



Appeal Decisions

Site visit made on 16 April 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2024

Appeal A Ref: APP/D1780/C/24/3340152

Appeal B Ref: APP/D1780/C/24/3340153

Land at 36-38 Witts Hill, Southampton SO18 4QH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mrs Katherine Kelly (Appeal A) and Mr David Kelly (Appeal B) against an enforcement notice issued by Southampton City Council.
 - The notice was issued on 8 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building.
 - The requirements of the notice are: (i) Remove the building from the land; and (ii) Remove all resulting materials from carrying out step (i) from the land.
 - The period for compliance with the requirements is one month.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Ground (b) appeals

2. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. Since ground (b) appeals are concerned strictly with matters of fact and law, planning merits considerations are not before me.
3. The notice alleges the erection of a building. To succeed on this ground, the appellants must show that what has been set up at the appeal property is not, as the Council argues, a building. The relevant test of the evidence is on the balance of probability.
4. The appeal property contains a semi-detached dwelling. The unit described by the Council as a building is situated in the front garden. The unit has a timber frame superstructure, with timber boarded sides, a timber floor and a roof covered with metal sheeting. The sides are fitted with UPVC framed windows and a door. The superstructure is fixed by bolts to a metal trailer chassis fitted with a pair of wheels, a jockey wheel and a drawbar. The chassis and superstructure stand on an earth surface and are supported above the ground by the wheels and by fold out metal legs, set in a vertical position and resting on loose concrete blocks. Additional upright metal supports are provided at the ends, also resting on loose blocks.

5. Internally, the unit contains a seating/sleeping area and a kitchenette including an LPG cooker, water container and sink. In addition, there is bench seating with a table, as well as a WC with a chemical toilet and washbasin. The unit has clearly been designed for human habitation and is in use for purposes incidental or ancillary to the use of the dwelling.
6. A building is defined in s336(1) of the Town and Country Planning Act 1990 as follows: '*...includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.*' Relevant case law confirms that three primary factors are determinative of what constitutes a building, these being size, permanence and physical attachment¹. No one factor is decisive.
7. A caravan on the other hand is defined in s29(1) of the Caravan Sites and Control of Development Act 1960 as follows: '*...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 rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.*' As set out in relevant case law, a mobile caravan would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment².
8. At s13, the Caravan Sites Act 1968 extends the definition of a caravan to include twin-units, whilst also excluding from that definition a twin-unit exceeding any of the following dimensions-20 metres in length, 6.8 metres in width and 3.05 metres in height as measured internally from the floor at the lowest level to the ceiling.
9. At around 5 metres in length and 2.5 metres in width, with an internal height from the floor to ceiling of 2.9 metres, the unit is comparable in scale to a modest residential outbuilding, such as a single garage. Even so, the unit does not exceed any of the maximum dimensions for a caravan set out in the 1968 Act. The unit is of a size not dissimilar to that of many touring caravans. The size and appearance of the unit is not dissimilar to that of a shepherd's hut, which ordinarily would be regarded as falling within the definition of a caravan. Consequently, its size does not necessarily mean that the unit constitutes a building.
10. Relevant case law makes it clear that permanence should be construed in terms of significance in the planning context³. The unit occupies a prominent location at the front of the property and is perceived as a conspicuous, solid manufactured feature in the surroundings. There is limited physical impediment however to movement of the unit. Given that the superstructure appears sound and the chassis is in good condition, there is little obvious to suggest that the unit is unroadworthy or that it would otherwise be unsafe to move, for example by attaching a suitable motor vehicle to the drawbar.
11. There is little which physically prevents the unit from accessing the public highway. Although the unit may not have been moved off-site to date, that does not necessarily equate to an inability to do so. Removing one or two of

¹ *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No. 2)* [2000] EWCA Civ 5569; *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co* [1949] 1 KB 385

² *Measor v SSETR & Tunbridge Wells DC* [1999] JPL 182

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

the low fencing panels at the front of the property would be sufficient to afford access to the highway and would be a relatively easy task, probably accomplished in a matter of minutes. The open strip of land between the property and the highway might be in separate ownership. In practice however that is unlikely to preclude movement of the unit, particularly as the appellants' evidence suggests that they have a right to access and park there.

12. In any event, the unit does not have to be capable of moving on its own wheels and axles to fall within the definition of a caravan; it is sufficient that the unit would be mobile in the sense of it being picked up intact and lifted onto a lorry by crane or hoist. There is little to indicate that the unit could not be moved in such a fashion. The implications of the ability to move the unit off-site are that its physical presence at the property and the associated visual impacts are unlikely to be permanent. Therefore, in my view the unit does not exhibit a similar degree of permanence to that generally associated with a building.
13. In relation to attachment, there are no works which physically connect the unit to the ground, such as walls or foundations, nor are utilities provided. The unit rests on the ground surface by means of its wheeled chassis and the upright supports. There is little to suggest that the unit weighs significantly more than, say, a large touring caravan or a static mobile home. The supports are provided primarily to stabilise the unit and to prevent movement. It is highly doubtful that the unit would be able to rest securely on the ground simply by means of its own weight, without requiring support or anchoring. Whilst the unit was constructed at the property, that does not weigh greatly in favour of it constituting a building. There is nothing in the definition which prevents a caravan from being constructed in situ.
14. Provision of supports to the chassis is also entirely consistent with what would ordinarily happen when a caravan is stationed on land. Raising the legs and removing the other supports prior to moving the unit is likely to be a straightforward matter and the work of little more than a few minutes. As a result, in my view the unit also does not exhibit a similar degree of physical attachment to the ground to that generally associated with a building.
15. Drawing the above matters together, based on the evidence before me, as a matter of fact and degree and on the balance of probability, in my view the unit is highly unlikely to constitute a building. Rather, in all likelihood the unit satisfies the definition of a caravan. It follows that the appellants have been able to show that the erection of a building as alleged in the notice has not in fact occurred and the ground (b) appeals succeed.

Conclusion

16. For the reasons given above I conclude that the appeals should succeed on ground (b). Accordingly, the enforcement notice will be quashed.

Stephen Hawkins

INSPECTOR