



Appeal Decision

Site visit made on 19 December 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/P1560/C/22/3304982

Land to the North East side of Lanchester Avenue (Known as 8 Lanchester Avenue), Jaywick, Clacton-On-Sea, Essex CO15 2LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Colin Blanchard against an enforcement notice issued by Tendring District Council.
- The notice was issued on 1 July 2022.
- The breach of planning control as alleged in the notice is described as “the stationing of a mobile home for residential purposes represents change of use of land for which planning permission is required and not obtained”.
- The requirements of the notice are:
 - (i) Cease the use of the Land for the stationing of a caravan for residential occupation.
 - (ii) Remove the caravan from the Land, including fencing and residential paraphernalia.
 - (iii) Remove all associated fixtures, fittings including electricity connections, gas bottles and water connections and other items associated with residential use
 - (iv) Remove all non-organic matter including hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its condition and appearance prior to the breach.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld, with corrections and a variation, as set out below in my Formal Decision.

The Notice

1. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990 (the Act), which relates to the content and effect of an enforcement notice.
2. Section 2 of the Notice specifies the land to which it relates with reference to a plan, which outlines the Land in red. Representations by an interested party advise that part of the Land indicated on the plan is within an adjoining garden. The main parties agree that the alleged breach does not extend onto the neighbouring land. The plan can therefore be amended to remove that area without injustice to the Council or the appellant.

The appeal on ground (b)

3. Appeals on ground (b) are made on the basis that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.
4. The appellant’s case on ground (b) is twofold. Firstly, that what has occurred is the erection of a dwelling, rather than the material change of use comprising the stationing of a residential mobile home. Secondly, that the lawful use of the

land is residential in any event, and that there is therefore no material change to a residential use.

5. The second limb of the appellant's case is an argument which goes to ground (c) of section 174 of the Act, rather than ground (b). Ground (c) is that that the alleged breach is not a breach of planning control. Although the appellant has not explicitly made an appeal on ground (c), I have considered the appellant's submission on this point as an appeal on ground (c). There is no prejudice to the Council in doing so since they have had the opportunity to rebut the appellant's submissions.
6. Section 55 of the Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(1A) states that "building operations" includes other operations normally undertaken by a person carrying on business as a builder. The definition of a building in Section 336(1) of the Act also includes any structure or erection, and any part of a building.
7. In terms of whether the mobile home is a building, I have been referred to various judgements of the courts¹. The crux of the matter is whether the mobile home should be considered a building on the basis of its size, permanence and attachment.
8. Regarding size, the mobile home is not substantial in its proportions, such that it must be constructed on the land, and mobile homes of this size are commonly transported on the public highway as a single unit. In that respect, it meets the Caravan Sites and Control of Development Act 1960 definition of a caravan², and the appellant refers to it as such. Although it is larger than many domestic sheds, it is not so large that it must necessarily be considered a building. It is also significantly smaller than the structures considered in the *Skerritts* and *Woolley Chickens*³ judgements quoted by the appellant.
9. In terms of permanence, the caravan retains its A-frame and hitch and remains on wheels, and with power lines running at a low level above the caravan it is likely to have been towed or manoeuvred onto the site without the use of a crane. Its underside has not been enclosed by what the appellant refers to as 'external skirting structures', and the mobile home has not been extended. Below the mobile home the ground remains largely unaltered, retaining elements of grass and other vegetation in the absence of a solid hardstanding base. It could be moved within, or from, the land relatively quickly and simply, without any dismantling or deconstruction, save for the uncoupling of services in a manner not dissimilar to other mobile caravans. Although the appellant advises the mobile home will last for many years, it could be replaced with relative ease.
10. The appellant intends to live in the mobile home for a period of up to 12 months to obtain planning permission and commence construction of a new dwelling, and potentially for a further period during construction. These are not significant periods of time in the context of permanent residential use.

¹ Including *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2000] EWCA Civ 5569; [2000] JPL 1025; *Barvis v SSE* [1971] 22 P&CR 710; *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin); and others.

² a structure designed or adapted for human habitation which is capable of being moved from one place to another

³ *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

11. I also note the appellant's possible ongoing use of the caravan on the land (but not necessarily in the same location) in association with a new dwelling, in the event that one is erected on the land. However, that is far from certain, and I attach very little weight to it.
12. In relation to attachment, the wheels and axle of the caravan and its stabiliser legs are supported by concrete blocks and timber boards, and stands further support the frame in a similar manner. On either side, chains attach the frame to small portable weights, but those weights are not themselves attached to the ground. Gas bottles connect externally, as does water underneath the caravan, served from a tap above ground near the roadside, and connected via a pipe running through a shallow ditch. A waste pipe running above ground under the caravan connects to unspecified underground wastewater services.
13. I have not been advised of the weight of the caravan, but it is largely raised off the ground, and the need for chains to improve its stability is indicative of its limited attachment. It would be relatively simple to detach the caravan and move it on, or from, the land, leaving very little evidence it had been there. It appears likely that it could be towed off the land, without the need for a crane. In my view the setting up of the caravan for residential use did not amount to a building operation, or to other operations normally undertaken by a person carrying on business as a builder.
14. Considering all these matters together, in my judgement, the caravan is not a building for the purposes of section 336 of the Act. What has occurred does not therefore amount to the erection of a dwelling.
15. I note the appellant's view in the alternative that the development could amount to "other operations" as defined in Section 55(1) of the Act, rather than "building operations". However, in that event, the development would not be a building operation, and would not be the erection of a building. In any case, very limited operations have occurred and, of the potential 'operations' the appellant cites, only moving the caravan into position within the Land has occurred in this case. The development is therefore not the carrying out of other operations under Section 55(1), and the operations that have occurred do not result in the development constituting a building.
16. In conclusion, I find that the mobile home is not a building and that the alleged breach of the material change of use of the Land for the stationing of a mobile home for residential use has occurred. The appeal on ground (b) therefore fails.

The appeal on ground (c)

17. As set out above, an appeal on ground (c) is made on the basis that the alleged breach of planning control stated in the notice does not constitute a breach of planning control.
18. The appellant's case is that the Land has a lawful residential use and therefore that any change to the siting of a caravan for residential use does not amount to a material change of use. It is a material change of use of land which constitutes development under section 55 of the Act, and not merely any change, and the alleged breach omits reference to 'material' in Section 3 of the Notice.

19. Nevertheless, the appellant has clearly considered the appeal on the basis of an alleged material change of use, and the Council has responded to it. Therefore, there would be no injustice to the appellant or the Council were I to correct the Notice by deleting the allegation and replacing it with, "Without planning permission, the material change of use of land comprising the stationing of a mobile home for residential purposes."
20. In terms of previous use, the Council consider the Land to have a nil use, and have provided aerial photographs which show no evidence of active residential occupation on the land in 2006 and 2017.
21. I have seen little to support the view that the Land falls within an area which is a caravan site. Even if many of the residential plots in the area originally contained caravans, I have been provided with no evidence of any planning permission or certificate of lawfulness granted encompassing the Land. Neither have I seen evidence of residential use of the Land for a continuous period of 10 years at any time. I note the presence of a caravan on land adjacent, but that in itself is not indicative of lawful use of the Land for residential use.
22. Therefore, on the balance of probabilities, with the evidence before me, the alleged breach amounts to a material change of use of the Land. The appeal on ground (c) fails, and I will correct the Notice to make reference in the allegation to a 'material' change of use of the Land.

The appeal on ground (g)

23. Appeals on ground (g) are made on the basis that the time given to comply with the notice is too short.
24. In simple terms, the Notice seeks to remedy the breach of planning control by requiring the cessation of the residential use and the removal of the caravan and associated fixtures, fittings, connections and materials, and restoring ground levels following those works. It requires these actions to be carried out within 3 months.
25. The appellant advises that his financial situation requires him to work part time, despite being in his seventies. He is concerned that too short a time period for compliance could lead to the possibility of him becoming homeless, being unable to continue his work and potentially becoming destitute.
26. On account of his age, I must have regard to the Public Sector Equality Duty (PSED) set out under Section 149 of the Equality Act 2010 (EA 2010), and its three aims of eliminating discrimination, advancing opportunity and fostering good relations.
27. The appellant intends to apply for planning permission for a new dwelling on the land, but the Council advise that no application has been made. The Council also states its pre-application advice suggests a new dwelling on the land, in Flood Zone 3, would be unlikely to be supported. More than 12 months have passed since the Council's pre-application advice. I have not seen convincing evidence that additional time is likely to result in an imminent grant of planning permission for a new dwelling.
28. 3 months is a short period of time for the appellant to seek alternative accommodation and restore the land to its former condition, particularly given his age and circumstances. At the same time, consideration must be given to

the flood risk associated with residential occupation of a caravan/mobile home in Flood Zone 3, and the harm arising to the character and appearance of the area. Even if other residential caravans are found in the area, Annex 3 of the National Planning Policy Framework describes caravans and mobile homes for permanent residential use as Highly Vulnerable, and the Planning Practice Guidance⁴ states that Highly Vulnerable development should not be permitted in Flood Zone 3 (irrespective of the sequential or exceptions tests).

29. Given the very limited prospect of planning permission being granted within the 12 month period sought by the appellant, a compliance period of that length is not necessary. However, a longer period of 6 months would provide greater opportunities for the appellant to find alternative accommodation or living arrangements, and may facilitate finding a buyer for the mobile home. This would reasonably balance the appellant's need whilst dealing with the planning harm with the appropriate expediency.
30. As dismissing the appeal and upholding the Notice would require the appellant to leave his home, Article 8 of the Human Rights Act 1998⁵ is engaged. Article 8 is a qualified right, and interference with it in this instance would accord with the law and be in pursuance of legitimate aims associated with flood risk, including risk to life, and harm to the character and appearance of the area.
31. A longer period for compliance of 6 months would be both proportionate and necessary, and would be reasonable in the circumstances. The protection of the public interest cannot be achieved by means that would be less interfering with the appellant's rights.
32. I have had due regard to the PSED, but the risk to life arising from flood risk and harm to the character and appearance of the area outweigh the benefits of the development in terms of eliminating discrimination against a person with the protected characteristic of age, advancing equality of opportunity for him and fostering good relations between the appellant and others. I conclude that it is proportionate and necessary to dismiss the appeal.
33. I shall therefore vary the notice to extend the period to 6 months. The appeal on ground (g) therefore succeeds to that extent.

Conclusion

34. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Decision

35. It is directed that the enforcement notice is corrected by:
- The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
 - The deletion of the words "the stationing of a mobile home for residential purposes represents a change of use of land for which planning permission is required and not obtained" in Section 3 of the notice and the substitution of the words, "Without planning permission, the material change of use of land comprising the stationing of a mobile home for residential purposes."

⁴ Paragraph: 079 Reference ID: 7-079-20220825

⁵ The right to respect for private and family life, home and correspondence.

36. And varied by:

- The deletion of "3 months" and the substitution of "6 months" as the time for compliance in Section 6 of the Notice.

37. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Peter White

INSPECTOR



Plan

The plan referred to in my decision dated 23 February 2024

Peter White BA(Hons) MA DipTP MRTPI

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Not to scale

