The Planning Inspectorate

Appeal Decision

Inquiry held and site visit made on 10 August 2016

by V F Ammoun BSc DipTP MRTPI FRGS

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

Decision date: 27 October 2016

Appeal Ref: APP/R3325/C/15/3141521
Land at Diacut Limited, 192 Marsh Lane, Henstridge, Templecombe BA8 0TG

- 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 Hugh Hayward against an enforcement notice issued by South Somerset District Council.
- The Council's reference is 13/00190/USE.
- The notice was issued on 10 December 2015.
- The breach of planning control as alleged in the notice is *Without planning permission the change of use of Land at Diacut Limited, 192 Marsh Lane, Henstridge, Templcombe BA8 0TG (The Land) from Use Classes B1, B2 and B8 (Town and Country Planning (Use Classes) Order 1987 to use of the Land for the retention of three mobile homes for residential purposes in the approximate position marked with a cross on the attached plan*.
- The requirements of the notice are *(a) Permanently cease the use of the Land for the retention of all three caravans for residential purposes; (b) Permanently remove two of these caravans for residential purposes and its associated domestic paraphernalia from the Land; (c) To retain one caravan for the use ancillary to the lawful use of the Land for B1, B2 and B8 uses only; and (d) Restore the land to its condition before the breach took place*.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)[d] of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal fails and the notice is altered and upheld, as set out in the Formal Decision.

Preliminary and Background matters

1. At the Inquiry an application for a full award of costs was made by the Appellant against the Council. This is the subject of a separate decision.

2. All evidence at the Inquiry was taken on affirmation.

3. As the appeal was made on legal ground (d) only there is no appeal on ground (a) seeking planning permission and the planning merits of the appeal development are not before me for decision. It follows that the development plan and other material considerations relating to such merits, and similarly the comments of the Parish Council and a local resident, can only be taken into account to the extent that they relate to the matters of fact and law at issue in legal grounds of appeal.

4. The enforcement notice allegation refers to three mobile homes, numbered 1 to 3 in the representations. Unit 2 was removed before the Inquiry, and it was confirmed for the Appellant that no case was argued in respect of that unit.

The main issues

5. The parties helpfully agreed that what was at issue in this case was *Whether the units constitute operational development as defined in Section 55 of the Act, rather than as a use of the land as a result of: size, permanence and physical attachment to the ground* (extract from Statement of Common Ground of 4 August 2016). Their agreement reflects the undisputed evidence that the three units had not been both present and known to be used for residential purposes for ten years prior to the date of the notice, but that the two now remaining had been present and thus used for four years. It follows from S171B (2) of the Act and the four year and ten year "rules" therein that the appeal on ground (d) can only succeed if it is concluded that the said units have been buildings/operational development for that four year period. I concur and conclude that this is the main issue in this case.

6. The case for the Appellant approached this issue through a conclusion that the appeal units were no longer caravans. It does not follow, however, that because a unit is not a caravan then it must be a building/operational development. Nevertheless as this approach involves a dispute as to the accuracy of the matters alleged in the notice[1], I shall deal with it as though it had been an appeal on ground (b).

Ground (b)

7. The Appellant's claim that the units were not caravans turned upon the Court of Appeal judgement in *Carter*[2] that to be a caravan the units, once fully assembled must be capable, as a whole, of being towed or transported by a single vehicle. No dimension or other circumstance was put forward as contrary to their being caravans. It was claimed that in this case as a matter of fact Units 1 and 3 would have to be broken up in order to transport them, and that this was because a replacement industrial building completed in 2010 had restricted the space available for moving the units, including by crane. In the case of the twin Unit 3 use of a crane was stated to be debarred due to the new building leaving insufficient space for the necessary metal frame to be placed beneath the unit.

8. The Council argued that while *Carter* had required the units to be of such a nature that they could be moved as a whole, S29(1) of the 1960 Act[3] and *Carter* did not go beyond that to take into account changes in the neighbourhood that in fact prevented such movement. *R v Schonewille* and *Pugsey v SoS*[4] were referred to show that a caravan walled up within a building had been held to still be a caravan, and that where local lanes were too narrow to prevent the movement of a caravan this did not prevent the caravan from falling within the statutory definition. While the circumstances in these cases, and indeed in others including *Carter* that were referred to were not claimed by either party to be identical to those in this appeal, I consider them helpful. In

[1] The notice allegation refers to mobile homes, but its requirements refer to caravans, suggesting that the Council had not distinguished between the two terms.
[2] *Carter v Secretary of State (1995) JPL 311.*
[3] The Caravan Sites and Control of Development Act 1960.
[4] *R v Schonewille [2011] EWCA Crim 811* and *Pugsey v SoS & North Devon District Council [1996] JPL.*

particular the two referred to by the Council which indicate a focus upon the nature of the unit in question, rather than to potentially limiting circumstances nearby. I have concluded that the Council's legal case prevails. It follows and I have concluded that on the facts in this case the units are not debarred from being caravans by the *Carter* decision. The ground (b) argument fails.

9. For completeness I record that the parties were also in dispute as to whether the units could in fact be removed from the site by manoeuvring them through the space remaining between buildings and boundaries without use of a crane. If I had concluded that the evidence supported the Appellant on that matter, however, it could not have altered the conclusion on ground (b) set out above, and so I do not state any view on this question.

10. Also for completeness I record that if the ground (b) approach had succeeded it would have been my duty to consider whether the notice could have been corrected without injustice. When I raised this possibility it was initially argued that it would be prejudicial to the Appellant to reword the notice to focus on the units being mobile dwellings/mobile homes rather than caravans. Upon further consideration, however, and after taking into account that quashing the notice for that reason only would be likely to result in a reworded replacement enforcement notice, it was agreed that such a potential correction could be made without prejudice/injustice. It follows that even if I had concluded that the units were not caravans, this would not in itself have determined the outcome of the appeal.

The appeal on ground (d)

11. The Statement of Common Ground quoted sets out the factors to be taken into account in determining whether or not the appeal units are buildings. As to size, the appeal units have the dimensions of a single unit caravan and a twin unit caravan. Their size is thus consistent with their being such, or with being small buildings. It is clear from the evidence, however, that they were not built on site nor did their presence require activities normally associated with the work of a builder. Unit No 1 was brought onto the site in much its present form, and the double Unit No 3 brought on in two parts whose coupling had been supervised by and was described at the Inquiry by Mr Nicholls. This particular factor thus supports the Council's case.

12. As to physical attachment to the ground, it was acknowledged for the Appellant that the service connections could readily be detached, and I saw that this had been done for Unit 2. Both units had skirtings which did not have a structural or supportive role. Both had U bolts which had been screwed into the surface beneath to give the units stability, but which it was acknowledged could be readily unscrewed. I conclude that this factor supports the Council's case.

13. As to permanence, both units have remained in their present locations since they were brought onto the land, Unit 1 in 2006 and Unit 3 in 2010. There was no evidence as to any intention or likelihood of their being moved voluntarily. On the other hand, they both retain their caravan style underframes, axles, and some at least of their wheels. Unit 1 had its towing bracket attached, Unit 3 had one towing bracket on site, and one missing. Both units, therefore, retain features relating directly to mobility.

14. It was argued for the Appellant that the two units had been, as it were, boxed in by the 2010 workshop. The extent and implications of the boxing in were

disputed at the Inquiry. Whatever may be the case, however, I do not consider that lawful operational development undertaken as an entirely separate construction can affect the permanency of the units. This conclusion is supported by the fact that the other two factors identified as relevant to the determination of whether something is a building or a use of land apply directly to the unit under consideration. To have the third factor of permanency potentially determined by other external actions takes the Court determined guidelines beyond the context in which they were formulated.

15. Taking the foregoing three factors referred to as a whole, I have concluded on the main issue in this case that the presence of the appeal units constitutes a use of land rather than being the result of operational development. The ten year "rule" applies, and it follows from the undisputed evidence as to the duration of the residential use of the units that the appeal on ground (d) fails.

Changes to the notice

16. The Council acknowledged that one unit had been present on the site for long enough to be lawful subject to its use, and had framed the notice to allow one unit to remain but had not specified which. The Appellant considered this produced a lack of clarity, but I consider the notice is entirely clear in requiring all but one unit to be removed. That the Appellant may choose which to retain is neither unclear nor disadvantageous.

17. The parties agreed that the notice be amended to delete an incorrect reference to the approximate position of the units being shown by a cross, to rephrase the allegation so to refer to a mixed use, and to substitute the stationing of units for their retention. It was also agreed that to require the retention of a unit and specify its use went beyond what was necessary to remedy the alleged breach of control, and that there was no need to require reinstatement of the site to its former condition having regard to that having been open land within a commercial site. I shall correct and amend the notice accordingly.

18. The notice allegation refers to mobile homes but the requirements of the notice refer to caravans, and a notice should be self-consistent. The parties favoured a correction to "caravans", but I consider that the phrase "mobile home/ caravan" better reflects the sense of the Notice as issued.

19. I have taken all the other matters raised in the representations into consideration, including those of a neighbour concerned with drainage matters, but do not find that they alter or are necessary to my conclusions on the main issue in this case.

FORMAL DECISION

20. The Notice is corrected by replacing the allegation in paragraph 3 with the following *The change of use of the Land from Use Classes B1, B2 and B8 (Town and Country Planning (Use Classes) Order 1987) to a mixed use for the foregoing and for the stationing of three mobile homes/caravans for residential purposes;* and is amended by replacing the requirements (a) to (d) of the notice in paragraph 5 with the following *(i) Permanently cease the use of the Land for the stationing of mobile homes/caravans for residential purposes, (ii) Remove two of the mobile homes/caravans and any domestic paraphernalia associated with the residential use thereof from the land.*

21. Subject to the foregoing corrections and amendments the appeal is dismissed and the notice upheld as altered.

V F Ammoun

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Tony Phillips	Director, Thurdleigh Planning Consultancy Ltd
He called	
Mr Fred Nicholls	Static caravan and park home siting consultant
Mr Hugh Hayward	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Robson	Of Counsel, St Johns Chambers Bristol
He called	
Mr Adrian Noon BA(Hons) Dip UP	Team Leader, South Somerset District Council

DOCUMENTS provided after the Inquiry opened

1 Council notification letter, copy advertisement, and associated documents.
2 Council photograph dated early September 2010.
3 Opening Statements for Appellant and Council.
4 Bundle of Correspondence between Appellant and Council.
5 Extracts from Encyclopedia of Planning Law.
6 Case report.
7 Closing statement for the Appellant.

C1 Costs application for the Appellant.