Appeal Decision

Inquiry held on 9 April 2002

by J G Roberts BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Transport, Local Government and the Regions

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date
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Appeal Ref: APP/N1025/C/01/1074589
159 Victoria Avenue, Borrowash, Derbyshire.

- 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 [redacted] against an enforcement notice issued by Erewash Borough Council.
- The Council's reference is ENF/01/254 P2337.
- The notice was issued on 22 August 2001.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey building in the approximate position marked with a cross on the plan attached to the notice.
- The requirements of the notice are:
  (i) remove the building;
  (ii) remove from the land all building materials and rubble arising from compliance with requirement (i) above.
- The periods for compliance with these requirements are: (i) Requirement (i) – 12 weeks; Requirement (ii) – 16 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) (f) and (g) of the 1990 Act as amended. An appeal was made on ground (d) but withdrawn on 22 November 2001; after an exchange of correspondence which followed the inquiry the appeal on ground (d) was reinstated. As the appropriate fees were paid within the prescribed period the planning application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered also. Ground (g) was added during the inquiry.

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

Procedural matters

1. I visited the site on the day of the inquiry. At the inquiry an application for an award of costs was made on behalf of Mr R Brentnall against Erewash Borough Council. This is the subject of a separate decision.

The appeal on ground (b)

2. The notice alleges the erection of a building. The appellant contends that the Park Home is not a building and has not involved operational development of land, but falls within the definition of a caravan. This is found in section 29(1) of the Caravan Sites and Control of Development Act 1960. 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, but does not include railway rolling stock in certain circumstances or tents.

3. Its application to twin-unit caravans is elaborated in section 13 of the Caravan Sites Act 1968. Such a structure, designed or adapted for human habitation and which is (a) composed of not more than 2 sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) when assembled, 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), shall not be treated as not being a caravan for the purposes of part 1 of the 1960 Act by reason only that it cannot lawfully be so moved on a highway when assembled.

4. However, such a unit which when assembled exceeds 18.288m in length, 6.096m in width or 3.048m in overall height of the living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level) are specifically excluded from the expression 'caravan' by section 13(2) of the 1968 Act. Thus there are 3 tests to be applied to the Park Home before me: a construction test, a mobility test and a size test. All 3 are contested.

The construction test

5. The local planning authority draws my attention to the analysis of the meaning of the words 'composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices' which was given in *Byrne v SSE and Arun DC, QBD 1997.* There is no requirement for the 2 sections to be each identifiable as caravans, or capable of habitation, before they are joined together. However, it was found that it was an 'essential part of the construction process in order to bring a structure which would not otherwise be a caravan, within the definition of that which is deemed to be a caravan, that there should be two sections separately constructed which are then designed to be assembled on a site..... If the process of construction was not by the creation of two separately constructed sections then joined together, the terms of the paragraph [section 13(1)(a) of the Caravan Sites Act 1968] are not satisfied'. They were not in that case because the log cabin concerned, composed of individual timbers clamped together as in that before me, had not at any time been composed of 2 separately constructed sections which were then joined together on the site.

6. That was not so in the case before me. Though the Park Home was delivered by lorry in many pieces I see no requirement in section 13(1)(a) that the process of creating the 2 separate sections must take place away from the site on which they are then joined together. It is necessary only that the act of joining the 2 sections together should be the final act of assembly. The appellant's evidence and photographs taken during the process of assembly demonstrate that the 2 sections, split at the base and ridge and each with a separate ridge beam, were constructed separately. The appellant was clear on this point. His evidence as to the facts of the matter was not disputed. In my opinion the process of construction fulfilled the test of section 13(1)(a).

The mobility test

7. Section 13(1)(b) of the Caravan Sites Act 1968 must be satisfied also. To fall within the definition the structure must be capable of being moved by road from one place to another in its assembled state. It may be moved by trailer, but is not excluded from the definition merely because it would be unlawful to move it in such a manner on a highway. The fact that the private drive to No 159 Victoria Avenue is too narrow to allow the passage of the Park Home in its assembled state along it is not the point. It seems to me that it is the structure that must possess the necessary qualities, not the means of access. It is not necessary for it to be capable of being towed, only that it is capable of being moved by road.

8. The appellant claims that it would be possible to lift the assembled structure, having first removed the terrace of timber decking and the porch which have been added to its western side, onto a lorry trailer which could then transport it from one place to another. The Council, however, argues that it has not been demonstrated that this could be done without serious significant damage to the structure – would the bolts hold? would it fall apart? – so that it cannot be regarded as transportable in a single piece.

9. I disagree. The manufacturer (Rural Accommodations) refers mainly to its movement in 2 sections, clearly the easier option here, but indicates that the reference to extra supports when shipping relate to extra safety and are not requirements. It would give a guarantee that 'the unit' is more than substantial enough to transport by road. Hewden Crane Hire indicates the method by which they would lift it, slew it round and lower it onto the ground or onto transport. The Park Home does not have a tiled roof or similar which would be liable to fall apart during the process. The fact that the cost estimate was based on an allowance of 8 hours does not exclude the Park Home from the definition of a twin-unit caravan.

10. The terrace and porch canopy are bolted to the unit and could be removed quickly and easily. The decking appears to have been attached to the remains of a caravan chassis and does not form an integral part of the structure. In my opinion neither affect the transportability of the assembled Park Home. In my opinion it meets the mobility criterion of the 1968 Act.

The size test

11. There is no dispute that the length and width of the assembled Park Home falls within the limits defined in section 13(2) of that Act, but Mr Thorp's measurements of internal height give a maximum of 3.060m, 12mm in excess of the maximum internal height measured from floor to ceiling of 10 feet (3.048m) specified in that section. The local planning authority's view is that either it falls within the size limits or it does not; there is no scope for the appellant's *de minimis* argument here.

12. However, Rural Accommodations states that the Park Home has been designed and built to a specification of a caravan to be used for permanent residence as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (BS 3632 : 1995). By implication it had been designed so that its maximum internal height would be no greater than 3.048m. The reason for the difference is not known, but it seems to me that 12mm discrepancy may be within the range of variation that might be expected from natural movement of timber. Further, the same structure could probably be brought within the strict definition of a twin-unit caravan very easily by the addition, for example, of strips of material 12mm thick added to the ceiling by the central ridge, or by plywood laid upon the floor. Its external dimensions would remain unchanged.

13. In these circumstances I agree with the appellant that the excess height is *de minimis*. To exclude the Park Home from the definition of a twin-unit caravan for this reason alone, or because the alterations necessary to bring it within the strict terms of the definition would now offend the construction test, would be verging on the unreasonable.

Conclusion

14. Therefore I regard the Park Home before me is a twin-unit caravan within the definition of the 1968 Caravan Sites Act and a caravan for the purposes of section 29(1) of the Caravan Sites and Control of Development Act 1960. It is clearly designed for and capable of use for

human habitation. The addition of the decking and porch canopy has not affected the integrity of the Park Home as such a twin unit.

15. It may look like a building at first sight. It may be a structure in the sense of something that has been constructed, but so are all caravans. The unit is not attached to the ground except by easily disconnected services. It rests on blocks, paving slabs and hardcore retained by railway sleepers, which have not resulted in a permanent change to the land on which it stands. Save for the 12mm in excessive internal height, which could be remedied easily, it falls within the definition of a twin-unit caravan, which sets it apart from other types of structure and is normally held to be a use of land. It has not become a building through permanence or its degree of physical attachment to the ground.

16. Therefore I conclude that the notice should have alleged the change of use of the land to use for stationing a residential caravan. The appeal on ground (b) succeeds. Whether its actual use is for the purpose of human habitation rests upon the relationship between occupation of the house and that of the caravan. This bears upon the appeal on ground (c). Both parties are fully aware that the notice is directed to the presence of the Park Home on the land. The difference is in their views on whether it should be treated as a caravan or as a building and in what consequences should flow from that determination, but the evidence of both parties covers both eventualities. As I am satisfied that the notice can be corrected without injustice to either I now turn to the appeal on ground (c).

The appeal on ground (c)

17. First, it is agreed by the parties that the whole of No 159 Victoria Avenue remains a single planning unit. I exclude the access track from the road to the gate which is shared with others. The main body of land contains a dwelling house, the Park Home, a swimming pool within a building (disused), a workshop used for the manufacture of picture and mirror frames by the appellant's parents who live in the Park Home, outbuildings, gardens and access, parking and turning areas shared between the house, the Park Home and the workshop.

18. The appellant retains ownership of the whole and there is no legal separation of the site into 2 parts. Both the house and the Park Home share an identical address, there is a common post box by the gate, the Park Home connects to the same foul water drainage system as the house, and single charges for the whole of the property are made for Council Tax, water and electricity. Only the telephone lines are separate. The Park Home is open to the remainder of the land on 3 sides. I agree that the whole of No 159 beyond the gate is a single planning unit and has been so at least since it was purchased by the appellant's parents in June 1978.

19. I turn now to the use of this planning unit. It includes use as a dwelling house, to which the gardens, garaging and pool are ancillary or incidental. This is not disputed. There is also the Park Home and the workshop. The implication of the appellant's argument is that the residential use of the Park Home is the same use as that of the dwelling house. There is said to be a degree of dependency, a separate planning unit has not been created, and 2 dwellings cannot occupy a single planning unit, so that there has been no material change of use.

20. Whether the Park Home accommodation is used for purposes ordinarily incidental to the primary use of the dwelling house as such is not the point here. That is relevant to the question of whether Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 applies, and that is concerned with the erection of buildings. In any event it is now widely accepted that use as living accommodation in connection with the dwelling house would be part and parcel of the main

use of that house and not therefore incidental to such (see the Secretary of State's decision reported in [1987] JPL 144 quoted in *Uttlesford DC v SSE and White, QBD 1991* and also *Michael Rambridge v SSE and East Hertfordshire DC, QBD 1996.* What is relevant is the use of the planning unit as a whole, which raises the question of the relationship between occupation of the house and that of the Park Home.

21. On this I have the unchallenged statement of the appellant and his supporting documents. There is certainly a close blood tie between the appellant, who now occupies the house, and his parents who now occupy the Park Home. They share utility services except the telephone. The parents work in the workshop, and also look after the appellant's son and nephew on occasions.

22. However, in explaining the reasons for the replacement of the former mobile home by the Park Home in May 2001 the appellant refers to the 'best place for them to reside'. Under cross-examination Mr Thorp referred to a 'lot of connectivity' but indicated that the appellant's parents received no daily assistance. The Park Home has and has specifically been designed to provide all the facilities necessary for day to day existence. There is no indication of shared meals and housekeeping arrangements any more than one might expect between friends and family living close by in separate dwellings.

23. On balance I consider that the occupation of the Park Home is sufficiently independent to amount to occupation by a separate household. That is not part of the primary use of the dwelling house but distinct, as the use of a caravan for the purposes of human habitation. It is functionally separate, but because it is not physically separate it has not resulted in the creation of a new planning unit. Nonetheless it represents the material change of use of the planning unit to a use which includes use as a residential caravan for one mobile home. Planning permission has not been granted for this change, which is in breach of planning control. The appeal on ground (c) fails.

The appeal on ground (d)

24. A caravan has been present on the site for many years. Owing to illness the appellant's grandparents, who had been living in a mobile home at Breedon-on-the-Hill, moved to a site alongside the poultry sheds, close to where the Park Home now stands, in early 1979 and, according to the appellant, 'assumed residence from then on'. His detailed personal recollections suggest to me that they lived essentially as a separate household independently of the appellant's parents who occupied the house. He would drop in frequently, as a visitor, for various reasons.

25. His grandfather died in 1988 but his grandmother remained there. She had coal delivered separately from the house. The coal merchant describes the caravan as 'the permanent home for Mrs Brentnall Snr.' There is no indication that she lived as part of her son's household. The aerial photograph taken about 1982 shows the substantial mobile home on the land. Mrs Brentnall Snr moved to a nursing home in about March 1998 and died in 2001, but the mobile home remained, available for occupation but vacant.

26. As his parents faced financial difficulties at the time the appellant bought the house from his parents in November 2000 but it seems that in anticipation of this they had already taken occupation of a touring caravan alongside pending replacement of the now deteriorating mobile home. The old mobile home was removed in April 2001 to make way for the new Park Home which was installed in May that year. In my opinion there is no material difference between the use of the Park Home before me and that of the mobile home which

occupied a site not identical to but overlapping the land on which the Park Home now stands.

27. The matter is complicated by the presence of the workshop, used by both the appellant's parents for the manufacture of picture and mirror frames. In September 1999 planning permission had been refused for the retention of a workshop and enforcement action to secure its removal was authorised, but planning permission was subsequently granted for the continuation of the use in a former egg production building. This is not regarded by the parties as a separate planning unit. Mr Thorp described it, in answer to questions from me, as having been granted only on the basis that it was "ancillary" to the dwelling (in which the appellant's parents then lived) and as "working from home".

28. On the balance of probability it seems to me that in 1979 a material change of use of the planning unit took place without planning permission, from use as a dwelling house to use as a dwelling house and as a caravan site for the stationing of one mobile home used for human habitation. This use continued until early 1998 and resumed, if not in the summer or autumn of 2000 when the touring caravan was occupied (with greater dependence on the house) and the mobile home remained present but vacant, in May 2001 when the Park Home was installed.

29. The circumstances suggest to me that this break in occupation of a mobile home was not sufficient to extinguish the use which by then had become immune from enforcement action by the passage of time and hence lawful. The use remained but was dormant until its point of resumption.

30. The workshop use, introduced in the late 1990s, is not ancillary to the residential use of either the dwelling house or the mobile home in the sense of serving it, nor is it incidental to it in the sense of ordinarily going together with it. It may be more than *de minimis* also. Even if so, its introduction did not result in a further *material* change to the character of the use of the planning unit as a whole, which is large, with a range of outbuildings only part of which is used for mirror and picture framing, and which at that time comprised both the dwelling house and caravan site uses (see *Beach v SSETR and Runnymede BC, QBD 2001).*

31. Hence the '10-year clock' did not start to run again at the point at which the workshop use began. The material change of use (to that including a mobile home) took place in 1979, more than 10 years before the date of the enforcement notice before me, and no further material change of use has taken place since. Therefore it was too late for enforcement action to be taken against the use of the land for stationing the Park Home before me. The appeal on ground (d) succeeds and the notice will be quashed. The deemed planning application and the appeals on ground (f) and (g) do not fall to be considered. The appellant may now wish to apply to the local planning authority for planning permission or a Certificate of Lawful Use or Development in order to obtain any site licence that may be required under the Caravan Sites and Control of Development Act 1960.

Formal Decision

32. In exercise of the powers transferred to me I direct that the notice be corrected by the deletion of the text of paragraph 3 of the notice and substitution therefor of the words 'without planning permission the material change in use of the land from use as a dwelling house to use as a caravan site for one mobile home for the purpose of human habitation'. Subject thereto I allow the appeal and quash the enforcement notice.

Information

33. Particulars of the right of appeal against my decision to the High Court are enclosed for those concerned.

Inspector