



Appeal Decision

Site visit made on 5 December 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2023

Appeal Ref: APP/X5990/X/22/3309062

Ground Floor Flat, 41 Fifth Avenue, London, W10 4DL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mrs Emily Bengue against the decision of City of Westminster Council.
 - The application ref 21/03032/CLEUD, dated 7 May 2021, was refused by notice dated 15 August 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is 'There have been no building operations. This certificate is submitted to confirm that the non-permanent garden office caravan is a caravan as defined in the relevant legislation and not a building that has been undertaken by a building operation. It is used incidentally to the dwelling, and therefore there has been no development under S55 of the TCPA.'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description appearing in the banner heading above is taken from the application form for a lawful development certificate for an existing use or operation or activity (LDC). For the purpose of its assessment, the Council have refined the description of development to 'the placement of a portable caravan in the rear garden'. The appellant has relied on the amended description for the purpose of the appeal and therefore so shall I.

Main Issue

3. The main issue is whether or not the Council's decision to refuse the LDC was well founded.

Reasons

4. The site consists of a ground floor flat and associated rear garden area within a terrace of predominantly 2-storey residential properties. The subject of the appeal is an office unit with glazing on one side. According to the submitted plans, the unit measures some 4.8 x 2.7 x 2.5(h)m. It is sited to the rear part of the garden and extends close to the side and rear boundary walls with neighbouring gardens.
5. The unit is set on the ground by way of adjustable steel pads. It has an electrical connection for power and lighting. The appellant confirms that no gas or water connections are present. The unit's primary function is as incidental space used in conjunction with the occupancy of the ground floor flat at

- 41 Fifth Avenue. At the time of my site inspection, the unit provided for 2 workstations, shelving and storage.
6. It is the appellant's contention that the unit falls within the definition of a 'caravan' such that, in conjunction with its use incidental to the use of the dwelling at No41, it neither constitutes operational development nor results in a material change of use of the site and it is not therefore 'development' for the purposes of s55 of the TCPA 1990.
 7. The relevant definition of a 'caravan' is provided by s29 of the Caravan Sites and Control of Development Act 1960. It states that "*caravan*" means 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, but does not include (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.
 8. The definition is augmented by s13 of the Caravan Sites Act 1968 in relation to twin-unit caravans which provides the definition: *A structure designed or adapted for human habitation which— (a) 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 (b) 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).* Dimension limits are also specified.
 9. Both definitions require that a 'caravan' is a structure designed or adapted for human habitation. 'Human habitation' is not defined in the Acts. The Oxford English Dictionary defines 'habitation' as 'The action of dwelling in or inhabiting as a place of residence; occupancy by inhabitants'. Other dictionary definitions include habitation as 'the act of living in a building' or the 'activity of living somewhere'.
 10. Despite an electrical power supply and limited furniture, the unit does not have the rudimentary provisions to provide for that function; nor has it been adapted for that purpose. As a matter of fact and degree, the absence of a water supply, kitchen, toilet, shower/bath or bed, leads me to the conclusion that it does not, in itself, provide the necessary facilities for human habitation. It therefore lies outside of the statutory definitions of a 'caravan'.
 11. In support of the appeal, the appellant refers me to a number of appeal decisions. These are substantially concerned with the establishment and application of the tests of the construction, mobility and size of a 'caravan'. However, consequent to my finding above, those decisions are of limited weight in the appeal.
 12. According to the appellant's evidence the structure was assembled on site and is described as portable. Once constructed, the ability to relocate the structure as a single unit is confirmed by the manufacturer in the appellant's evidence.
 13. Whether or not a moveable structure constitutes a building for the purposes of s55 of the TCPA 1990 must be determined on the individual case circumstances. In *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, the tests of size, permanence and physical

attachment were established as decisive of what was a 'building'. The tests were endorsed in the Court of Appeal¹ having regard to the planning context.

14. According to the appellant's evidence, the subject structure can be ordered complete such that it can normally be transported to site and moved into position as a consolidated unit. However, in this instance, the enclosed nature of the site and subsequent prohibitive cost of craning the building into position resulted in the alternative of the unit arriving in kit form to be assembled once carried through the dwelling. In the circumstances, the structure was finally constructed on site such that a building operation occurred.
15. There is little by way of attachment to the ground. The raised floor is simply levelled by adjustable metal pads resting on the ground. However, as a structure of some considerable weight and extending for much of the width of the plot, there is little capacity to freely move the unit within the confines of the rear garden. In my view, the operation of doing so within the site would not be possible without specialist heavy lifting equipment.
16. Pursuant to my finding that the structure is not a 'caravan', having regard to the above and the substantial construction of the unit along with its siting to enable use of the remainder of the outdoor amenity space, I find that it is more likely than not to have a high degree of permanence. Furthermore, the evidence of the Council indicates the unit has already been in place since before April 2021 such that the physical change to the site has persisted for some time.
17. Taking those matters together, the balance of evidence leads me to the conclusion that the final structure is a 'building' for the s55(1) of the TCPA 1990. Accordingly, in contrast to the appellant's claim, 'development' has taken place as a matter of fact and degree.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the placement of a portable caravan in the rear garden was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Hitchcock

INSPECTOR

¹ *Skerritts of Nottingham Ltd v SSETR (No. 2)* [2002] EWCA Civ 5569