard to how the axle remains are held in position.
 23. In addition to the above, Mr Cailles described how he continued the concrete pour up to the level of the internal floor of the unit. This concrete pour is between the longitudinal beams that, with the latitudinal beams, form the frame that is at the base of the unit. This is also referred to as the sub-frame. What resulted from this are two large rectangular pads of concrete, parts of which I observed inside the unit, beneath the floor covering. Mr Cailles' cross

³ Appended to the evidence of Mr Hoile.

section diagram shows the resultant set concrete forms a 'T' shape starting in the dug out footings and ending within the floor of the unit.

24. The Council doubt whether the concrete slabs in the floor of the unit are part of, or connected in any way to, the concrete pillars encased in the black cylinders. In other words, it doubts whether the concrete forms a complete 'T' shape, as shown on Mr Cailles' diagram. I can understand why the Council has suggested this. At both the site visit and in Mr Hoile's photographs the timber planks (shuttering) beneath the concrete slabs are visible, and I can see that, rather than abutting the black cylinders, they overlap the top of the cylinder. I also acknowledge that this might be consistent with elements of evidence given by the father of Mr Cailles.
25. However, Mr Cailles' evidence, given under oath, is that the concrete poured into the footings and into the cylinders continues, and is part of, the concrete slabs in the floor of the unit. He confirmed that the wire mesh also continues into the rectangular slab. As I note above, Mr Cailles said that he carried out these works himself. His evidence on this was precise and unambiguous. It was also convincing, not least because his oral evidence was entirely consistent with his written evidence and his diagram. It provides a complete first hand account of the works that were undertaken to the unit, following it having been brought onto the site and its subsequent failure. I do not, therefore, find the contradictory evidence sufficient to find Mr Cailles' version of these events and his description of the works undertaken less than probable.
26. I find the extent of the works undertaken by Mr Cailles to be substantial. The two concrete structures not only provide central support for the unit, they also encase elements of the unit and have become integral parts of it. Although not undertaken by a person carrying on a business as a builder, the extent of the footings, the works to prepare for and reinforce the poured concrete, and the extent of concrete poured are more than ancillary works ordinarily carried out in preparation for the siting of a static caravan. I find these to be building operations that fall within the meaning in sections 55(1) and (1A) of the 1990 Act.
27. The concrete structures have encased the axle of the unit, anchoring it by some substantial means to the ground. Whilst there is no dispute that the wheels and the axle are not the usual means by which a static caravan would be supported, the axle is securely attached to the sub-frame. The axle and its means of attachment to the sub-frame could be cut, or the axle itself could be further cut, detaching it from the parts of the axle that are embedded in the concrete structures. However, the unit would still remain attached to the ground by reason of the concrete slabs that have become an integral part of the floor of the unit. To free the unit from the concrete 'T' shaped structures, it is likely that the slabs would have to be broken up and detach from the concrete that fills the cylinders. This would not be an easy task, bearing in mind the extent of concrete and the reinforcing mesh that is embedded within it. The works are likely to be substantial and would necessitate at least the partial demolition of the concrete structures. For these reasons, I do not regard the unit as being capable of being moved from one place to another.
28. Even if the concrete slabs were removed, it is likely that what would remain would be two large openings in the floor of the unit. These would, to my mind, mean that the unit would not be capable of human habitation.

29. Notwithstanding the above, I have had regard to the other means by which the unit is attached to the ground, including its services (e.g. electricity, drainage, etc.). The decking area and steps into the unit are also likely to be attached to the unit in some way. However, these are all the usual means by which a static caravan would be physically connected to the ground and these can usually be unattached with little effort. These means of attachment of the unit to the ground do not alone render the unit immobile.
30. Furthermore, at the site visit I noted that the unit is also held stable by means other than the concrete structures referred to above. These include a number of metal stands, referred to as axle stands in the evidence. There was, however, no suggestion that these had also been fixed in position and that they could not easily be moved or detached, should the unit be moved.
31. I can agree with the Council that an axle and wheels are not necessary for a static caravan to be moved from place to place. Furthermore, I cannot regard the deterioration of the sub-frame of the unit as decisive in finding that the unit is not mobile. The evidence indicates that such deterioration is to be expected in a static caravan of this age. I am persuaded that, in other circumstances, and with some minor repairs, bracing and additional support, the sub frame could support the unit, were it to be lifted.
32. However, none of the above changes my conclusions with regard to the effect of the concrete structures on the mobility of the unit and, if removed, whether the unit could be used for human habitation. For these reasons I find, as a matter of fact and degree, that the unit is not a caravan within the meaning of the 1960 Act.
33. In view of the above, I now turn to whether or not the unit is a building. For this I consider in turn each of the three tests referred to earlier in this decision.
34. The size of the unit is typical of a static caravan. There are no additions to the unit that increase the volume of the accommodation. Its size is such that, in other circumstances, it could be easily lifted, moved and/or transported as a single unit. Indeed, that is how it was brought to the site. However, the unit is not so small as to render it incapable of being regarded as a building. Its size is comparable to that of a small dwelling and it is large enough to easily accommodate all facilities required for this purpose.
35. Turning to the matter of permanence, the unit retains the appearance of a static caravan. The character of such static caravans is often considered to be temporary. The unit has, however, been in its current position since 2012 and the evidence indicates that it has not moved since this time. Its presence on the site for this period and beyond was clearly intended, having regard to the works undertaken to fix the unit to the ground. This, together with other physical changes, including the hard surfacing beneath and around the unit, give the character of the unit a degree of permanence.
36. I have already considered above the means by which the unit is physically attached to the land. I have found the works carried out to anchor the unit to the ground to be substantial; these are an integral part of the unit and it is not likely that these would easily be undone. Whilst I acknowledge that the two 'T' shaped structures are the only means by which the unit can be regarded as being permanently attached to the ground, this is sufficient for the unit to pass the test of physical attachment.

37. Having regard to all of the above, I find as a matter of fact and degree that the unit is a building.
38. As for the use of the building, although it was clearly intended to provide residential accommodation, it is the appellants' case that, following the works to secure the building in position, it was used for a period of some 6 months for the purposes of storage in association with the agricultural use of the land at that time. This is not disputed by the Council. Following the storage use, Mr Cailles says that he and his partner moved into the building and used it for residential accommodation; i.e. as a dwellinghouse.
39. Accordingly, the evidence indicates that the building was not constructed as a dwellinghouse. Rather there has been a change of use of the building to a dwellinghouse. I have been given no reason to find otherwise.
40. The matter alleged in the enforcement notice comprises a material change of use of the land. Whilst operations are listed in the allegation (i.e. decking and hard surfacing), it was confirmed that these works facilitate the alleged material change of use. For the reasons given above, I conclude that the matters alleged in the enforcement notice, as I intend to correct it, have not occurred. Accordingly, the appeal on ground (b) succeeds.
41. However, it does not necessarily follow that the notice should be quashed. I must consider whether the notice can be corrected and whether such a correction would cause injustice to any party. This was a matter that was discussed at the inquiry. The parties agreed that, should I conclude that the unit on site is a building, I should move on to consider whether or not the building and the use of it is lawful.
42. Dealing first with how the allegation could be corrected, my findings above mean that, to be correct, the notice should allege both operational development and a material change of use. The building operations should include the erection of a building. Furthermore, as the allegation refers to operations comprising decking and hard surfacing, it is only right that any correction to the notice should also refer to these matters.
43. As for the material change of use, my conclusions above mean that, for the notice to be correct, it should allege the material change of use of the building to a dwellinghouse. However, the notice also refers to 'a garden with domestic paraphernalia'. At the inquiry the Council confirmed that the land outlined in red on the enforcement notice plan reflects the extent of the residential use as alleged. The suggestion was that this is the planning unit relevant to the material change of use referred to in the notice.
44. There is no dispute that the residential use extends beyond the footprint of the building. Although both the land outlined in red and land beyond this is occupied by the appellants, the red land is occupied for a different primary purpose to that of the remaining land. Indeed, the red land is a distinct parcel that is entirely enclosed, with the building, by established hedgerow, fencing and a gate. From both my observations of the site, and from the photographs provided, I cannot see that there is an obvious use of the red land, other than for a purpose incidental to the dwellinghouse. Mr Cailles may well visit the red land when tending to his agricultural enterprise, and there may be some limited use of the red land in association with the enterprise (for example, for parking). However, I have no reason to conclude that the red land is not used

in a way that is physically and functionally separate from the use of the remainder of the wider Nuts Landing site. I am, therefore, satisfied that the land outlined in red is the extent of the planning unit for the purposes of the material change of use that the notice should allege.

45. Bringing all of the above together, for the allegation to be correct, the notice should allege the erection of a building, decking and hardstanding on the land outlined in red and the material change of use of the building to a single dwellinghouse.
46. In concluding as I have, and having regard to the parties' agreed position in these circumstances, I have no reason to find that injustice would be caused, were I to correct the notice as set out above.

Ground (d)

47. For the appellants to succeed on ground (d), they must demonstrate that on the date the enforcement notice was issued no enforcement action could be taken in respect of the breach of planning control stated in the notice, once corrected as I intend. The burden of proof is on the appellants and the test of the evidence is on the balance of probability.
48. Turning first to the operational development, section 171B(1) of the 1990 Act states that no enforcement action may be taken after the end of a period of 4 years beginning with the date on which the operations were substantially completed.
49. My conclusion that the unit on site is a building results mainly from the appellants' evidence of the works undertaken to anchor the unit in position, following it having been brought onto the site. Having regard to the extent and nature of these works, their completion signifies the date of substantial completion of the building on site. The evidence indicates that these works were carried out in June 2012. This is not disputed by the Council. The unit is also visible in the 2014 and 2017 aerial photographs of the site. Accordingly, it is more likely than not that four years have passed beginning with the date on which the building was substantially completed.
50. With regard to the decking, this provides access to one of the two doors into the building. An additional set of steps provides access to the other door. Although the appellants do not say when the decking was constructed, it seems likely that this would have been either when the building was substantially completed or when Mr Cailles commenced the use of the building as a dwellinghouse. Nevertheless, I can see that the decking and additional steps are visible in the 2014 and 2017 aerial photographs.
51. The hard surfacing within the red land forms a 'T' shape that goes partly beneath the unit. Mr Cailles refers to works to create a new means of access off Newman's Lane, prior to bringing the unit onto the site. He does not, however, indicate that these works included the hard surfacing within the red land. Notwithstanding this, the hard surfacing is visible in the 2014 and 2017 aerial photographs.
52. Having regard to the above, I am satisfied that, on the balance of probability, four years has passed since the decking and hard surfacing within the red land were substantially completed.

53. Turning to the material change of use of the building to a use as a single dwellinghouse, section 171B(2) of the 1990 Act states that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The appellants must demonstrate that the use has continued, substantially uninterrupted, during the four year period.
54. Mr Cailes' evidence is that he moved into the building, with his partner, in December 2012, and that he continuously occupied the unit as a dwellinghouse up until April 2016. He says that his daughter, Miss Cailes, moved into the building as he and his partner left to move into a property elsewhere. Also, that Miss Cailes has continuously lived in the building with her partner and, more recently, her child since April 2016. This is corroborated by the written and oral evidence, given under oath, of Miss Cailes, Ms Cole (Mr Cailes' partner), and a number of other witnesses who are either friends or members of the Cailes family.
55. None of the above is disputed by either the Council or any other interested party. Accordingly, I have no reason to conclude that the appellants' version of events regarding the use of the building is less than probable.
56. With regard to the land associated with the dwellinghouse, the current layout of the surrounding site appears similar to that shown in the 2014 aerial photograph. Furthermore, there is no suggestion that, when the use of the building as a dwellinghouse commenced, the surrounding land falling within the red line boundary was not used as it is at present.
57. For the reasons given above, it is more likely than not that the material change of use of the land and building occurred in December 2012 and that this use has continued, uninterrupted, since that time.
58. To summarise on the ground (d) appeals, it has been demonstrated that, on the balance of probability, at the time the enforcement notice was issued, no enforcement action could be taken in respect of the erection of the building, decking and hardstanding, and the material change of use of the building to a single dwellinghouse. For this reason, the ground (d) appeal succeeds.

Conclusion

59. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeals should succeed on ground (b) and the notice will be corrected.
60. I also conclude that, on the balance of probabilities, the appeals on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
61. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (f) and (g) do not need to be considered.

Formal Decision

62. It is directed that the enforcement notice is corrected by:
- In part 2 the deletion of the words 'edged red on the attached plan and relevant to Land Registry Reference DT92878 (edged black)' and their

substitution with the words '(Land Registry Reference DT92878) shown edged black on the attached plan'; and

- In part 3 the deletion of the words 'the material change of use of open land for permanent residential purposes (human habitation), including stationing of a static caravan together with decking, hard surfacing for parking of vehicles, and a garden with domestic paraphernalia' and their substitution with the words 'the erection of a building, decking and hardstanding on the land edged in red on the attached plan and the material change of use of the building to a use as a single dwellinghouse'.

63. Subject to the corrections, the appeals are allowed and the enforcement notice is quashed.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters	Counsel – 1 Pump Court
David Cailes	Appellant
Carley Cailes	Appellant
Bryan Hoile	Engineer
Roy Cailes	Family member or friend of the appellants
Kelly Cole	Family member or friend of the appellants
Marian Tarrant	Family member or friend of the appellants
Kim Hassall	Family member or friend of the appellants
Andrew Stevens	Family member or friend of the appellants
Christine Nutland	Family member or friend of the appellants
S Day	Family member or friend of the appellants
Suhnita Linda Robinson	Family member or friend of the appellants
Carol Marie Slater	Family member or friend of the appellants

FOR THE LOCAL PLANNING AUTHORITY:

Brendan Brett	Counsel – Francis Taylor Building
Mark Newman	East Dorset District Council
Emily Jones	East Dorset District Council
Roger Sewill	East Dorset District Council

INTERESTED PERSONS:

Diane White	Interested Party
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INQUIRY DOCUMENTS

ID1	Appeal decisions bundle
ID2	Council Tax Records
ID3	Statement from Diane White
ID4	List of amended requirements
ID5	Statement of Suhnita Linda Robinson
ID6	Updated vehicle movement data