The Planning Inspectorate

Appeal Decisions

Hearing Held on 12 June 2019

Site visit made on 12 June 2019

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and LocalGovernment

Decision date: 26 June 2019

Appeal A: APP/U1240/C/18/3204771
Trotters Plot, track from Uddens Drive to Clayford Farm, Clayford, Wimborne, Dorset, BH21 7BJ

- 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 Lee against an enforcement notice issued by East Dorset District Council.
- The enforcement notice, numbered ENF/16/0335, was issued on 10 May 2018.
- The breach of planning control as alleged in the notice is in the approximate position marked with a black cross, unauthorised construction of a timber constructed building used for residential purposes.
- The requirements of the notice are a) cease the use of the building hatched green for habitable accommodation as a dwelling-house; b) demolish the building hatched green on the attached plan; c) remove all the resulting materials from the land affected following compliance with b) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Appeal B: APP/U1240/C/18/3207038
Trotters Plot, track from Uddens Drive to Clayford Farm, Clayford, Wimborne, Dorset, BH21 7BJ

- 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 Mrs Lee against an enforcement notice issued by East Dorset District Council.
- The enforcement notice, numbered ENF/16/0335, was issued on 10 May 2018.
- The breach of planning control as alleged in the notice is in the approximate position marked with a black cross, unauthorised construction of a timber constructed building used for residential purposes.
- The requirements of the notice are a) cease the use of the building hatched green for habitable accommodation as a dwelling-house; b) demolish the building hatched green on the attached plan; c) remove all the resulting materials from the land affected following compliance with b) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal C: APP/U1240/W/18/3219361
Trotters Plot, track from Uddens Drive to Clayford Farm, Clayford, Wimborne, Dorset, BH21 7BJ

- 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 Mrs Jenna Lee against the decision of East Dorset District Council.
- The application Ref 3/17/1982/FUL, dated 14 July 2017, was refused by notice dated 28 June 2018.
- The development proposed is change of use of equestrian land to residential, replacement septic tank, extension of existing shed for use as store and associated parking area. Demolition of barn, retrospective.

Decisions

Appeals A and B 3204771 & 3207038

1. The appeals are allowed and the enforcement notice is quashed.

Appeal C 3219361

2. The appeal is allowed and planning permission is granted for change of use of equestrian land to residential, replacement septic tank, extension of existing shed for use as store and associated parking area. Demolition of barn, retrospective at Trotters Plot, track from Uddens Drive to Clayford Farm, Clayford, Wimborne, Dorset, BH21 7BJ in accordance with the terms of the application, Reference:3/17/1982/FUL, dated 14 July 2017, subject to the following condition:

    1) The development hereby permitted shall be carried out in accordance with the approved plan: Trotters Plot amended block plan, 1:500@A4, submitted with appeal on 23/12/2018. The change of use hereby granted permission shall be restricted only to the area outlined in red on that plan. The parking and turning area shall be used only for the parking and turning of vehicles and for no other purposes.

Costs Application

3. An application for costs relating to Appeals A and B was made by the appellants and is the subject of a separate decision letter.

Background to the Appeals

4. The site lies in the green belt in an area of woodland and pasture somewhat remote from any roads but in an isolated cluster of dwellings and farm buildings. Set to the south of the access track is a paddock which contains the appeal structure, with a modest garden area, parking and turning for several vehicles, a storage shed, a stables with a concrete apron outside and a half built concrete block barn-like building which apparently has planning permission.

5. The appeal structure stands on the site of a former barn, which has been removed and which once contained a caravan. A lawful development certificate exists for the stationing of a caravan for residential purposes on the site of the former barn. The red line drawn around the area which lawfully can be used for that purpose is effectively the footprint of the now demolished barn, which

is also the same size as the appeal structure. In essence, having achieved a lawful use for residential purposes the appellant has tried to take advantage of the current limitations on the size and design for a caravan, in order to maximise their living space.

6. Appeals A and B turn on whether they have overstepped the mark in doing so, in which case they will have inadvertently created a permanent dwelling and the ground (a) is to grant planning permission for that dwelling. However, the appellants made it clear they are not seeking planning permission for a permanent dwelling, except as a last resort, and if the appeal succeeds on ground (b) they withdraw the ground (a) appeal. Appeal C is to provide the new appeal structure with an access, parking and some garden area as the lawful use of all the land outside the new structure is agricultural.

The Appeal on Ground (b)

7. The definition of a caravan is contained within the Caravans Sites Act 1968 to include twin unit caravans provided that they meet the requirements of section 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)"*. The Act also includes maximum dimensions and the maximum width is 6.8m. The Council argue that the appeal structure is not a caravan as a matter of fact as it is too wide, is composed of at least three sections which were not constructed separately and then designed to be fastened together and it cannot be moved on the road. The parties therefore agreed the issue turns on the construction test, the mobility test and the dimension test.

The construction test

8. This test falls into two parts, firstly, are there more than 2 sections, and if not, are the sections "*separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices*". There is no dispute that the living accommodation of the unit consists of two sections. These were manufactured in Romania and delivered to the site broken down into kit form. The final act of construction, once it had been assembled into two halves was to join the them together with bolts etc. The issue between the parties is that the Council allege the two separate halves were actually constructed as one unit on the site, albeit one that was separable into two. It was then moved apart and re-joined in a cynical attempt to pass the construction test.

9. Various court cases and an appeal decision were referenced. In Byrne[1], the court held that "*if the process of construction was not by the creation of two separately constructed sections then joined together...*" it was not a caravan. It is thus clear that the two sections have to be constructed separately before being joined together. In Brightlingsea[2] a lodge that comprised of two parts brought to the site and then joined together was a caravan. Each half sat on a metal chassis with wheels and a towing device. But that is not the case here and there is no suggestion that a caravan is defined as having a chassis or

[1] Byrne v SSE & Arun DC (1997) 74 P&CR 420
[2] Brightlingsea Haven Ltd and others v Morris and others [2008] EWHC 1928

wheels. Finally an appeal decision in Borrowash[3] accepted that construction of the two halves did not have to take place off site. In the current appeal the kit was assembled on site, and it is agreed this does not prevent it from being a caravan. None of these authorities greatly help in the issues in this appeal, which have to turn on their own facts.

10. I agree that if the Council's analysis of the construction method was the case then the two sections would not have been '*separately constructed'*, the apparent 'separate' construction would just have been a smokescreen and the structure would not be a caravan within the terms of the Act. However, I do not think this is a fair description of events. I was shown photographs of the whole unit under construction, apparently as one unit, and also as two. It is also clear there was a final act of joining together. It was explained that as the two halves are built up from the various elements of the kit, they are placed side by side in order to ensure they various components would eventually fit together. The two halves were moved apart and back together as required during construction. This seemed to me be a reasonable explanation of the construction process.

11. A neighbour provided photographs of the end gable at a late stage in construction. This gable contained the longitudinal split of the two halves. It appeared from the photographs that the cladding on the side was fastened in long strips across the two halves, and then, presumably later cut through with a circular saw to re-create the two separate halves again. This too could be fatal to the requirement that the two halves were separately constructed. However, on closer examination it seems the scaffolding pole in the foreground of the picture sat exactly over the actual gap between the two halves and so hid it from view. The cut ends of the cladding could just be seen at one point, suggesting the gap was there, but hidden from view by the scaffold pole. Given the whole structure was delivered in a kit form, and each separate part was made to fit together to form two halves, it seems unlikely the rather crude method of cutting the wood with a circular saw after being fixed would be used to finish the cladding. Consequently I do not consider these photographs show the construction of one unit rather than two. Other photographs showed the roof felting covering the gap between the two halves, but inevitably the roof would have to be waterproofed in this way, this does not mean the construction test is failed.

12. The whole process is somewhat artificial as no doubt it would be easier to design and construct a building of the same dimensions as a single unit, but the two units are required by the Act and by the planning system. In this case it seems to me the design and construction of the two halves was indeed within the wording of s13(a).

13. A subsidiary issue is that the structure consists of more than 2 sections. The two halves are supported on wooden beams which are regularly spaced running from front to back and the beams in turn are lifted off the ground by adjustable metal feet which sit on a base of crushed stone. The metal feet are bolted to the beams, but the accommodation sits on the beams without any direct fastening. The manufacturer of the structure recommends using low walls made of concrete blocks but the appellants chose here the beam and feet option.

[3] APP/N1025/C/01/1074589 (19 April 2002).

14. The Council argue that when the two halves are winched off and onto a lorry, the beams and feet will be left behind. They thus form a third section taking the whole structure beyond the limitation of s13. In my view, to form a 'section' of the structure the elements in consideration should form an integral part of that structure. All caravans, mobile homes and park homes (all of which are designed to fall within the definition of a caravan) have to sit on the ground in some way. If they sit flat on the ground there are issue with damp and with future mobility, so they usually are raised off the ground, which also allows pipes for services to be easily run to them and disconnected if they are moved. A touring caravan sits on its chassis and wheels. A much larger mobile home will usually have a metal chassis and wheels, but the wheels will not support the mobile home which will have metal legs that are lowered down to level the unit on the ground. Park homes can have a similar arrangement, but I was informed they can also sit on props of all kinds. I have seen numerous mobile homes that sit at least partly on concrete walls where they are on sloping sites.

15. I was informed the appeal structure is internally structurally sound and the floor is braced so that the beams are not an integral part of its stability. The beams could be removed and each metal leg have a shorter piece of wood (or similar material) to spread the load where it supported the unit above. I agree that this is just a method for supporting the structure above the ground, it is not a separate section, such that the structure could be said to be composed of more than two sections. In my view therefore the construction test is passed.

The mobility test

16. This test is rather more easily dealt with. The Council did not, in the end, dispute the evidence provided that the two halves of the structure could be winched up by a large crane and then put on the back of a trailer to be taken to another site. Their contention was that the third section (the beams and feet) would be left behind. As I have concluded the beams and feet do not form a third section, whether they are left behind or not does not affect the mobility of the two halves that do form the unit, so the mobility test is passed.

The dimension test

17. There is no dispute the wall to wall width of the structure is 6.29m, which is 51cm within the allowance. However, the Council point out that the roof timbers overhang the walls by 40cm on each side to create eaves. To these are attached fascia boards and guttering, adding an extra 12cm to each side, giving a total width of 7.33m or 53cm too much. I agree with the Council that a structure either fits within the measurements or it does not, there is no room for a de minimis excess other than that of a few millimetres which could be explained as measurement error.

18. The appellants position is essentially that it is obvious the measurement is meant to be wall to wall and excludes projecting eaves or rainwater goods etc. This is how the industry as a whole understands it and to find otherwise would be to take away the definition of caravan from numerous mobile and park homes at a stroke. I was shown two plans of mobile homes currently on the market, which were 6.79m wide, plus overhanging eaves and gutters. I was also referred to the case of Brightlingsea (referred to above) where this issue was fully aired and incidentally where the court held that whether

consternation would be caused to manufacturers of mobile homes was irrelevant to the outcome of the case.

19. In Brightlingsea the court had to determine whether a lodge was a caravan for the purposes of the 1968 Act. In that case, as in this appeal, the wall to wall measurements were within the 6.8 limits but not if the eaves were included. The court held in paragraph 80 of the judgement "*if one is measuring the width of a structure such as the lodges, it is normal to take the wall measurements and to exclude the roof measurements. Secondly it seems to me to be more likely that Parliament would seek to control the wall measurements for width and length rather than the roof measurements*".

20. There was considerable discussion at the Hearing about the model conditions for a caravan site, and the Government's response to the consultation on extending the measurements to 6.8m. it is clear from these that the 6.8m is intended to be wall to wall, and the diagram in the consultation response, which is repeated in the model conditions shows exactly that. I accept that these are merely the view of the Government department, not a definitive guide to the Act, and the model conditions are primarily concerned with caravan spacing, rather than actual sizes, nevertheless it is instructive that the advice is consistent in measuring wall to wall. However, the courts view in Brightlingsea seems to me to be decisive and also to agree with the Government's own view. I have been given no reasons to consider this appeal should be treated as different from these authorities and so I consider the dimension test is met.

Conclusion

21. Taking this all together I consider the structure enforced against is a caravan within the meaning of the 1968 Act. The matters alleged have not occurred and so the appeal succeeds on ground (b). I shall allow the appeal and quash the notice.

Appeal C – Creation of a Curtilage

22. The s78 appeal is for a material change of use of a defined area of land around the caravan from agricultural to residential. A plan has been supplied which shows the extent of the land affected. This includes an access from the track, a turning area, a small strip of land to the south of the park home and an area around a shed next to the park home.

23. The Council accept that whether the residential structure is a caravan or a permanent dwelling it is reasonable for it to have some form of garden area, an access and some parking. When the original LDC was granted, the red line was drawn tightly around the footprint of the old tin barn which contained the caravan. This, the Council argue, gave the then much smaller caravan an area of land for residential use. The appellant has now filled this land up with the new larger park home, but as I have found it to be lawful, it follows this too should be allowed an area of land around it for residential use. Had I allowed the appeal on ground (a), the Council suggested a strip of land 7m wide to the south and east of the park home would be acceptable. This would take up most, but not all of the proposed access drive and about half the parking and turning area but would be slightly more generous than the proposed garden strip to the south of the park home. What it would exclude is the shed.

24. In my view the turning area is obviously necessary for convenience and safety, and that proposed is more or less the minimum required. The strip of garden to the south is not controversial, and again is the only outdoor garden space available (the land to the north between the park home and the track contains the stable). The shed has been in existence for some years, and that is not in dispute. However, it has been enlarged by the appellants, adding 2m onto the end, turning it from a 4x3m to a 4x5m shed.

25. The site lies in the green belt where inappropriate development is harmful. The NPPF at paragraph 146 notes that certain forms of development, including a material change of use of land, are not inappropriate providing they preserve openness and do not conflict with the purposes of including land in the green belt in first place. The purposes of including land in the green belt are explained in paragraph 134 and these are high level purposes that are not infringed by this minor encroachment. Although a material change of use should preserve openness, this is not a blanket ban on any structures at all but should be seen in the context of what the material change of use is. In this case it is for residential purposes and includes a modest shed which are required for a use that has already been fund to be lawful. The small extension of the shed does not in this context harm openness and neither would the parking of cars associated with, what is in this context, a modest bungalow with a small area for parking and turning. Vehicles would have to be parked somewhere and there would potentially be more impact if there was not an identified area to do so. Any further extension of the area into the countryside would require planning permission and could well have an effect on the green belt, but as it is drawn, it seems to me to be entirely reasonable.

26. Consequently, I do not find the proposed material change of use to be inappropriate development. The residential land acquires no permitted development rights, so there should be no further development on the site. It therefore also accord with policy HE3 of the Christchurch and East Dorset Core Strategy which seeks to protect landscape character. The septic tank and demolition of the barn are not opposed by the Council.

27. I shall allow the appeal and grant planning permission for the material change of use, subject to the condition that the uses are limited to the area shown on the plan provided as part of the appeal.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Amy Cater	Solicitor
David Vestey	Surveyor
Clive Miller	Agent for Enforcement appeals
Vik Cooper	Timber Spec
Ian Lassiter	Agent for s78 appeal
Janet Lee	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Poonam Pattni	Of counsel
Pip Williams	Enforcement
Elizabeth Adams	Planning
Anthony Delk	Surveyor

INTERESTED PERSONS:

Tim Harris	Neighbour

DOCUMENTS

1 Written submissions on behalf of the Council
2 Statement of common ground – enforcement
3 Statement of common ground – s78
4 Amending the definition of a caravan - ODPM consultation paper and response.
5 Floor plans and measurements of typical park homes
6 Photographs from Mr Harris
7 Transcript of Lloyd v SSCLG & Dacorum BC [2014] EWCA Civ 839
8 Costs application