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Your Ref: [redacted]

Our Ref: APP/Y3615/C/01/1063497

Date: 4 January 2002

Dear Sir/Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY MR W J EVERETT
SITE AT FULVENS, RAD LANE, ABINGER HAMMER, SURREY, RH5 6RA

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

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Yours faithfully

[redacted]

COVERDL1

Appeal Decision

Site visit made on 14th November 2001

by Sean Slack BA LLB DipTP MRTPI

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

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Date: - 4 JAN 2002

Appeal Ref: APP/Y3615/C/01/1063497
Fulvens, Rad Lane, Abinger Hammer, Surrey, RH5 6RA

- 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 Guildford Borough Council.
- The Council's reference is LR/01/0023.
- The notice was issued on 2nd April 2001.
- The breach of planning control as alleged in the notice is the erection of a timber building, the construction of a patio and pergola, without planning permission.
- The requirements of the notice are to remove from the land the building, patio, and pergola and all materials resulting from their demolition, save for the foundation pads which are suitable for use with a caravan.
- The period for compliance with the requirements is 6 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal succeeds and the enforcement notice is quashed. Planning permission is granted for retention of a patio and pergola subject to a condition as set out in the formal decision.

Procedural Matters

1. The deemed application for planning permission also falls to be considered.

2. The appeal site is within the Green Belt and a designated Area of Great Landscape Value. There is an operative planning permission for use of the appeal site as a caravan site for a maximum of 5 caravans. There is no dispute that the alleged development would replace a former mobile home on the appeal site.

The appeal on ground (c)

3. In order to succeed on a ground (c) appeal it would be necessary to show that the alleged development does not constitute a breach of planning control. It must be shown that the works undertaken in connection with the construction of a timber building, patio(also referred to by the Council as a veranda), and pergola were undertaken with planning permission or were permitted development under the Town and Country Planning (General Permitted Development) Order 1995.(GDO)

4. No claim is made that planning permission has been granted for the alleged development. In essence, the appellant's case is that the Council have misdirected themselves in defining the breach, insofar as it applies to the timber building, as operational development. It is claimed that the timber building is a twin unit chalet which falls within the statutory definition of a "caravan" in section 13 of the Caravan Sites Act 1968. For this reason the

stationing of a caravan on a lawful caravan site would be permitted development under Part 5 Class A of the 1995 GDO.

5. In February 2001, an application for a Certificate of Lawful Development (LDC) in respect of the siting of a caravan on the appeal site was refused. The reason for refusal was that the unit was not a caravan as defined in section 29 and section 13 of the relevant Acts of 1960 and 1968. In particular;

   (a) The structure has been built on site from many component parts

   (b) The structure comprises at least 3 main sections and is not a twin unit caravan

   (c) It has not been demonstrated that the structure as assembled is physically capable of being moved by road from one place to another

   (d) The structure exceeds the dimensions in section 13(2) (b) and (c) of the Caravan Sites Act 1968.

6. The Council no longer contest that the timber building as assembled is not capable of being moved by road from place to place. This follows the submission of photographic evidence including a video viewed by Council officers showing the structure raised on a series of hydraulic jacks and moved on small wheels running within steel rails. It is accepted that there is no requirement that the structure when assembled must be capable of being moved lawfully on a public highway. (section 13(1)(b) of the 1968Act)

7. The other reasons for refusing the LDC are maintained by the Council in the representations. It is said that the building has been assembled on site in 2 main parts with a separate patio or veranda. The veranda has always been an element of the building since it was first ordered in March 1998. It is pointed out that Counsel's opinion, requested by the supplying company, was that the veranda would place the structure outside the definition of a twin unit caravan. The Council are also of the opinion that a prefabricated unit supplied in kit form would be contrary to the intention of the legislation as explained in Circular 17/65. The structure as supplied could not be considered a caravan as it would not be capable of human habitation. The appellant accepts that the structure when first brought onto the site was in more than 2 main parts but points out that it was de-assembled and reconstructed to meet the statutory definition of a twin unit. It is said that the Council's Legal Officer accepted that provided the constructional details were followed, the legislation did not prohibit the 2 halves of the unit being built on site and then joined together.

8. It is also the view of the Council that the building exceeds the maximum permitted width of 20 feet (6.09 metres). There is no dispute that the building at its widest measures almost 22 feet and 2 inches. The Council do not accept that the measurements should be taken from wall to wall even if this is an accepted practice within the industry supplying mobile homes. The width of the building greatly exceeds the 20 foot limit if the patio or veranda is included. The internal height exceeds 10 feet (3.048 metres). A measurement undertaken by the National Caravan Council recorded an internal height of 3.1 metres.

9. For the appellant it is said that both the Secretary of State for the Environment and the Courts have accepted that the dimensions of a caravan should be taken as the outer walls excluding projections such as eaves and guttering. Support is sought from an appeal decision dating from 1995 involving the Lake District Special Planning Board (Courtney case) in connection with an unauthorised porch. The case is of interest in that previous planning appeal decisions and case law regarding the correct approach to measurement of a

caravan were reviewed. The Inspector in that case did not consider that there was any good reason to change the longstanding practice of taking measurements between outer faces of caravans, particularly as that approach is incorporated into the model conditions for caravan site licences. She also distinguished the case of Short v Secretary of State for the Environment and North Dorset District Council(QBD 1990) where overhanging eaves were included in calculating the width of the structure. In that case the building had a steeply pitched roof with full hipped ends which had been tiled by skilled contractors after the building had been erected which was not the situation with the Courtney appeal.

10. The law relating to twin unit caravans is set out in section 13(1) of the 1968 Act. This states;

"13(1) A structure designed or adapted for human habitation which –

(a) is 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; and

(b) is, 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 (or as not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled."

Subsection (2) states;

"(2) For the purposes of Part 1 of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely-

(a) length (exclusive of any drawbar): 60 feet (18.288 metres)

(b) width: 20 feet (6.096 metres)

(c) overall height of living accommodation (measured internally from floor at the lowest level to the ceiling at the highest level) 10 feet (3.048 metres).

11. I am satisfied that the timber building has been assembled from 2 main sections, notwithstanding that these may have been partly fabricated on site. I consider the patio or veranda to be an addition to the main structure, not being integral to or forming part of a structural element of the building. I am also satisfied that with some difficulty the unit as assembled could be moved to another part of the site as illustrated on the submitted photographs. This has not been contested by the Council. My conclusion from the representations and site inspection is that the structure as erected meets the requirements of section 13(1).

12. The final requirement is that the assembled structure must not exceed the dimensions in section 13 (2). There is no dispute that the structure or chalet as erected does not exceed 60 feet (18.288 metres). I consider the small divergence in ceiling height from the stated height not to be significant and can be considered as de minimis for purposes of planning control.

13. The remaining area of dispute concerns the width of the building. The appellant has taken a measurement from outer wall to wall of just under 20 feet. The measurement of width, including the eaves, is a little over 22 feet. In my opinion measurement should generally be taken wall to wall unless the eaves and roof of the building is a substantial structural element in itself. An example could be an alpine style chalet where there could be a

considerable overhang of the roof to enclose a veranda. This appears to have been the circumstances in the Short appeal. I found the appeal building to be a chalet with a conventional roof of a design common to chalet parks throughout the country. My conclusion is that the building as measured wall to wall (externally) meets the statutory size for a twin unit caravan. On this basis the appeal on ground (c) succeeds in relation to the caravan only. The other grounds for appeal no longer need to be determined. The patio and pergola do not fall within any class of permitted development and the ground (c) appeal cannot succeed in relation to those structures.

Appeal on ground (a) and the deemed application- the patio and pergola

14. The Council have referred to strategic policies for the protection of the Green Belt and Areas of Great landscape Value in the Surrey Structure Plan and the adopted Guildford Borough Local Plan. Reference has also been made to similar policies of the deposit draft structure plan and deposit local plan. In view of my conclusion on the ground (c) appeal, that the building is a twin unit caravan, it must follow that the patio and pergola are not inappropriate development. PPG2 at paragraph 3.6 makes clear that the extension or alterations of dwellings are not inappropriate provided it does not result in a disproportionate addition over and above the size of the original building. I consider the wooden patio to be in keeping with the building. The pergola is a minor decorative garden feature which is consistent with the lawful use of amenity space within a caravan site. In order to protect the amenity of the area, I consider it necessary to impose a condition that the structures should remain only so long as the caravan or chalet is stationed on the site. The appeal on grounds (f) and (g) do not need to be determined.

Other Matters

15. I have considered all other matters raised in the representations including the opinions from Counsel obtained by both parties. My decision has been reached on the basis of the circumstances I found in this case and does not imply the general acceptability of measuring the dimensions of a caravan using the outer faces from wall to wall.

Formal Decision

16. For the reasons given above and in exercise of the powers transferred to me, I allow the ground (c) appeal, in respect of a timber building and the ground (a) appeals to retain the patio and pergola. I quash the enforcement notice and grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for retention of a patio and pergola at Fulvens, Rad Lane, Abinger Hammer, Surrey subject to a condition that the patio and pergola shall be removed when the site is no longer used for stationing of a timber building/chalet.

Sean Slack
Inspector

Information

A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within 6 weeks from the date of this decision.

This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.