Appeal Decision

Hearing held and site visit made on 6 March 2007

by V F Ammoun BSc DipTP MRTPI FRGS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date 3rd May 2007

Appeal Ref: APP/A2280/C/06/2024147
The Woodlands, Hempstead Road, Hempstead, Gillingham, ME7 3QL

- 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 Robert C Beck against an enforcement notice issued by The Medway Council.
- The Council's reference is ENFCASE2006/0008. The notice was issued on 7 August 2006.
- The breach of planning control as alleged in the notice is *The retention of a building being a significant pre-fabricated house, stationed on several brick courses, containing kitchen, bathroom, lounge and bedrooms, together with associated driveway, external paving and fencing on the Land, in breach of the condition set out in paragraphs A2(a) and (b) of Class A of Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995*.
- The requirements of the notice are *(i) Remove the dwelling erected on the Land, including the foundations thereof and any associated hardstanding, external paving and fencing. (ii) Remove from the Land all building materials and rubble arising from compliance with requirement (i) above. (iii) Reinstate the Land to its condition before the development permitted by Class A of Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (i.e. the erection of the dwelling, including associated hardstanding and external paving referred to in paragraph (i) above) was carried out.*
- The period for compliance with the requirements is one month.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Background

1. In 2005 planning permission was given for a replacement dwelling on this site. During the building works the Appellant and his family occupied what the Council describes as a *significant pre-fabricated house* and what the Appellant considers to be a caravan. The Council assumed that the permitted development rights referred to in the notice were being exercised, but took enforcement action when the building was completed but the structure/caravan remained on the site and was lived in by the Appellant.

The appeal on ground (b)

2. The appeal on ground (b) is that what is alleged did not take place as a matter of fact, because what is present on the site is not a building but a caravan. I consider that a caravan is a creature of statute in the sense that it is defined thereby[1]. The Council did not dispute

[1] "Caravan" as defined in s29(1) of the Caravan Sites and Control of Development Act 1960 as modified by s13(1) of the Caravan Sites Act 1968.

that the three tests of a caravan set by statute had been met: that it fell within the specified dimensions; that it had been brought onto the site in not more than two sections which had then been bolted together; and that it was capable of being moved as a single unit albeit this would require special equipment. The unit was also constructed by manufacturers who market their product on the basis that it complies with the statutory definition.

3. At the hearing the Council accepted that the arguments they put forward, namely the linkage of the chalet to the ground through having drainage and other services connected, the existence of associated steps, and the presence of a brick plinth or skirt were common features on many static caravan sites and were not normally taken as sufficient to denote a change from caravan to building. After inspection it was agreed that the caravan was not fastened to the ground. It follows and I have concluded that the breach of control has been wrongly described, and that rather than it being the retention of a pre-fabricated building, it is the use of the land as the site of a caravan. **The appeal on ground (b) succeeds.**

4. At the hearing I invited the parties to consider whether I must quash the notice[2] if the appeal on ground (b) succeeded, or whether it would be fair to all concerned to go on to determine the appeal on the basis of an altered breach of control. It was agreed that there would be no problem as to planning merits, as these had been amply rehearsed for either a building or a caravan, but that the Council might be disadvantaged if new evidence was given which needed cross examination or other consideration that was not practicable at the hearing. I shall refer below to the one point at which concern was raised under this head.

The appeal on ground (c)

5. The caravan was placed on the land in October 2005. Occupation of the caravan by the Appellant, his son and daughter in law, and their children commenced before demolition of the original dwelling began, and continued through to its practical completion. The caravan was thus initially occupied as an independent dwelling, in that its presence on the land was not ancillary to the enjoyment of any existing dwelling. It was agreed that the use at this time would have constituted development requiring planning permission.

6. For the Appellant it was suggested that the caravan site use could have been permitted development under Schedule 2 of the General Permitted Development Order (GPDO), Part 5, which conditionally allows the siting of a caravan for *the accommodation of workers employed in carrying out building … operations*. It had been intended that the Appellant would take an active part in the construction of the replacement house, in a "foreman" role. In the event he required medical attention and was temporarily disabled following an operation on 6th December 2005. The Council had understood that he had been disabled for the whole period of construction, but at the hearing it was said that after about eight weeks he had been able to do some work on the new building[3]. This could imply some supervisory activity from him from about early February 2006. In assessing the weight to be given to

[2] Both parties recognised, however, that if I quashed the notice the matter would not rest there, as the Council could be expected to issue a new enforcement notice with a corrected allegation.

[3] At this point the Council's representative expressed concern that he was hearing of this recovery for the first time and might not be able to test it properly. This could have led me to adjourn the hearing or close it with a view to a public inquiry being held. However as it became clear that a decision on ground (c) would turn on the question of use incidental to the enjoyment of a dwellinghouse under S55 of the Act rather than status as permitted development under Part 5 of the GPDO, I concluded that the hearing procedure remained appropriate. In any event no formal request for adjournment or change of procedure was made.

this, however, I noted earlier written evidence that the building had had to be finished off by others – implying the involvement of builders not living within the caravan. The young children had self evidently not been workers, and there was no evidence of significant activity by the Appellant's son or daughter and law such as might have brought them within that definition. I consider that, as a matter of fact and degree, the caravan was not for the *"accommodation of workers employed in the carrying out of building …operations"*.

7. The enforcement notice was issued in August 2006, on the basis that the approved replacement dwelling had been completed, but that what the Council believed to be a pre-fabricated house remained on site contrary to a requirement of Class 4A of the GPDO. A similar requirement would have applied to it as a caravan had it been initially authorised under Class 5. It was not suggested that when the notice was served the caravan was being occupied by workers. It follows that when the enforcement notice was served, and thereafter up to and including the date of the hearing, the lawfulness or otherwise of the caravan and its use did not turn on the permitted development rights referred to.

8. Section 55(2) of the Act sets out various matters which shall not be taken for the purposes of the Act to involve the development of land, and includes therein at (d) *the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.* It was claimed that the occupation of the appeal caravan by the Appellant was incidental to the enjoyment of the dwellinghouse, which was occupied by his son and daughter in law and their children. There was no dispute that the caravan was situated within the curtilage of The Woodlands.

9. Nor was it in dispute that there were circumstances in which a curtilage caravan could be residentially occupied and be incidental within the terms of S55(2)(d), as where a use was essentially that of a spare bedroom to the main dwelling. The Appellant claimed that this was what was happening in the present case. A bedroom and bathroom was being used, and the lounge when the Appellant sought privacy and quiet, but all meals were taken at the house or elsewhere. The Appellant had been widowed in 2005 and was described as a male of the generation that had not acquired household skills. I was told that these barely extended to making a cup of tea, and that even toast was prepared in the house. There was no contrary evidence given, nor suggested by the evidence given by the Appellant personally or by my visit to the caravan. I have concluded, on the evidence before me, that the appeal caravan is no longer being used as a separate dwelling[4], because of how it is being occupied by the Appellant in association with the use of the house by his family. This does not, however, in itself establish that the use is incidental in terms of S55 of the Act.

10. As to what would be an incidental use, the Council considered that a smaller single bedroom caravan with a bathroom and living room that was used as the appeal caravan is currently used would be lawful. This raises the question of whether the scale of a use is relevant to whether it is incidental to the enjoyment of the dwellinghouse as such. Neither party referred to case law or other guidance on this particular point. I consider that as a matter of commonsense, scale can indeed be a material factor. In the present case the new appeal dwelling is a house with four bedrooms. Within what would otherwise be its rear garden is the appeal caravan, which provides three bedrooms and has the appearance and size of a small bungalow. Of these bedrooms, only one is being used for the purpose of accommodating the Appellant. I have concluded that as a matter of fact and degree the use

[4] It had been used as such by the whole family while the new house was being built.

of the land as the site of the appeal caravan exceeds what might reasonably be incidental to the enjoyment of the dwellinghouse as such. **The appeal on ground (c) fails.**

The deemed planning application – appeal on ground (a)

11. The Woodlands holding is situated in the countryside closely adjoining the built up area of Gillingham. Well established countryside protection policies of the Kent and Medway Structure Plan 2006 and the Medway Local Plan 2003, as set out in the representations, seek to limit development and to protect rural character and appearance. The site is in an area of Local Landscape Importance[5], and Hempstead Road is designated as a Rural Lane. Within countryside areas, however, Local Plan policy BNE25(vi) conditionally allows *a rebuilding of, or modest extension or annex to, a dwelling*.

12. From my inspection of the site and area, and from consideration of the representations made I have concluded that the main issues in the appeal on ground (a) are whether the appeal use would cause material harm to the rural character of the area, and if so the extent to which it may benefit from policy BNE25 or is supported by housing need.

13. As to **rural character**, the countryside in this area is part of a green wedge that extends into the Medway Towns urban area. The supporting text to the Local Plan refers to designated areas of Local Landscape Importance in part as *edge or "fringe" land, needing protection from the pressures of urban sprawl*. The appeal site is flanked by woodland in an urban fringe location. There are indications within the woodland and in the area generally that there are or have been pressures for change that are harmful to countryside character. I consider that the urban fringe location of the site adds particular weight to the need to protect countryside character. The appeal caravan/mobile home has the appearance of a small bungalow and is situated at the rear of and at right angles to the main house. Though in part screened when I visited the site, and likely to be further screened later in the season when foliage is greater, it was nevertheless visible to me from the highway. In any event, even if this view were obstructed it could still be seen from adjoining land. It appears as an extension of development into an area where an observer would expect to see rear garden against a background of woodland. I have concluded that the caravan/mobile home is materially harmful to the rural character of the area.

14. The Council acknowledged that a smaller caravan appropriately used could be lawful, and this is therefore a relevant "fall back" position. The Appellant suggested that a smaller caravan need not look materially different from the present one, but I consider rather that it would be likely to have a significantly lesser impact. The only suggested conditions potentially affecting the appearance of the caravan rather than the nature of its use[6] were the possibility of planting and changing the colour of the caravan. While both could be helpful, they would not in my assessment sufficiently reduce the harm to the area. I have concluded on the first issue that the appeal use would cause material harm to the rural character of the area

[5] It is also within an area of Nature Conservation Interest but no issue relating to this designation was raised.

[6] Conditions to limit the use to a single caravan, to require occupation to be incidental to use of the dwelling house as such, and to limit the life of the permission or define who should occupy the caravan do not directly address the effect upon the character of the countryside.

15. Turning to the second issue, the Appellant sought to apply **policy BNE25** by analogy to the appeal caravan, though recognising that the policy was framed for conventional built extensions and annexes. The policy indicates that a modest extension of or annex to a dwelling in the countryside can be acceptable. The supporting text states that normally rebuilding, extension, or annexes would *not be expected to result in more than a 25% increase over the original dwelling's floorspace.* The original dwelling was stated to have had an area of 98.25m^2 and the present replacement house 124.50m^{2,} and that this gave a 26% increase in floorspace at the time of redevelopment, which the Council considered should not be added to. The Appellant pointed out that when the redevelopment had been considered, an officer report had acknowledged that due to the removal of outbuildings, the footprint after redevelopment would be 65% less than before. I consider that any weight to be given to this particular point is, however, substantially reduced by the amount of new outbuildings which I saw at my visit.

16. The supporting text to the policy recognises, however, that 25% is a *nominal figure and proposals will be determined on a case-by-case basis*. I therefore do not consider the past increase of 26% in floor area to be conclusive. However comparing the 124.50m^2 floorspace of the existing house with the stated caravan floor area of about 84m^2 strongly suggests that the increase is far more than modest. Similarly the caravan/mobile home has three bedrooms, a living room, hall, kitchen and bathroom. This is by no means modest even when compared with the new four bedroom main house. I have concluded that whether considered in terms of floorspace or accommodation provided, the appeal caravan cannot benefit directly from the terms of BNE25 relating to modest extensions or annexes.

17. The Appellant went on to argue that the caravan/mobile home was within the spirit of that policy, which allowed additional floorspace within the countryside to meet housing needs. The need for the appeal caravan reflected a wider absence of larger family homes[7] in the area with which to accommodate extended families, and this point was supported by planning documents relating to housing needs and provision. It was argued that within a caring society there was a need to support social cohesion, by allowing mutual support between the generations of a family. The Appellant was supported by living with his family, both as to housekeeping and literacy/paperwork, while retaining his privacy. I consider these points to be entirely reasonable as a general proposition, and they were not generally resisted by the Council. Nevertheless policy BNE25 makes it clear that provision of any particular extension or annex is subject to a wider condition that it *maintains, and wherever possible enhances, the character … of the countryside….*

18. As to the particular needs of the Appellant and his family, the Council responded that this need could be met by a smaller caravan with a single bedroom, living area, and bathroom. I heard no convincing response as to why the Appellant needed to occupy a three bedroom unit, and consider that this alternative substantially reduces the weight to be given to the family and personal circumstance arguments raised in support of the appeal. I have concluded that the appeal proposal does not benefit from the terms of policy BNE25, nor is it significantly supported by a housing need.

19. Taking into account my conclusions on the two main issues in this case, and the planning policies referred to, I have concluded that the appeal on ground (a) fails.

[7] In reply to my enquiry as to why the new house had not been built larger to accommodate the recently widowed Appellant, it was said that this could not have been afforded.

The appeal on ground (f)

20. The Appellant's case under grounds (a) and (f) were put forward as alternatives, and I have therefore considered and dealt with the substantive arguments under (a) above.

21. Following success of the appeal on ground (b) the requirements of the notice will be altered to delete reference to removal of a building, and to require cessation of the use of the land for the stationing of a caravan for residential purposes, removal of the caravan from the land, and removal of the hardstanding and external paving.

22. There is now no need to require removal of fencing, as a fence between house and caravan to which this requirement of the notice referred has been removed and its reinstatement would not be permitted development by reason of a condition imposed upon the approval of a replacement dwelling. Rather than refer to returning the land to its previous condition, I consider that it would be clearer and less onerous to require it to be laid out as rear garden land to the main dwelling, as it is in the main currently laid to garden. The appeal on ground (f) succeeds to these limited extents.

The appeal on ground (g)

23. The Appellant considered one month an unreasonably short period to comply with the notice, as the family would need to review the situation. They would have to decide whether to sell The Woodlands and look for a larger property where they could live together. Properties with a "granny" annex were not too common, and a year would be a reasonable time to find such premises and complete sale and purchase. Alternatively they might decide to build an extension, though the arrangement of the house suggested that this would not be easy, and an extension would also take longer than a month to build.

24. The Council responded that it was not necessary to move house or build an extension, as the present caravan could be replaced by a smaller one. As to how long should be allowed for this, the Council stated that having regard also to the necessary sale and purchase, they would accept that three months would be reasonable. The Appellant responded that twelve months would still be needed. I do not agree. I consider that caravans could be physically moved off and onto the site within a month, and that three months would provide a reasonable period for the sale and purchase of the caravans.

25. The possibility that the family might choose to replace the present caravan with a smaller one has implications for the time given to remove the hardstanding and paving. No planning purpose would be served by requiring the removal of something that might subsequently be considered acceptable as the site of a smaller caravan. I have concluded a year should be allowed in which to remove the hardstanding and paving. I have no reason to doubt that, if at the end of that period the Council found part of the hardstanding to be supporting an otherwise lawful and acceptable caravan, they would be prepared to exercise their powers under S173A(1)(b) of the Act to amend the requirements of the notice accordingly. Alternatively planning permission might be sought to retain the relevant parts of the hardstanding/paving.

26. The appeal on ground (g) succeeds to these limited extents.

FORMAL DECISION

27. I direct that the enforcement notice be corrected by deleting all the words in paragraph 3 after *THE MATTERS THAT APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL* and replacing them with the words *use of the land as the site of a twin unit caravan for residential purposes*; be varied by deleting all the words in paragraph 5 after *WHAT YOU ARE REQUIRED TO DO* and replacing them with the words *(i) Within three months of the date this notice takes effect cease to use the land as the site of a twin unit caravan for residential purposes and remove the caravan from the land; (ii) Within one year from the date this notice takes effect remove the hardstanding and external paving from the site and lay the site out as rear garden land to the dwelling and remove all materials and rubble arising from these actions from the Land;* and also that it be varied by deleting all the words in paragraph 6.

28. I dismiss the appeal and uphold the enforcement notice as corrected and varied.

V F Ammoun

APPEARANCES

FOR THE APPELLANT:

Mr R Perrin, MRTPI	Chartered Town Planner.
Mr C Beck	Appellant.
Mrs M J Beck	Appellant's daughter in law.

FOR THE LOCAL PLANNING AUTHORITY:

Mr L Prebble, DipPlan, MRTPI, DMS	Consultant to Medway Council.

DOCUMENT PROVIDED AT THE HEARING

1 To scale copy of the application plan for a replacement dwelling.