Appeal Decision

Hearing held on 27 August 2008

by D Roger Dyer **BA, DipArch, RIBA, FCIArb, Barrister**

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

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Decision date: 1st September, 2008.

Appeal A Ref: APP/Q1153/C/08/2064995 and 6
7 Burnshall Cottages, Chillaton, Lifton PL16 0HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr and Mrs Francis Griffiths against an enforcement notice issued by the West Devon Borough Council.
- The Council's reference is E/0523/2007.
- The notice was issued on 12 December 2007.
- The breach of planning control alleged is "operational development without planning permission namely the erection of a building ("the building") on the Land in the approximate position shown coloured blue on the attached plan, and the unauthorised oil tank ("the oil tank") in the approximate position shown and coloured purple on the attached plan ("the Development")."
- The requirements of the notice are:
  "a) Permanently remove the unauthorised Building and any resulting debris from the Land
  b) Permanently remove the oil tank from the Land."
- The period for compliance with the requirements is three months.
- The appeal is made on the grounds set out in section 174(2) (b), (d), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/Q1153/A/08/2064993/NWF
7 Burnshall Cottages, Chillaton, Lifton PL16 0HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Francis Griffiths against the decision of the West Devon Borough Council.
- The application ref: 10884/2007/TAV dated 8 September 2007 was refused by notice dated 5 November 2007.
- The works proposed are: "Change of use to (residential curtilage) garden and retention of mobile structure (retrospective)".

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions as set out in the Formal Decision below.

Procedural matters

1. Before the hearing the Council made an application for costs against the appellants but the application was withdrawn at the hearing. At the hearing the appellants made an application for costs against the Council. That is the subject of a separate letter.

Preliminary matters

2. Burnshall Cottages are a row of eight semi-detached dwellings close to, but detached from, the small village of Chillaton. The properties lie beside open farmland about half a mile from the village centre. The appeal site, no. 7, lies near the end of these houses.

3. *Appeal B: the Section 78 appeal.*

Planning policy

4. Development plan policies are found in regional planning guidance, RPG10 (2001), the Devon Structure Plan adopted in October 2004 and the West Devon Borough Local Plan Review that was adopted in March 2005. Relevant to this appeal is Structure Plan policy ST1 that aims to ensure sustainable development objectives by conserving resources, protecting environmental assets, meeting the needs of the community, including housing among other criteria. Local Plan policy H31 addresses residential development outside settlements while policy NE10 seeks to prevent development in the countryside unless it provides an overriding economic or community benefit; does not cause harm to the landscape; or it outweighs agricultural considerations. These Local Plan policies have been saved by direction of the Secretary of State pursuant to paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004.

5. In reaching my decision I have taken account of Government advice in Planning Policy Statement 1 (PPS1) "Delivering Sustainable Development", PPS7 "Sustainable Development in Rural Areas" and Planning Policy Guidance Note 18 (PPG18) "Enforcing Planning Control".

The main issues

6. The principal considerations in this appeal are first, whether the former agricultural land purchased by the appellants may be incorporated into the residential curtilage of their property without harm and, secondly, whether the timber structure satisfies national and local policies for housing in the countryside.

Reasons

Incorporation of land into the cartilage

7. The appellants acquired additional land from the adjoining farmer in 2002 and have used part of that land to extend their garden. Other parts of the land acquired are separated from that garden by fences which divide it into an orchard/ vegetable patch on one side and a paddock on the other.

8. In its pre-hearing statement the Council does not appear to address the question of incorporating agricultural land into the curtilage saves for noting the refusal of permission. The refusal notice refers to the effect of the timber structure 'in an unsuitable countryside location' and 'in the open countryside.' At the hearing, officers for the Council stated that there was no objection to the extension of the residential curtilage subject to removal of permitted development rights because it lies outside the settlement boundary.

9. By inspection, the enlarged garden area does not amount to a change in the character of the landscape. Its increased size is not out of proportion from that of its neighbours. The change does not depart from advice in PPS7, particularly in terms of promoting sustainable patterns of development. The Council has not brought my attention to any local plan policies that address extension of garden areas or curtilage into the countryside. In this case the site was visited by a senior planning officer of the Council, who raised no question about the extension of the curtilage having been told of the history of its purchase. Having regard to all these matters there can be no objection to the enlargement of the curtilage of the appellants' property. As to the question of removing permitted development rights, I can see no justification for such a provision in connection with the matters that are before me in these appeals given the presumption against such restriction in paragraph 87 of Circular 11/95.

Retention of the timber structure

10. The Council's case concentrates on the advice given to the appellants following its officer's visit to the site in 2006. It says the land pointed out to him appeared to be garden. It is said that if the area of ground had the appearance of agricultural land, officer advice would have reflected that. In consequence of that visit, the Council had written to the appellants two letters in June 2006, the first of which stated "the mobile home can be placed on the land without permission subject to it being as ancillary accommodation to the main house", while the second letter stated "I am writing to confirm that you will not require planning permission to station a static caravan in the garden of the above property" and went on to quote extracts from the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).

11. But the Council argued at the hearing that even if the land had been residential curtilage, planning permission would still have been required because what has occurred is operational development that requires express permission. Instead of stationing a caravan, the appellants brought to the land a building designed for human habitation in kit form; it was in numerous pieces, certainly more than two sections. Accordingly the Council takes the view that it would not meet the definition of a caravan in the Caravan Sites and Control of Development Act 1960 as modified by the Caravan Sites Act 1968. It says that while the stationing of a caravan (as defined in the latter Act) within the residential curtilage of a dwelling for a use incidental to that of the primary dwelling would not require express permission, the carrying out of building operations as defined by section 55(1) of the Act would need such permission.

12. The 1968 Act defines, at section 13, a "twin-unit caravan" including its maximum dimensions in terms of its length, width and the overall height of living accommodation from floor to ceiling. It also provides that a twin-unit caravan shall not be treated as not being a caravan by reason only that it cannot lawfully be so moved on a highway when assembled if it is (a) composed of two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b), when assembled, is 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). It seems that section 13 was introduced because the 1960 Act defined a caravan as a structure capable of being moved by road from one place to another.

13. The manufacturer of the caravan (or mobile home) attended the hearing. His evidence was that the structure was fabricated in his factory but, after ascertaining that access to the site was not conducive to delivery in two sections, it was taken apart and transported to the site in smaller segments. It was then re-assembled into two sections which were bolted together in the conventional way envisaged by section 13. That would meet the provision in section 13 for the final two sections to be assembled on site. From the information provided to the tribunal, including drawings, and from my inspection of the unit it is clear that this is a standard twin-unit caravan. It happened not to have been delivered in two sections merely because of the site access. Accordingly it meets the provisions of section 13 (1) (a).

14. Evidence was also given by the manufacturer that, if necessary, the two halves of the unit could be lifted onto a trailer by crane. In that respect it would meet the provisions of section 13(1) (b), even though that may be an awkward and expensive operation. Inspection of the site shows that, if necessary, the unit is capable of being moved into the original curtilage.

15. At the hearing the Council submitted that whether or not the unit is a twin-unit caravan, planning permission would be needed because the unit is supported by concrete block walls on some form of foundation. The Council's case is now that concrete walls amount to building operations pursuant to section 55 (1A) of the main Act. That argument has to be assessed against the Council's earlier written confirmation to the appellants that planning permission was not required for the stationing of a "static caravan" in their garden by reference to the GPDO. Secondly, the Council says that the height of the roof exceeds 4 metres at one end (because the land slopes) thus failing to comply with the provisions of Class E of Part 1 of Schedule 2 of the GPDO. However Article 1(3) of the GPDO states that reference to the height of a building has to be measured from ground level or, where the level of the surface of the ground on which it is situated is not uniform, the level of the highest surface of the ground adjacent to it. If Class E has effect, as seemed to be suggested in the Council's letter of 6 June 2006, planning permission would not have been required for the development.

16. Taking account of all these matters there can be no objection to the unit that has been stationed on the appellants' land. It meets the provisions of statute as well as the advice offered in writing by the Council in 2006 even though the unit was reassembled on site. In order to comply with Class E referred to above, the unit has to be used for a purpose incidental to the enjoyment of the dwellinghouse (referred to in the Council's first letter as "ancillary accommodation to the main house."). In order to ensure compliance I shall grant permission for the retention of the unit but subject to a condition confirming the point. The appellants have suggested a further condition that would prevent any further development on the site by removing permitted development rights hereafter. In all the circumstances of this case such a condition is not necessary. The appeal succeeds.

Appeal A: the appeal on ground (b); that the breach of control has not occurred as a matter of fact

17. Having regard to the decision in the section 78 appeal it is necessary only to record that the allegation in the enforcement notice that a building has been erected is incorrect. Thus the breach alleged has not taken place. The appeal on ground (b) is allowed and the enforcement notice is quashed.

Appeal A: the appeal on ground (d); that it was too late to take enforcement action

Appeal A: the appeal on ground (f); that the steps required are excessive; and

Appeal A: the appeal on ground (g); the period for compliance is too short

18. In the light of the above decision on the ground (b) appeal and on the section 78 appeal these appeals need not be addressed.

Conclusions

19. In this case the appellants needed urgent accommodation for their aged parents. They approached the Council and were told, in two letters, that a mobile home could be placed on the land without planning permission. After the installation of the unit in question the Council served an enforcement notice requiring its removal. It also refused an application for extension of their residential curtilage and retention of the mobile structure. In this case the incorporation of additional land into their garden to extend the residential curtilage complies with national and local plan policy and does not harm its surroundings. The unit erected amounts to permitted development and meets statutory provisions for caravans. In the circumstances the appeals against the enforcement notice succeed and the notice is quashed.

Formal Decisions

Appeal A

20. The appeal is allowed and the enforcement notice is quashed.

Appeal B

21. The appeal succeeds and planning permission is granted for change of use of the land incorporated into the site to residential curtilage and the retention of the timber structure placed on the land at 7 Burnshall Cottages, Chillaton, Lifton PL16 0HX in accordance with the application dated 8 September 2007, reference 10884/2007/TAV, subject to the condition that the structure shall not be occupied other than for purposes ancillary to the residential use of the dwelling known as 7 Burnshall Cottages, Chillaton, Lifton PL16 0HX and shall not be used at any time as a separate dwelling.

Roger Dyer
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Keith Oliver	Associate law Clerk, Ashfords, Solicitors.
Mr and Mrs Griffiths	Appellants.
Mr Robert Sheridan	Director, Pinlog.

FOR THE LOCAL PLANNING AUTHORITY

Miss Katie Graham	Planning Officer, West Devon Borough Council.
Mr Keith Palmer	Enforcement Officer, WDBC.

INTERESTED PARTIES

Mr John Nolan	Neighbour and Parish Councillor.

DOCUMENTS

Document	1	Attendance Sheet.
Document	2	Notification of the hearing.
Document	3	Notes on Elitestone Ltd v Morris [1997] HL put in by Mr Palmer.
Document	4	Report of Wyre Forest DC v SSE [1990] put in by Mr Oliver.
Document	5	Note on saved policies put in by Mr Palmer.
Document	6	Clip of letters (appellants/Council) put in by Mr Oliver.
Document	7	Miss Graham's pre-hearing statement.
Document	8	Aerial photograph put in by Mr Palmer.
Document	9	Clip of photographs put in by Mr Sheridan.
Document	10	Suggested without prejudice conditions.