BYRNE v. SECRETARY OF STATE FOR ENVIRONMENT and ARUN [1997] EWHC Admin 190 (27th February, 1997)

IN THE HIGH COURT OF JUSTICE CO 2803-96

QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

Royal Courts of Justice
Strand
London WC2

Thursday, 27th February 1997

B e f o r e:

HIS HONOUR JUDGE RICH
(Sitting as a judge of the Queen's Bench Division)

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BYRNE

-v-

THE SECRETARY OF STATE FOR THE ENVIRONMENT

and

ARUN

- - - - - - -

(Computer-aided Transcript of the Stenograph Notes of
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MR C BOYLE (instructed by Clarks, Reading RG1 1SX) appeared on behalf of the Applicant.

MISS N LIEVEN (instructed by The Treasury Solicitors) appeared on behalf of the Respondent.

J U D G M E N T
(As Approved)
Thursday, 27th February 1997

1. HIS HONOUR JUDGE RICH: Mr Boyle appears on behalf of the Applicant to quash the decision of the First Respondent of an enforcement notice served by the Second Respondent which, by its terms, requires the Applicant to remove a log cabin from their land.

2. The enforcement notice was served on the basis that the log cabin was to be treated as a caravan within the meaning of the Town and Country Planning Acts and therefore the use of the land by the stationing of it on the land was the development of which complaint should be made. The Inspector in upholding the notice, decided that the log cabin was not a caravan but a structure which had involved carrying out building operations on the land and, therefore, that the development to be complained of was operational development in respect of which the period for enforcement is a period of four years.

3. In the case of a change of use the period which makes unauthorised development common from enforcement action is ten years. If what was complained of was change of use, it would be possible in order to determine whether a change of use had taken place and when, to have regard to the presence on the land prior to the construction of the log cabin in 1994 of a succession of caravans. Accordingly, the view which the Inspector took as to the nature of the development affected the nature of his decision as to whether or not the time for taking enforcement action had passed; and if he was wrong in his identification of the nature of the development, it is accepted that the Applicant was prejudiced.

4. The difficulty in identifying the nature of the development arises from the statutory definition of "caravan". It is accepted that those statutory definitions contained in the Caravan Sites and Development Act 1960, and the Caravan Sites Act 1968 are to be treated, at least, for the purposes of this present application as the relevant definitions to be applied for the purposes of the Inspector's decision.

5. The 1960 Act had defined "caravan" as meaning:

"A structure designed or adapted for human habitation which-

(b) is... 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)."

6. The rest of the definition is not presently material. That definition raised problems in circumstances where it was physically practical to move a structure, but not lawful to take such

structure on the highway.

7. Section 13 of the 1968 Act, accordingly enacted as follows, the section is headed:

"Twin unit caravans .

(i) A structure designed or adapted for human habitation which-

(a) is composed of not more that two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices."

8. Pausing there, that subparagraph has been referred to as the "construction test". I continue reading:

"(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or being transported on a motor vehicle or trailer)."

9. Pausing there, the second limb is referred to in this case as being the "mobility test": I continue reading:

"shall not be treated as not being a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled."

10. The form of the 1968 Act therefore, is in effect a deeming provision to deem something which would not be treated within the meaning of the 1960 Act as "a caravan" as being "a caravan" if it satisfies firstly, the construction test and, secondly, the mobility test which mobility test is to be applied irrespective of whether or not it could lawfully be moved on the highway.

11. There is a provision in section 13(2) limiting the size of the structure which can thus be deemed to be a caravan, but it is accepted in this case, and the Inspector so found, that the structure which fell for his consideration was within the dimensions expressed as the limitation in section 13(2) of the 1968 Act.

12. The Inspector described the log cabin that had been erected on the site as follows:

"The log cabin is apparently recently built and is of wood construction, comprising horizontal interlocking timbers of oval rounded profile, vertically clamped by steel rods. It has a shallow pitched roof covered with felt tiles. There are verandas at the front, northern end, and at the rear, south east corner of the building. The structure is supported on concrete blocks resting on ground pads at regularly intervals."

13. He sets out the dimensions:

"The accommodation comprises a living area with integral kitchen, a bathroom and three bedrooms."

14. The Inspector concluded that the log cabin satisfied neither the construction test nor the mobility test. The Applicant complains that in so doing, he misconstrued the meaning of section 13 of the 1968 Act and/or alternatively, at least in respect of the mobility test, proceeded without evidence in reaching his conclusion.

15. Mr Boyle suggests that there are warnings of the erroneous approach of the Inspector in certain preliminary paragraphs leading to his decision on the two tests. He has concluded that the question which arises in the case, which he had to decide was:

"Whether the cabin satisfies the other criteria of the definition than those found in section 13(2)."

16. That definition, he goes on:

"..is to be found in section 13(1) of the Caravan Sites Act 1968 and elaborates on the definition of a caravan which is set out in section 29(1) of the Caravan Sites and Control of Development Act 1960."

17. Following that identification of the issue, he proceeded -- Mr Boyle indicates, that this shows his proclivity to fall into error-to consider the ordinary meaning of the word "caravan". In my judgment, although it may not be clearly expressed in the decision letter, all that the Inspector was doing was reverting before addressing section 13(1) of the 1968 Act to the provisions of section 29(1) of the 1960 Act which he had just said section 13(1) of the 1968 Act elaborated.

18. Nevertheless, it is apparent that he did have in his mind, before applying the tests in section 13(1) of the 1968 Act, a picture of a caravan ordinarily so-called. In paragraph 9 of his decision letter, he said:

"Turning to the statutory definition of a twin unit, which I understand to mean two caravans joined together, sub-section 13 (1)(a) of the 1969 Act describes a structure of not more that two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices. When assembled it should physically be 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) and that it should be treated as a caravan even though it cannot legally be moved on the highway when so assembled."

19. That is a fair and proper paraphrase of section 13(1)(a) of the 1961 Act, save that there is interposed between his referring to his intention to look at the statutory definition of a twin unit and his doing so, the phrase "which I understand to mean two caravans joined together."

20. That without doubt was a misconception. There is nothing in the section, save only its heading "twin unit caravans", to indicate that the separately constructed sections which are a necessary ingredient of satisfying the construction test were to be each identifiable as caravans. I think that it may be that the Inspector did, in applying the test, have some confusion about that element. It does not however mean, that in the event he, in fact, applied the wrong test. I read paragraph 10 of his decision letter in order firstly, to indicate what he did say in reaching the conclusion that the construction test was not satisfied.

"The evidence in this case indicates that the log cabin was assembled on site from several components, and certainly more than two sections. It seems that individual logs or timbers were stacked on one another and finally compressed together by the use of straining rods to erect the walls. Rigidity for the structure is provided by laminated 'glulam' beams which run along the base of the walls and along the roof ridge line, linking to vertical beams in the centre of the gable ends (Plan A)."

21. Reference to "Plan A" is a reference to a manufacturer's plan which shows a section through the building indicating how the two sections of the building can be bolted together once positioned at ridge and subfloor level and indicates how the side walls are 75 millimetre doubled tongued and grooved walls fixed to a laminated edge beam and then bolted together by a 12 millimetre bolt through the walls.

"In theory", the Inspector went on in paragraph 10:
"at the meeting point of the two roof slopes and at the centre points of the gable ends, the structure is capable of being split into two parts. However there is no internal partition on the centre line of each

half which will expose the interiors of the two halves to the elements."

22. Pausing there, it is apparent that he is noting that the two separate halves into which, in theory, the cabin is capable of being split, would not themselves constitute separate structures designed or adapted for human habitation and thus it would not, if made up of two such sections, be made by two caravans being joined together. However, having made that observation, the Inspector continued:

"Moreover, it is clear from the evidence that this is not the way the log cabin was assembled on site. I therefore conclude that this structure does not comply with section 29(1) of the 1960 Act or section 13(1)(a) of the 1968 Act."

23. I read the sentence, "moreover, it is clear from the evidence that this is not the way the log cabin was assembled on site" as meaning that the bringing together of the theoretically separable parts having been separately constructed, is not the way in which the log cabin was in fact constructed.

24. The Notice of Motion criticises the Inspector's decision on this point by saying, that as it talks of the section being "designed to be assembled", the actual method of assembly in any given case is not conclusive. In my judgment, that construction of the section is mistaken.

25. Mr Boyle sought to support it by drawing to my attention that the paragraph refers to the structure as being "composed of not more than two sections... and designed to be assembled on a site by mean of bolts, clamps or other devices." I accept that if that was all that was required in order to satisfy the paragraph, it might be said that this structure was composed of not more that two sections, if one in some way ignored the fact that it was in fact composed of a very much larger number of sections, namely the separate logs and timbers to which the Inspector had referred. Certainly, it is designed to be composed into two sections, then to be bolted together as the paragraph requires, but this argument of Mr Boyle disregards two words in the paragraph which seem to me to be of importance. The requirement is that the structure should be composed of not more than two sections "separately constructed". That means, in my judgment, 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 to be deemed a caravan, that there should be two sections separately constructed which are then designed to be assembled on a site by means of bolts, clamps or other devices. If the process of construction was not by the creation of two separately constructed sections then joined together, the terms of the paragraph are not satisfied.

26. In my judgment, the Inspector was finding in the sentence to which I have drawn attention that it was not so constructed. I was at one stage, notwithstanding that no complaint is made of this point in a Notice of Motion, for myself somewhat concerned as to how the Inspector could have reached that conclusion. I think that I was improperly concerned, because it has not been suggested on behalf of the Applicant, that the Applicant sought to prove before the Inspector that the structure had been so composed out of two separately constructed sections. The burden, as Mr Boyle readily accepts, was upon the Applicant to satisfy the Inspector that the structure fell within the definition, if it was to be deemed, that it was a caravan.

27. On a proper understanding of the proof of evidence which has been exhibited before me, given by a building control surveyor on behalf of the Second Respondent, I do understand why it was right for the Inspector to reach the conclusion on the evidence, which he did reach. Mr Highward, over the time I was referring to, said that:

"The log cabin is a system/prefabricated structure. It is manufactured in several parts and designed to be assembled on site. The external skin of the log cabin, which is constructed on site, is a 'double-tongue and double-groove, special half-butt jointing and shaped interlocking' system."

28. That, as it appears to me, is the external skin consisting of the individual logs to which the

Inspector made reference, and it is separate from the structure whose rigidity is provided by the laminated glulam beams which run along the base of the walls and along the roof bridge line. So it appears that there were not at any stage two separately constructed sections which were then designed to be assembled and were assembled by means of bolts, clamps or other devices.

29. My concerns as to the justification for the sentence which decides as a matter of fact that the paragraph does not apply were, therefore, on reflection, unjustified. On a proper construction of the paragraph, the conclusion that the log cabin was not assembled on site out of two separately constructed sections, is conclusive that the paragraph does not apply and therefore the section does not operate to deem the structure as a caravan, and that is sufficient to uphold the Inspector's decision and to dismiss this Notice of Motion.

30. The Inspector, however, went on to find that the mobility test was not satisfied either. He did so in paragraph 11 of his decision letter as follows:

"Concerning the question of whether the structure is physically capable of being moved by road from one place to another, it is clearly impossible to tow it. I heard evidence from both sides about the practicality of moving it by motor vehicle or trailer. This included lifting by crane and jacking it up to enable a low-loader trailer to reverse under the log cabin. With regard to the first, the structure lacks lifting eyes or strong points for attaching strops and is of such mass and bulk that it may well be beyond safe lifting tolerances of many cranes capable of gaining access to this site. Jacking the structure would be a potentially complex procedure and, despite the claimed strength of the 'glulam' beams, would probably carry a very real risk of structural damage. In this respect I prefer the Council's evidence to that effect. Consequently I am satisfied that the structure also fails to satisfy the provisions of subsection 13(1)(b) of the 1968 Act."

31. Having made those specific findings however, the Inspector went on to give some explanation as to how he had arrived at them by the short observations that he made in paragraph 12:

"Having regard to all of the foregoing considerations, and to other evidence, including the manufacture's brochure and reports of conversations with them by the witnesses, I conclude, as a matter of fact and degree, that the structure on the site is not a twin unit caravan or mobile home and that it was constructed as a result of building operations as defined in section 55 of the 1990 Act."

32. The consideration of the mobility test in paragraph 11 clearly has regard to the movability of the structure from the particular site upon which it had been erected. This, Mr Boyle urges upon me, is an error of law, because, he says, what is to be considered is the nature of the structure rather than the circumstances of the structure in regard to the particular place where it has been erected.

33. I am uncertain what is the true construction of section 13(1)(b) in this respect. It appeared to me, when I read the paragraph at first, that the phrase "when assembled" is a clear indication that its mobility is to be tested by reference to the circumstances where and how it had in fact been assembled.

34. Mr Boyle submits and submits persuasively, that there is an alternative meaning of "when assembled", namely in its assembled state. He submits further, that since what is to be considered is whether it is capable of being moved by road from one place to another, it is not to be construed as meaning from the particular place where it has in fact been erected. That I find a highly persuasive argument and one which I would readily accept if I did not immediately recognise the source of the expression "one place to another" which is merely a repetition of the phrase which had been found already in the definition of section 29(1) of the 1960 Act.

35. I remain, therefore, inclined to the view, that the proper construction of the paragraph is that which I first gave it, namely that when assembled means when and as assembled in the state where

the question of whether or not it is to be deemed to be a caravan falls to be determined. I readily acknowledge that I may be wrong as to that construction of the paragraph, and it is therefore convenient that I should go on to consider, on the assumption that what is to be considered is the structure independent of its position, whether there would be reason to interfere with the Inspector's decision.

36. The Inspector by referring to the practicality of removing the structure by means of cranes capable of gaining access to the particular site was clearly, for himself, applying a test which would proceed, if I am mistaken in the construction of this paragraph, on a mistaken basis, but the conclusions that he has reached would appear to me to be equally applicable to the circumstances of this particular structure wherever it was placed.

37. The parties had agreed, as he recorded in the first sentence of paragraph 11, that it is clearly impossible to tow the structure. There was then apparently evidence as to the practicality of lifting it sufficiently to be able to place it on the back of a low-loader trailer in order then to move it as a complete unit by such means.

38. The Inspector addressed first the practicality of lifting by crane and secondly the practicality of lifting by jacking. He does not in terms, in paragraph 11 of his decision letter, deal with the problem of moving it once it was placed on the back of a trailer by either of those means of lifting. He does, however, in respect of jacking say:

"Jacking the structure would be a potentially complex procedure"

39. Within the limits of reasonable practicality, I accept Mr Boyle's observation that the complexity probably does not matter, but he goes on:

"... and, despite the claimed strength of the 'glulam' beams, would probably carry a very real risk of structural damage. In this respect I prefer the Council's evidence to that effect."

40. Now the Council's evidence as to the real risk of structural damage was not directed specifically to the circumstances of jacking: that is a complaint made on behalf of the Applicant as to the form of the decision. It is a factor that is specifically directed to the moving of the structure if it were once lifted, whether by jacking or by crane, and deposited on the back of a trailer.

41. Mr Highward said, and this is his evidence as it appears to me directed to the dangers of cracking:

"It appears to me that the log cabin is designed to remain static once constructed on site. Furthermore, due to the log cabin's size and design, it is not capable of being moved in one piece on the back of a motor vehicle or trailer if lifted and transported in its constructed state, the base would be likely to fracture and movement would be likely to cause a significant deterioration of some structural members and possibly the roof."

42. This evidence was apparently based upon conversations with the manufacturers, to which the Inspector made reference in paragraph 12 of his decision letter.

43. Mr Highward said:

"When I contacted the manufacturer, I was advised whilst the log cabin has lifting rings connected to the base they would not recommend it is moved using these rings or transported in one section. If it is necessary to move the log cabin they recommend that it is disassembled before hand on site, transported in its dismantled state and then reconstructed in its new position."

44. Although there does seem to me to be at least the potentiality of error in the reasoning which the Inspector applied to arrive at his conclusion that the mobility test is not satisfied, I am content he had evidence which he accepted, which would have led him to the same conclusion had he addressed himself not to the means of lifting the structure, but to the practicality of moving it once lifted, which is after all the test which he is required to apply under paragraph (b).

45. I have, in the passage which I have just read from Mr Highward's evidence, identified the fact that

46. Mr Highward refers to the existence of so-called "lifting rings" connected to the base of the structure. The Inspector had said, and the Applicant complains had said "without evidence" that the structure lacks lifting eyes or strong points for attaching strops.

47. The complaint as identified in the Notice of Motion was that the Inspector had found that there were no "lifting eyes or strong points for attaching strops", that was not his finding. His finding was, that it lacked such lifting eyes or strong points, and the lack seems to me to be a word apt to cover the situation which Mr Highward described of inadequate rings for the purpose of lifting, as much as the non-existence of rings and, therefore, it does not seem to me, that that particular observation in the Inspector's decision letter is an indication that he had made a finding for which there was no evidence.

48. For the reasons which I have given, the decision of the Inspector is sustainable by reason of his proper construction of the construction test. If it had been the case that I had reached the conclusion that the mobility test had been wrongly applied, I would still not have interfered with this decision and quashed it, because it appears to me clear on the evidence that was before the Inspector, and which evidence it is clear he accepted, that on applying such test as Mr Boyle would regard as unimpeachable his conclusion would be the same.

49. In those circumstances, and for those reasons, I reject this application.

50. MISS LIEVEN: My Lord, I ask for my costs.

51. MR BOYLE: I cannot resist that.

52. HIS HONOUR JUDGE RICH: Application dismissed with costs. Anything else I should properly deal with? Thank you both for your clear and helpful submissions.

Friday, 28th February 1997

53. MR BOYLE: If it please you, my Lord. My Lord, this is an application for leave against your Lordship's judgment of yesterday. My Lord will recall that I did not actually ask for leave after your Lordship gave judgment and did not address your Lordship as to leave to appeal to the Court of Appeal.

54. My Lord, I am obliged you can deal with it now. My Lord, it will be apparent from the case how important this matter is to those instructing me. The way my Lord decided the case will have the effect of removing this structure wherever it may be, removing the house of those who occupy it, or indeed that they face criminal sanctions.

55. There is, my Lord, of course, a much more general question of importance and that is, as I submitted yesterday, without authority on the point----

56. HIS HONOUR JUDGE RICH: The mobility point is certainly an arguable point, but as it is not critical if I am right on the construction point which, as a matter of fact which was found against you, I do not think I can give leave.

57. MR BOYLE: My Lord, I would submit to you, my Lord, that both on construction and mobility, with the greatest of respect, your Lordship made an error in law.

58. HIS HONOUR JUDGE RICH: If you can identify the error of law that I made on the construction issue, you might persuade me. What I thought I was doing was finding that the Inspector had made a decision of fact.

59. MR BOYLE: My Lord, on the construction matter, the way it was put in argument before you was such as to say that the design of the caravan was the most important matter.

60. HIS HONOUR JUDGE RICH: You conceded that that could not be conclusive, but what was determinative was how it was actually assembled.

61. MR BOYLE: Certainly in argument before your Lordship, I had argued that the way in which the Inspector came to his conclusion showed that he accepted that the design was such as to be in two parts, but in that case the two parts not constructed, but that he confused----

62. HIS HONOUR JUDGE RICH: The whole was not constructed by the method of first having two separate parts and then....

63. MR BOYLE: My Lord, that was a possible reading of his decision letter but, my Lord, I would submit that that is not the correct reading of his decision letter but, in fact, what he was finding was that the structure was put together from bits and pieces, but he accepted that those bits and pieces went to make the two parts -- the two parts went to make the whole as was the design of the caravan structure.

64. HIS HONOUR JUDGE RICH: Mr Boyle, by your very considerable charm, you succeeded in persuading me that there should be an opportunity for a full hearing. You have had your full hearing. If the Court of Appeal can be similarly charmed if they think there should be another full hearing good luck to you. I do not give you leave.

MR BOYLE: Thank you.
