



Appeal Decision

Site visit made on 17 January 2025

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 February 2025

Appeal Ref: APP/V2255/X/23/3323970

31 Brecon Chase, Minster On Sea ME12 2HX

- 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 (LDC).
 - The appeal is made by Mrs Emma Howland against the decision of Swale Borough Council.
 - The application ref 22/50463/LAWPRO, dated 26 September 2022, was refused by notice dated 23 March 2023.
 - The application was made under section 192(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 siting of an ancillary temporary structure under the Caravan Act 1968.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council states that the appellant agreed to a change in the description of the proposed development to an application for the siting of a mobile home for incidental use under the Caravan Act 1968. I have not been provided with details of the appellant's agreement and I have considered the appeal on the basis of the description in the banner heading above, which I have taken from the application form. The description makes it clear that the temporary structure is intended to meet the legal definition of a caravan.
3. The application was accompanied by a drawing (ref. 613.08.22 V1 / R1) indicating that model Rydal 70 was proposed. A further drawing was provided (ref. 613.08.22 V2/R1) showing the model Albany 60. It is dated 20 March 2023, just before the application was refused. I note that the appellant's appeal statement includes images showing the Albany 60 but the dimensions given in the same appeal statement relate to the Rydal 70. It is not therefore clear which model was the subject of the Council's decision but I have taken them both into account in my decision.
4. The layout indicated in Figure 6 of the Supporting documentation for an application for a Certificate of Lawfulness under the Caravan Act by Contemporary Log Living reference 613.08.22 does not reflect the internal layout of either of the models provided with the appeal submissions. It most closely resembles the Rydal 70 (ref. 613.08.22 V1/R1) in terms of the dimensions and the section shown at Figure 1.
5. I saw on my site visit that there is a structure in the rear garden. Although it is in a similar location to the proposed mobile home, it differs from both of the proposed

drawings provided by the appellant. I have determined the application on the basis of the submitted proposal, rather than structure that is present on site.

6. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case to show that, on the balance of probability, the development would, on the date of the application, be lawful. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. The planning merits of the case are not relevant to the legal tests and therefore I cannot take into account the appellant's personal circumstances. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.

Reasons

7. The application sought to establish that the structure, which the appellant considers would fall within the definition of 'twin-unit caravan', can lawfully be stationed on the land and used for purposes ancillary or incidental to the residential use of the site. The application was refused because the Council considered that the structure was not a caravan as defined in law, and that due to its scale in relation to the main dwelling it would not be incidental to the enjoyment of the dwelling.

Whether the structure would be a caravan

8. Subsection 29(1) of the Caravan Sites and Control of Development Act 1960 as amended (the CSCDA) says that a '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. Subsections 13 (1) and (2) of the Caravan Sites Act 1968 as amended (the CSA) define twin-unit caravans.
9. It is well-established that when considering whether or not a structure is deemed to be a twin-unit caravan, the commonly applied 'construction' and 'mobility' tests should be considered. The following are relevant considerations; there has to be a structure, it has to be designed or adapted for human habitation and that structure must be capable of being moved as a single structure. A structure composed of not more than two separately constructed sections which are designed to be assembled on site, and, when assembled, is physically capable of being moved by road, is not excluded from the relevant legislative provisions.
10. Section 55(2)(d) of the Town and Country Planning Act states that '(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land – (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such'.
11. The parties have referred to relevant case law. In *Measor*¹ it was found that generally, and as a matter of fact and degree, a mobile caravan would not satisfy the definition of a building, having regard to the factors of permanence and attachment. But the Court would be wary of holding that, as a matter of law, a

¹ *Measor v SSETR & Tunbridge Wells BC* [1999] JPL 182, [1998] EWHC 123 (QB)

structure that satisfied the definition of, for example, a mobile home under section 13(1) of the 1968 Act could never be a building for the purposes of the 1990 Act.

12. The judgement in *Byrne*² found that a twin-unit caravan needs to be of two parts that are separately constructed and then joined together. A structure did not meet the CSA 1968 definition because the s13(1)(b) requirement to be physically capable of being moved by road would be failed if there would be a risk of structural damage from lifting the caravan onto a trailer by crane.
13. In *Brightlingsea*³ the Court found that to pass the 'mobility test' the structure must be physically capable of being towed or carried on a road, not momentarily but enough to say that it is taken from one place to another.

Construction Test

14. While I accept that there is no requirement for the process of creating the two separate sections to take place away from the site, there is a requirement that the act of joining the two sections together should be the final act of assembly. The application submissions set out that the structure would be a twin-unit mobile home and two different options for construction are provided.
15. The supporting documentation states that the preferred method would be 'option (a)', which would use the 'Easy Pad' foundation system with a raised timber floor construction resting on its own weight. The mobile home would be split into two sections across its depth. The 'Easy Pads' are shown to be laid onto concrete pads with supporting metal brackets to which the structure would be attached, placed onto the ground at regular intervals. The pads can be completely removed and are therefore temporary, according to the appellant. The mobile home would be delivered as a flat pack sectional building to be constructed on site as two separate sections and then joined together. Diagrams show the location of the pads underneath the 'floor cassettes'.
16. The prebuilt wall cassettes would sit on the floor cassettes, allowing for both sections of the mobile home to be constructed independently of each other. Once the two sections are completed they would then be joined with mechanical fixings, so that there would clearly be a visible joint line to the external build of the mobile home. The appeal statement provides further information but contradicts the application details in specifying that a 'swift plinth foundation system' would be used. This indicates that concrete pads would be set into the ground with a metal plate with a similar design to the 'Easy Pad'.
17. The alternative option (b) method would be to construct the mobile home onto a 2 allow wheeled chassis which would be joined together as a final part of the construction. The mobile home would be split long ways. This appears to be based on the Albany 60 model (reference 613.08.22 V2/R1). It seems that this option would not need the pad foundation system but would require a suitable concrete slab to be laid for the chassis to be wheeled onto. However, the appellant's stated preferred option is (a) and I have not been advised that a concrete slab would be laid.
18. Regardless of which option was proposed, very little information has been provided as to the proposed process of construction. The Council's delegated

² *Byrne v SSE & Arun DC* [1998] JPL 122, [EWHC] Admin 190

³ *Brightlingsea Haven LTD v Morris* [2008] EWHC 1928 (QB); [2009] 1 EGLR 117 (*Brightlingsea*)

report states that the agent was contacted during the course of the application for further information in relation to the method of construction. He explained that it would typically take around 13 weeks, with the first 3-4 weeks involving the foundation pads and service connections, and the remainder of the time being the assembly of the structure on site. Given that the application details stated that the structure would be delivered as a flat pack sectional building it is not clear why it would take such a long period of time to construct it. It seems unlikely that 9-10 weeks would be required unless it arrived in many pieces rather than as a flat-pack sectional building.

19. The length of time required to build the structure indicates that it would be a complex process and leads me to question whether it would in fact be constructed as two separate units, prior to being joined, or whether it would be constructed as a single structure. The uncertainty and contradictions regarding the model that would be used, which option would be followed, the method of construction and whether it would be prebuilt in sections or fully assembled on site, leads me to conclude that it is less than probable that the structure would be formed of two separate units that would be joined. The evidence is not sufficiently precise and unambiguous. The appellant has not discharged the burden of proof and as a matter of fact and degree and on the balance of probability the construction test in section 13(1)(a) of the CSA would not be met.

Mobility Test

20. The appellant asserts that once the two parts have been joined together the resultant whole as a single structure would be capable of being moved by a crane and transported to and from the site. The floor would be built using '8 x 2' timber joists. A specialist lifting company would be required. Temporary lifting bars/straps would be inserted under the floor from front to rear across the depth of the mobile home at structural load points along its length. Chains or straps would be attached to the lifting bars or straps and attached to a spreader bar to ensure that the lift of the mobile home would be vertical. It would then be lowered onto a suitable low loader trailer to be transported by road to another place. The appellant further asserts that the structure would have the structural integrity to be able to be craned or moved as a whole unit. However, it has not been shown that any structural elements would ensure that it would withstand being lifted and moved from one place to another.
21. The details set out above appear to be based on option (a). Option (b) would be built onto a chassis which could be winched onto a suitable flat bed trailer lorry using a specialist lifting or transport company and transported to another place. It is not clear that option (b) forms the basis of the proposal, not least because the appellant has not stated that the required concrete slab would be installed, and therefore I have given this option little weight.
22. The evidence falls short of discharging the burden of proof and on the balance of probability I therefore conclude that the mobility test in s13(1)(b) to the CSA would not be met and the structure would not meet the definition of a twin-unit caravan.
23. The appellant has referred to a number of appeal decisions. In the Romford decision⁴, the appellant had provided a detailed method of construction which satisfied the inspector that the construction test had been met. In this case no

⁴ Ref APP/B5480/C/17/3174314

detailed method of construction has been provided and I have concluded that the evidence is not sufficiently precise and unambiguous.

24. The Erewash decision⁵ confirms that the process of construction of the two units does not need to take place away from the site on which they are then joined together, and it is only necessary that the act of joining the two sections together should be the final act of assembly. In that case, the inspector was satisfied, on the basis of the clear and undisputed evidence before them, that the two sections had been constructed separately. In terms of the mobility test, the inspector was satisfied that the evidence showed that the structure was capable of being lifted and transported. It therefore differs from this case, where the appellant's assertions have not been backed up by clear evidence in relation to the construction or the mobility tests.
25. I note that in the Teddington⁶ decision there was a letter from a qualified structural engineer in relation to the construction and mobility tests. The degree of attachment to the land is not in dispute in the case before me. The Sawbridgeworth⁷ decision also states that the connection to services is not the same as attachment to land, but that is not in dispute in this case.

Whether the structure would be a building

26. Section 336 of the Act states a "building" '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.' The main characteristics of a building, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive.
27. The proposed structure would be substantial in size and the evidence indicates it would be constructed on site. Although it would rest under its own weight, there is no indication that it would be moved once placed on the site, and therefore I consider it would have a degree of permanency. Therefore, as a matter of fact and degree, I conclude that the structure would be a building.
28. It has not been argued that the development would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. Since the proposed purpose of the structure is to provide primary living accommodation for the appellant's family members, the building would not be permitted development by virtue of Class E, Part 1 of Schedule 2 as such a use would not be incidental to the enjoyment of the dwellinghouse as such.
29. I therefore conclude that the proposal would require planning permission and was not lawful at the date of application.

⁵ Ref APP/N1025/C/01/1074589

⁶ Ref APP/L5810/X/15/3140569

⁷ Ref APP/J1915/X/11/2159970

Conclusion

30. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of siting of an ancillary temporary structure under the Caravan Act 1968 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).

N Thomas

INSPECTOR