



Appeal Decisions

Site visit made on 13 November 2023

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th December 2023

Appeal A Ref: APP/R3325/C/22/3309153

Appeal B Ref: APP/R3325/C/22/3309154

Land at 39 The Avenue, Stoke Sub Hamdon, Somerset, TA14 6QB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Alan Terry (Appeal A) and Ms Mickaela Terry (Appeal B) against an enforcement notice issued by South Somerset District Council.
- The notice was issued on 28 September 2022.
- The breach of planning control as alleged in the notice is without planning permission: the stationing of a mobile home within the residential curtilage of a dwelling for the purpose of use as an independent unit of residential dwelling, shown (in the approximate position) coloured blue on the plan; and the erection of a raised wooden decking area (measuring above 30cm from natural ground level) situated to the front of the mobile home, shown (in the approximate position) coloured green on the plan.
- The requirements of the notice are to: i) permanently cease the unauthorised use of the land by the stationing and use of the mobile home as an independent unit of accommodation; ii) permanently remove the entire unauthorised raised wooden decking area from the land; and (iii) remove any residential paraphernalia, debris or materials arising from compliance with the above requirements from the land.
- The period for compliance with the requirements is three months from the date the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended (1990 Act).

Summary decisions: The appeals are dismissed and the enforcement notice is upheld with a correction and variation in the terms set out in the Formal Decisions.

Preliminary Matters

1. Whilst no appeals on ground (c) have been brought, the appellants contend that the mobile home is/was solely used for purposes incidental to the enjoyment of the main dwelling. On this basis, they say this element of the matters alleged in the enforcement notice (EN) would not need planning permission. The appellants further contend that the decking is free-standing, and would again not need permission. These arguments are more akin to a ground (c) appeal, being that the matters alleged do not constitute a breach of planning control. I have therefore addressed this additional ground of appeal in my reasoning.
2. Whilst the appeal property is registered to Michaela Terry, for the purpose of the banner heading, I have used the spelling "Mikaela", as set out in the appeal form.

Appeals on Ground B and C

3. Pursuant to ground (b), the appellants contend that parts of the matters alleged have not occurred. The appeals on this ground appear limited to the stationing of the mobile home for use as an independent unit of residential accommodation. To succeed on this ground, the burden is on the appellants to demonstrate, on the balance of probability, that the matters alleged have not occurred. As a legal ground of appeal, the planning merits of the alleged development are not relevant. I should also highlight that, irrespective of whether the matters alleged have now ceased, this ground must be determined with regard to the situation as at the time the EN was issued.
4. If the matters alleged have occurred, then the appellants say they do not constitute a breach of planning control. The burden on this ground (c) appeal again falls on the appellants to demonstrate, on the balance of probability, that the matters alleged do not constitute a breach of planning control. The planning merits are again not relevant.

Main Issues

5. The main issues with regards to the appeals on these grounds are:
 - whether the matters alleged had occurred prior to the EN being issued;
 - whether use of the mobile home is/was incidental to the enjoyment of the main dwelling; and
 - whether the decking constitutes development, and if so, whether it would benefit from any permitted development rights.

Reasons

Mobile Home

6. A Planning Contravention Notice (PCN) was issued by the Council in April 2022 in respect of the alleged breaches of planning control. Mr Terry's response to the PCN says that the mobile home was first brought on to the site in October 2018. He goes on to say that the mobile home was first used as temporary residential accommodation in March 2020. In themselves, these responses are indicative of the mobile home having been used as an independent unit of residential accommodation at the time the EN was issued.
7. Whilst the appellants originally alleged that the mobile home had always remained incidental to use of the main dwelling (and had not been let out on Airbnb), they have since conceded that it has been let out on Airbnb. Reviews on the website show that the mobile home has been let out as far back as July 2020, long before the EN was issued. Notwithstanding the appellants' comments that the mobile home is no longer used in this way, customer reviews on the website show it has been let out as recently as November 2023, with hundreds of reviews during this intervening period.
8. The mobile home is advertised as suitable for a "little getaway", which is indicative of it being used as a holiday let. It contains all the facilities necessary for day-to-day living, cooking, bathing and sleeping, thereby allowing it to be used independently of the main dwelling. Whilst the advertisement says the host's garden is available for visitors to enjoy, the physical arrangement of the site and the apparent exclusive possession of the mobile home given to

visitors, mean I can be satisfied that it is used independent of the appellants' main dwellinghouse when it is let out.

9. On the available evidence, it therefore seems clear that the mobile home had been used as an independent unit of residential accommodation prior to the EN being issued. This use appears to remain ongoing.
10. Such use would effectively constitute a sub-division of the appeal site to form two separate residential units, and would not be incidental to the enjoyment of the main dwelling. Planning permission would therefore be required for this material change of use (MCU).
11. Insofar as relevant to the stationing of the mobile home for use as an independent unit of residential accommodation, the appeals on grounds (b) and (c) therefore fail.

Erection of Decking

12. The appellants say that the decking would not require planning permission, as it is a free-standing structure which is not fixed to the mobile home. Notwithstanding this position, I observed the decking to be a substantial structure which extends along the entire frontage of the mobile home. It connects into steps to a patio to the rear of the main dwelling, as well as a fence which runs along the rear boundary to this patio. The supporting structures to the decking appear to be dug into the ground, and there are also brackets which connect the raised platform to the mobile home. On account of these factors, the decking has a degree of physical permanence which helps facilitate stable access into the mobile home. From my own observations, the decking would therefore constitute development, as per s55 of the 1990 Act, and no substantive evidence has been presented by the appellants to demonstrate otherwise.
13. As mentioned, use of the mobile home as an independent unit of residential accommodation has effectively sub-divided the appeal site to form two separate planning units. This would mean that the mobile home is no longer within the curtilage of the main dwelling, and any permitted development rights which allow certain development within the curtilage of a dwellinghouse would not be applicable to the mobile home.
14. In any event, the "construction or provision of a verandah, balcony or raised platform" is expressly excluded from the permitted development rights conferred by Article 3 and Classes A and E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Given the decking in this instance is raised (measuring above 30cm from ground level), it would therefore not benefit from these permitted development rights if it were within the curtilage of the main dwellinghouse. In turn, the decking would constitute development requiring planning permission.
15. For completeness, there is no suggestion from the appellants that the raised decking had not been erected at the time the EN was issued, and this element of the matters alleged was evident on my site visit. In turn, there is nothing before me to suggest that erection of the decking had not occurred at the time the EN was issued.
16. Insofar as they relate to the decking, the appeals on grounds (b) and (c) therefore also fail.

Appeals on Ground D

17. In terms of the ground (d) appeals, the appellants contend that, as at the date the EN was issued, no enforcement action could be taken in respect of the matters alleged. Whilst this argument appears limited to the decking only, I have addressed both elements of the matters alleged for completeness.
18. As with the appeals on grounds (b) and (c), planning merits are not relevant to the outcome of this ground. The burden again falls on the appellants to demonstrate, on the balance of probability, that the breaches of planning control were immune from enforcement at the date the EN was issued.

Main Issue

19. The main issue with regards to the appeals on ground (d) is therefore whether the matters alleged, or any part of those matters, were immune from enforcement at the time the EN was issued.

Mobile Home

20. As moveable structures, mobile homes are not usually considered as buildings, and there is no suggestion from either party that I should conclude otherwise. Indeed, whilst the decking does add a limited degree of permanence to the structure, the mobile home appears otherwise capable of being moved and transported elsewhere. In turn, I have proceeded on the basis that the mobile home is a caravan and not a building, as defined in s29(1) of the Caravan Sites and Control of Development Act 1960.
21. As per s171B of the 1990 Act, to succeed on this ground, the appellants would therefore need to demonstrate that the stationing of the mobile home for use as an independent unit of residential accommodation, which would constitute a material change of use (MCU) of the appeal site, had subsisted continuously for a period of ten years before the EN was issued. Put another way, the effective sub-division of the site to form two separate units of residential accommodation would need to have subsisted for a period of ten years before the EN was issued.
22. As mentioned, Mr Terry's response to the PCN says that the mobile home was first brought on to the site in October 2018, and that it was first used as temporary residential accommodation in March 2020. Aerial images of the appeal site are consistent with this position, as they show there was no mobile home on the appeal site in June 2018. There is also no suggestion from either party that there was any independent residential use separate from the main dwelling before this time.
23. The EN was issued on 28 September 2022. This means any use of the mobile home as an independent unit of residential accommodation had not subsisted for a period of ten years before the EN was issued. In turn, this element of the matters alleged was not immune from enforcement action at the time the EN was issued.
24. It is worth noting that even if the four-year immunity rule had applied (which is applicable to operational development), the requisite period of time to benefit from immunity would still not have been obtained before the EN was issued.

Erection of Decking

25. To succeed on ground (d) with regards to the erection of the raised decking area, the appellants would need to demonstrate that this operational development was substantially completed more than four years before the EN was issued (noting there is no suggestion that it is integral to the MCU).
26. The appellants have submitted very little evidence to confirm when the raised decking area was erected. However, Mr Terry's response to the PCN says that the mobile home was brought on to the site in October 2018. The raised decking wraps around the footprint of the mobile home, which means it would undoubtedly have been erected (and substantially completed) after the mobile home was brought on to site. The aerial images provided by the Council are consistent with this position, as the relevant part of the appeal site is shown to be clear of any physical development in June 2018.
27. This means the decking was likely erected sometime after October 2018, when the mobile home was first brought on to site. The appellants have presented no alternative timeline to suggest otherwise. Given that the EN was served in September 2022, the raised decking would not have been substantially complete more than four years before the EN was issued. The operational development comprising the erection of raised decking would therefore not have been immune from enforcement at the date the EN was issued.
28. The appeals on ground (d) therefore fail.

Other Matters

29. Mr Terry's response to the PCN says he has sometimes used the mobile home for sleeping, to avoid climbing stairs in the main dwelling. The responses also say that the mobile home has been used on occasion to house homeless people and key workers. However, as the planning merits of the alleged development are not relevant to consideration of grounds (b), (c) or (d), these factors cannot affect the outcome of the appeals.
30. I have made a minor correction to the matters alleged in the EN which allow them to read better. I have also made a minor variation to the requirements to ensure they accurately reflect the matters alleged. This is because the requirement to cease the unauthorised use of the land did not explicitly refer to "residential" accommodation. Given that the requirements would likely have been interpreted as a requirement to cease the independent residential use of the mobile home, I am satisfied that these amendments do not cause injustice to either party.

Conclusion

31. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variation, as set out below in the Formal Decisions.

Formal Decisions

32. It is directed that the enforcement notice is corrected by:
 - (a) substituting the words "for the purpose of use as an independent unit of residential dwelling" in paragraph 3.1 with "for use as an independent unit of residential accommodation"and varied by:

- (b) deleting requirement (i) from paragraph 5 and replacing it with
“(i) Permanently cease the stationing of a mobile home for use as an independent unit of residential accommodation.”

33. Subject to this correction and variation, the appeals are dismissed and the enforcement notice is upheld.

James Blackwell

INSPECTOR