The Planning Inspectorate

Appeal Decision

Site visit made on 19 August 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/U2370/C/19/3241296
Land on the north west side of Cockerham Road, Bay Horse, Lancaster (part of which being known as Old Quarry, Potters Brook, Bay Horse, Lancaster LA2 0HQ).

- 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 Nicholas Plummer against an enforcement notice issued by Wyre Borough Council.
- The enforcement notice, numbered PLG/6/105, was issued on 8 October 2019.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from agricultural use to a mixed use for part agricultural and part use for the siting of a static caravan for residential purposes.
- The requirements of the notice are to:
    1. Permanently cease the use of the Land for residential use; and
    2. Permanently remove from the Land the following:
        I. the static caravan in its entirety: and
        II. all residential paraphernalia associated with the static caravan.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (e) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is quashed.

The notice

2. The appellant contends that the notice does not contain all elements of the mixed use which is lawful as planning permission has been given for the stabling of horses and that this permission has begun. However, at the time the notice was served the stable building was in a partial state of construction. It seems probable that the notice was correct at the time it was issued. During my visit, I noticed that the rear wall of the stable block had been erected but the side walls were partially built. I saw that no horses were being kept on the land or which could be housed due to the partial construction of the stable block, therefore it seems probable that at the time the notice was issued the allegation in relation to the use of land reflected the lawful use of the site.

3. The second point raised relates to the question of whether the caravan has been adapted to a building which is considered under the ground (d) appeal.

4. The third matter is that the enforcement notice does not tell the appellant fairly what he has done wrong and what he must do to remedy it[1]. The notice requirements refer to the removal of "all residential paraphernalia associated with the static caravan" and the appellant asserts that the Council has not provided a list of items to clarify the term paraphernalia, or a site plan identifying which objects to be removed. The appellant contends that the use of the umbrella term would lead to the need to further clarify the situation. The appellant also indicates that due to this lack of clarity the Council would have a continuing power to enforce this requirement after compliance has taken place which in the appellant's view renders the notice a nullity.

5. I do not consider that the Council ought to have listed each and every item that requires removal in the notice associated with the residential use, as the term 'paraphernalia' is widely used and has a common dictionary definition. It seems from the appellant's submissions that he understood the meaning of the term and was concerned that it could apply to the equipment and machinery associated with the agricultural use of the land. I do not consider that this is likely, and the items listed by the appellant such as bags of pig feed and straw bales are not normally associated with residential use.

6. The concern that the notice would have a continuing effect applies in statute under section 181 of the Act as amended and compliance with the requirements of the notice would not discharge the notice. This would prevent the unlawful use or other requirement from re-occurring. In all and having considered the appellant's submissions I do not regard the notice to be a nullity.

7. The appellant also indicates that the questionnaire response relating to the notice plan is inaccurate, however the plan accompanying the notice reflects the boundaries of the appeal site land and identifies the site in relation to concerns about the inaccuracies of the address which was entered on the planning register. The Council has also confirmed that the planning register has been corrected accordingly. The notice plan properly identifies the boundaries of the land to which the notice relates in accordance with The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 Article 4(c) and section 173(10) of the Act as amended.

Preliminary matters

8. The appellant has raised several matters pertaining to the expediency of taking enforcement action and the provisions of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. There are also matters raised in relation to policy content, description of the site and the appellant's request to make further representations under a ground (a) appeal.

9. Planning practice guidance (paragraph: 003 Reference ID: 17b-003-20140306) advises that the provisions of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 are relevant when deciding whether to take enforcement action. Local Planning Authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and of those who are affected by the breach of planning control.

[1] Miller-Mead v Minister of Housing and Local Government [1963] 2 WLR 225

10. However, no ground (a) appeal has been pleaded in this case. Human rights and the Public Sector Equality Duty do not come into play in the legal grounds of appeal where the questions are whether or not, as a matter of fact and law, the enforcement notice was properly served, the matters occurred, or the matters are in breach of planning control or immune. The legal grounds do not allow for consideration of the effect of the decision on individuals and their rights. As to the issue of expediency, that is not within the remit of this appeal to decide. It would involve a complex assessment and investigation of the background to the issue of the enforcement notice and therefore, if pursued, should be the subject of an application for judicial review.

The appeal on ground (e)

11. The appellant's case is that Mrs Cvijanovic was not served with the enforcement notice. She resides at the appeal property and is registered on the Council tax and Electoral Register.

12. The Council indicates that the notice was served on the occupier of the land as well as the owner of the land.

13. The appeal is made by the appellant who was served with the notice. The notice also lists that the occupier was served the notice. I conclude that this is sufficient for the purposes of proving service in relation to sections 329 and 172 of the Act as amended. I consider that there is no prejudice arising from the Council not naming Mrs Cvijanovic as the recipient of one of the copies of the enforcement notice, as the notice was served on the occupier of the land.

14. The appeal on ground (e) therefore fails.

Ground (d)

Whether the development is regarded as a caravan or building?

15. The case made by the appellant is that the caravan brought onto the land has been altered to become a structure/building. The Council refer to the *Measor*[2] case. I have had regard to this case and others and the statutory definitions as set out below.

16. From what I saw, the appellant has installed a fireplace and a bathroom both of which have resulted in blockwork walls being constructed internally within the caravan which are attached to a concrete foundation beneath the caravan. The walls extend through the floor of the caravan to ceiling height inside the caravan. In the case of the bathroom the breeze-block wall is evident through the side window of the caravan. Part of the chassis steel frame of the caravan has been removed to allow for the blockwork walls to be built and sections of the chassis caravan frame has in turn been cemented to the walls. The floor of the caravan has been extensively repaired or replaced as it was evident that these were relatively recent replacements because they were not discoloured or weathered and had not been treated.

17. A caravan is defined at section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA) as any structure designed or adapted for human habitation which is capable of being moved from one place to another

[2] Measor v SSETR & Tunbridge Wells DC [1999] JPL 182

(whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. It excludes (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.

18. Section 13(1) of the Caravan Sites Act 1968 (CSA) defines twin-unit caravans, but there is no suggestion by any party that the appeal development comprises a twin-unit. Section 13(2) of the CSA confirms the size limitations of a caravan and there is also no suggestion that the appeal development exceeds the size test. The mobility test is whether the caravan is capable of being moved in principle and not whether the caravan could lawfully be transported on the highway.

19. The appellant has supplied a letter from Mr Tallon of Lakeland Caravan Services Limited indicating that he installed the bathroom in the caravan in February 2015. Mr Tallon indicates that he removed part of the steel frame of the caravan to facilitate building the foundations and walls of the bathroom. He also indicates that the main frame is built into the walls of the bathroom. Mr Tallon asserts that to remove the caravan, the block-built bathroom would have to be demolished, and this would lead to the caravan chassis collapsing, resulting in the demolition of the caravan.

20. Given the degree of affixation to the ground I am persuaded that the walls would have to be demolished since they attach from foundation level to internal ceiling height. The walls break through the floor of the caravan and the chassis is now attached in part to the walls. Part of the chassis had been removed to facilitate the construction of the walls and new flooring of the caravan is built around sections of the wall. It seems probable that the structure is not capable of being towed from one place to another, and it could not in all likelihood move without the chassis and side walls of the caravan, roof, and floor buckling or even tearing apart. In this instance I do not consider, as the Council suggests, that the degree of attachment is limited, nor that the low concrete walls could be detached, without part of the caravan collapsing in on its own weight.

21. No technical evidence has been presented to demonstrate that the structure could withstand movement in relation to the mobility test, but Mr Tallon's evidence who constructed the bathroom corroborates with what I saw on site. I therefore consider on the balance of probability that the mobility test is not met. In all, I consider the structure as adapted does not meet the CSCDA definition.

22. If the structure does not meet with the definition of a caravan, then it should be assessed against the recognised tests for determining whether the structure constitutes a building. These are size, permanence and physical attachment.

23. In terms of size, the structure is of sufficient size to have been previously designed as a habitable residential caravan. It is now adapted to provide one double bedroom/living room, kitchen/study/dressing room and bathroom. The fireplace and bathroom, and flooring is substantial enough to have required construction from multiple component parts. I consider the structure to be of sufficient size to constitute a building.

24. With regard to permanence, the caravan has been adapted to a building and given my preceding conclusion it fails to meet the mobility test. The structure,

the subject to this appeal, has been settled in place for a considerable period of time. The bathroom was fitted in February 2015 and the structure has not been moved since. I consider that it has sufficient permanence to be regarded as a building.

25. In terms of physical attachment, the structure is cemented to a foundation. The chassis which formed the caravan base is cemented to some of the walls that form the bathroom. The structure is also connected to main utilities. I consider the structure achieves the necessary affixation to the ground in terms of physical attachment.

26. As a matter of fact, and degree I therefore consider that the structure meets all of the tests for being a building but does not meet all of the tests for being a caravan.

27. The Council suggests that the works do not amount to development under section 55(2)(a) – works affecting only the interior of a building, or do not materially affect the external appearance of the building. I note that section 55(2)(a) relates to "the carrying out for the maintenance, improvement, or other alteration of any building..". It does not apply to a residential caravan use which the Council alleges has taken place.

28. I conclude, on the balance of probability, that the structure is a building and is not a caravan. I conclude that the building operation is development for the purposes of section 55(1).

The construction of the dwellinghouse or building

29. Under section 171B(1), where there has been a breach of planning control consisting in the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The notice was issued on 8 October 2019 and so the material date is 8 October 2015.

30. The static caravan as it was before it was adapted was brought onto the land in March 2014. In April 2014 a multi-fuel stove was installed but this caused heat damage and as a result in November 2014 the stove was re-installed and was supported by concrete foundation and block work walls. The appellant removed sections of wall and floor to facilitate this work. In February 2015 the original fitted bathroom was replaced by Mr Tallon[3], and a new bathroom was installed as set-out above.

31. Letters in support[4] from Mr S Cvijanovic (appellant's father-in-law) and Mr/Mrs Holt have been submitted. These indicate that Mrs Cvijanovic and Mr Plummer moved into the static caravan in March 2014, whilst Mr/Mrs Holt says they have witnessed all work that the appellant has undertaken and that the appellant and partner moved in over 5 years ago. Mr S Cvijanovic who gave his daughter the stove visited the site in December 2014, and he recalls seeing the stove had been fitted in the unit with concrete foundation and block work walls. In May 2015 he saw that the bathroom had been fitted and constructed in the unit with a foundation and block work walls. The appellant has also provided an

[3] Appendices 10 and 11 (Dated Job Sheet)
[4] Appendices 12 (letter dated 29 October 2019), and 13 (letter dated 14 November 2019)

email confirmation of a bulk order of coal delivery[5] to the appeal site address on 2 January 2015.

32. I am satisfied that the appellant has demonstrated, on the balance of probabilities, that the building was substantially complete before 8 October 2015. It follows from my preceding conclusions that, as a building, it is immune from enforcement action under section 171B(1). I am also satisfied that the building amounts to the construction of a dwellinghouse as it has all the attributes and facilities required for day-to day private domestic existence[6] and is immune from enforcement action under section 171B(1).

The residential occupation or use of the building as a dwellinghouse

33. Section 171B(2) of the 1990 Act provides that where the breach of planning control consists in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

34. The Council's case is based on the allegation as set out in the heading above as a residential caravan. It maintains that the appellant has not provided sufficiently precise and unambiguous evidence that the static caravan has been in a continuous[7] residential use.

35. The appellant's submission is that he has lived at the appeal site from 2014. In the final comments submission in July 2020 it is stated that Mrs Cvijanovic mainly resided in Scarborough until early 2015 although she occasionally slept at the site. The property was entered on the valuation list on 26 January 2015. It is contended that Mrs Cvijanovic's intention was to reside solely at the site in early 2015. Until that date the property did not have facilities for day-to-day existence, Mr Plummer had used a camping stove and outdoor water tap until such time as the gas appliances and pipe work had been installed. It is claimed that the building as initially constructed exhibited characteristics from multiple classes and did not fall within a use other that regarded as 'sui generis'. It is stated that it was not Mr Plummer's initial intention to use the caravan/structure as a dwelling.

36. The appellant claims that the structure was erected following completion of the fireplace being built in the caravan in November 2014. However, the bathroom was constructed in February 2015 which coincides with Mrs Cvijanovic's intention to reside solely at the site in early 2015.

37. I have had regard to the issue of when the building provided viable facilities for living in relation to *Gravesham* and when the use actually commenced, although neither factor is decisive. In this regard the question is whether the building was capable of being used as a dwellinghouse as a matter of fact and degree. The information on this point is sparse and the onus is on the appellant to demonstrate as a matter of fact and degree that there has been a change of use. Actual residential use remains a factor even when physical works to facilitate residential use has been completed, and the actual use must be more

[5] Appendix 5 email dated 2 January 2015
[6] Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142; [1983] JPL 307

[7] Swale BC v FSS & Lee [2005] EWCA Civ 1568; [2006] JPL 886 and Thurrock BC v SSETR & Holding [2002] EWCA Civ 226; [2002] JPL 1278

than squatting or camping. There is little evidence to consider in the round with regard to the former use of the building, the physical state of the building at the relevant date, the actual use of the building at that date and the intended use in relation to the chronology of the residential use.

38. It may be argued that upon completion of all the facilities within the structure in February 2015 the building's residential use began straight away thereafter. This would imply that this was the first use of the building and there was no change of use to a dwellinghouse. This in turn implies a breach under section 171B(3) and case law has established that if a dwellinghouse is erected unlawfully and used as a dwellinghouse from the outset the unlawful use can still properly be the subject of enforcement action within ten years, even if the building itself, as a structure, becomes immune from enforcement action after four years.

39. Based on the available evidence and on the balance of probability it has not been demonstrated that there has been a change of use of any building to use as a single dwellinghouse.

Conclusions

40. I have concluded that the caravan residential use has not occurred as is alleged in the notice, and the notice cannot be corrected without causing injustice. As there is a case to answer in relation to the material change of use of the land to residential use which has not been argued as set out in paragraph 38 it would be unfair to correct the notice in these terms.

41. To correct the notice to the appellant's suggestion 'without planning permission, the erection of a building and material change of use of the building to a dwelling' would not (based on the available evidence as concluded in paragraph 39) accurately reflect the breach of planning control.

42. Other matters have been raised in relation to whether planning permission is required for temporary buildings and the issue of deliberate concealment. The Council offer no evidence that there has been an act of positive deception in this case. Mr Plummer submitted a planning application for a new dwelling on the site in 2015 and the planning appeal was dismissed in June 2017. The tolerances for temporary uses and buildings do not apply when the intention is that the development should be permanent and in this regard the appellant has not shown on the available evidence this to be the case.

43. My conclusion is therefore not to correct the notice but only to quash the notice. The matter of the use of the building would need to be resolved, without prejudice, by a future enforcement notice, or by a lawful development certificate or planning application.

Iwan Lloyd

INSPECTOR