
Appeal Decision

Site visit made on 1 August 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities, and Local Government

Decision date: 08 August 2024

Appeal Ref: APP/K0940/X/24/3341669

Land and former depot building to the North West of Helian, Plumpton, Ulverston, LA12 7QN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Woods against the decision of Westmorland and Furness Council.
 - The application Ref SL/2023/0646, dated 25 August 2023, was refused by notice dated 28 September 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of a Prowler travel trailer as a single dwelling house began more than four years before the date of this application.
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Decision: the appeal is dismissed

Procedural matters

1. I have taken the description of the use for which the LDC is sought from the Council's formal Decision Notice. I am satisfied that there is no dispute or confusion about the use described.

Reasons

2. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
3. Section 1721B (2) of the 1990 Act states that in respect of the change of use of *any building* to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years (emphasis added). There is no

dispute that the trailer has the distinctive characteristic of a dwellinghouse in terms of its ability to afford to those who use it the facilities required for day-to-day private domestic existence¹. There is also no dispute that the trailer has been occupied continuously for a period in excess of four years. The question that arises is therefore whether the Prowler travel trailer constitutes 'any building' for the purposes of section 171B(2) of the 1990 Act.

4. The term 'building operations' is defined for the purposes of section 55(1)(a) of the 1990 Act as including (a) demolition, (b) rebuilding, (c) structural alterations of or additions to buildings, and (d) other operations normally carried on by a person in business as a builder. Section 55 (1)(a) of the 1990 Act must be read in conjunction with section 336(1) of that Act, which defines a 'building' as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
5. The approach of the courts in construing the definition of a building has been to ask first whether what has been done has resulted in the erection of a 'building': if so, the courts should want a great deal of persuading that the erection of it had not amounted to a building or other operation. The courts have also identified that there are three primary factors that are decisive of what constitutes a building: size, permanence and physical attachment. None of the factors are necessarily decisive but greater weight may be given to any one factor over the others.
6. In relation to size, the Prowler travel trailer was clearly not constructed on site. It was constructed as a purpose-built trailer by a manufacturer and has been brought to site in its completed state having been purchased, I understand, at a travelling fair.
7. The courts have held that 'permanence' does not necessarily connote that the state of affairs is to continue forever or indefinitely. The trailer is clearly intended to be moved: it was designed for that very purpose. The question then becomes whether, in practice, it is presently capable of being moved or has now become a permanent fixture.
8. In that context, the aerial photographs provided by the appellant show that the trailer has been in its current position since at least May 2019. The appellant is on record as saying that he has no intention of the structure ever moving elsewhere.
9. The appellant has submitted a Statutory Declaration setting out the background to how the trailer arrived at the appeal site. That Statutory Declaration is signed, witnessed and dated (22 August 2023), and contains the requisite wording from the Statutory Declarations Act 1835. Accordingly, I have afforded that Statutory Declaration the appropriate weight.
10. However, in his Statutory Declaration, the appellant states that the "Prowler Travel Trailer had no wheels or axles and was dragged into location, later being dragged into its current location within the compound, to enable better usage of its integral slide-outs, and to improve light and access into the depot building". The first part of that statement is factually incorrect. The trailer does have wheels, as shown in the photographs provided as part of the Council's evidence and confirmed at my site visit. This was also subsequently

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

acknowledged by the appellant. Nevertheless, this factual error then brings into question the remainder of that sentence relating to the trailer being dragged into its current location. I am therefore not able to place any reliance on that evidence, notwithstanding that it forms part of the appellant's Statutory Declaration.

11. Section 29(1) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) defines a caravan as 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 (emphasis added). In this case, I have no evidence to show that the trailer is incapable of being moved on its own wheels. Neither do I have any evidence to show that the trailer could not be transported on a motor vehicle or another trailer.
12. The appellant points out that the width of the access road leading to the appeal site is 4.3 metres, which is less than the width of the trailer in its current condition (i.e: with the slide-outs extended). There is also a sharp bend to be negotiated. The appellant considers that this would prevent the trailer from being transported. Two points flow from this.
13. Firstly, although the appellant contends that the slide-outs have seized, I have no evidence to substantiate that or to explain why that is the case. Neither have I been provided with any explanation as to why the slide-outs could not be made to function again or temporarily removed for the purposes of transportation. Secondly, even if the slide-outs have seized and could not be fixed or removed, I have not been provided with any explanation as to why the trailer could not be transported on a lorry or other vehicle/trailer.
14. I am therefore not persuaded by the appellant's evidence that the trailer is not *capable* of being moved. I attach particular weight to this factor of permanence or, rather, the lack of it. Moreover, I am satisfied that on the evidence before me that the trailer has all the characteristics of a caravan for the purposes of section 29(1) the 1960 Act and, by definition, is moveable.
15. The trailer is plumbed into utilities, but it would be simple to detach these connections to services such as water, drains and electricity. The trailer is otherwise simply sitting on top of the land (on concrete blocks) and is not physically attached to the ground.
16. Having regard to all the above, I conclude that as a matter of fact and degree the Prowler travel trailer is not a building as defined in sections 55(1) and 336(1) of the 1990 Act. It follows that the Prowler travel trailer does not qualify as 'any building' for the purposes Section 1721B (2) of the 1990 Act and that the four-year period set out in that section does not apply in this case.
17. It further follows that the development that has taken place is, on the balance of probability, a material change of use of the land comprising of the stationing of a caravan or other structure on the land for the purposes of human habitation. The relevant period for that use to become lawful is that in respect of any other breach of planning control under section 171B (3) of the 1990 Act, which states that no enforcement action may be taken after the end of the period of 10 years. Whilst there is no dispute that the trailer has been occupied continuously for a period in excess of four years, there is no evidence before me to show that the use has been taking place in excess of 10 years.

18. This is not a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. On the contrary, I find that the appellant's evidence is not sufficiently precise to counter the documentary and photographic evidence produced by the Council. The appellant has therefore failed to discharge the burden of evidence that falls upon him.
19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Paul Freer
INSPECTOR