

## Appeal Decision

Site Inspection on 12 September 2016

**by Graham Self MA MSc FRTPI**

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

Decision date: 23 September 2016

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### **Appeal Reference Y1138/X/16/3149507**

#### **Site at: The Orchard, Forder, Cheriton Bishop, Exeter EX6 6HP**

- The appeal is made by Mr Peter Guscott under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the refusal by Mid Devon District Council to grant a certificate of lawfulness.
- The application (Reference No. 15/01850/CLU) dated 15 November 2015 was refused on 12 January 2016.
- The application was made under Section 191 of the Town and Country Planning Act 1990 as amended.
- The description specified in the application form is "C3" and "Please see attached submissions". In the council's refusal notice, the description is stated as: "Certificate of Lawfulness for existing use of building as residential dwelling for a period in excess of 4 years". (See "Procedural Matters" below.)

#### **Summary of Decision: The appeal fails.**

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#### **Procedural Matters - Description in Application**

1. As noted above, the application now subject to appeal referred to "attached submissions". The council's refusal notice contained a different description. Neither description is really satisfactory. The submissions with the application stated (in paragraph 3):

"It is the applicants' *[sic]* position that....development undertaken between April 2001 and October 2003 by the applicant at The Orchard resulted in a building structure, which....upon completion in October 2003 has been occupied as a single dwellinghouse for a period in excess of four years and continues to be thus occupied to date".
2. It is apparent from those submissions that what was being applied for (and is now sought as a result of the appeal) was a certificate of lawfulness to certify that either a dwellinghouse was built and completed by October 2003, or that a material change of use of a building to use as a single dwellinghouse occurred then, such that by the time of the application the development was "immune" from enforcement and had therefore become lawful because of the four year time limit which applies to such development under Section 171B of the 1990 Act. The statement with the application also referred to "the use of the land shown in the application plan for purposes ancillary to the dwelling house".

## Reasons

3. In this type of case the decision has to be based on matters of fact and law, not on considerations such as planning policy or the impact of development on its surroundings. The onus of proof lies with the appellant, the standard of proof being the balance of probability.
4. The central issue of dispute is whether the dwelling at the appeal site is a "mobile home", or a structure within the definition of a "dwellinghouse" for the purposes of planning law. There is common ground between the council and the appellant about when the dwelling was brought onto the site and about the work carried out by Mr Guscott. The council say that the dwelling is a mobile home; the appellant contends that it is a dwellinghouse which has been in place and occupied for more than four years and so has become lawful.
5. The home was evidently brought to the site in 2001. It stands on a concrete base and is fixed to the base with metal straps. The wheels have been removed and the outer edge of the gap between the home and the ground has been covered with a "skirt" structure consisting of metal sheeting attached to a timber frame fixed to the home with screws or bolts. The home is connected to services including water supply, electricity and septic tank drainage. A corrugated sheet roof with a low-pitched ridged shape has been erected over the home, supported on timber posts bolted to the concrete base using metal brackets. Insulating material has evidently been inserted into the gap between this roof and the home. An area of timber decking abuts the south side of the home. There is no dispute that the various items just described were put in place between 2001 and 2003.
6. Much of the appeal site is laid out as a domestic garden. Other items on the site include a small shed and a larger metal container which at the time of my inspection appeared to be used as a garage or for domestic storage.
7. Part of the appellant's case refers to court judgments. One such judgment relates to the well-known *Woolley Valley* case.<sup>1</sup> This concerned the definition of "development" under Section 55 of the 1990 Act and whether poultry units mounted on skids were "buildings" as defined under planning legislation. Other judgments of potential relevance include *Skerritts of Nottingham* and *Barvis*.<sup>2</sup>
8. Three key factors to be considered are size, permanence and degree of physical attachment. Taking the descriptive points above into account, together with the length of time the home has been on the site, the home has a considerable degree of permanence and it is attached to the ground. However, other factors weigh against the appellant's case. Despite the presence of the skirt, the roof and the timber decking, the original mobile home remains as an intact entity, most of it being exposed to the outside. Numerous bolts and screws would have to be undone to undo the fixing straps and remove the roof with its upright supports, the skirting and other items which are attached to the home; and wheels would have to be re-attached if the home were to be moved without lifting. But those are not impossible tasks and the need for them to be carried out to "unfix" the home does not mean that the home itself is a "building" (that is to say, a "structure or erection") for the purposes of planning law.

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<sup>1</sup> *R (on application of Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council & Golden Valley Paddocks Ltd & SSETR* [2012] EWHC 2161 (Admin)..

<sup>2</sup> *Skerritts of Nottingham Ltd v SSETR* [2000] EWCA Civ 5569 & 2 PLR 102. *Barvis Ltd v SSE* [1971] 22 P&CR 710.

9. I bear in mind here that it is not uncommon for caravans or mobile homes to have skirts or structures such as porches added to them, or to be anchored in some way with soil pipes and other services connected. Mr Guscott took things further than may be common, but not to an extent which converted the mobile home itself into a "building".
10. It is also notable that in 2010, the council granted a certificate of lawfulness for the use of the appeal site for siting a caravan for full-time residential occupancy. This certificate relates to the existing home. The evidence put before me does not include the application details for that certificate - an omission which may be because documents are not available, or might perhaps have a more tactical reason. Be that as it may, it is reasonable to assume that in 2010, the appellant must have described the home as a caravan or a mobile home. All the physical works mentioned above (the skirt, the roof, the decking, drainage connection and so on) had apparently been carried out long before the 2010 application, and no significant change has occurred since. Moreover, on several plans submitted to the council after 2003, the dwelling has been repeatedly labelled as "mobile home".
11. A developer's intention can have some relevance in certificate cases. In this instance, the evidence is inconsistent. When Mr Guscott constructed the skirt and roof and other features he apparently wanted to help insulate the home and make it more weatherproof. He refers in his affidavit to his and his wife's intention to "reside permanently at the property" and states that the works he undertook "render the existing structure secure and permanent". But in 2010 he still evidently regarded the home as a mobile home; otherwise he would not have applied for a certificate for it as such. It seems to me that the 2015 refusal of planning permission for the erection of a two-storey chalet-style dwelling in place of the existing home has a bearing here, and that the basis of the present appeal has been formulated retrospectively as a result of the appellant's earlier unsuccessful attempt to obtain planning permission for a replacement house.<sup>3</sup>
12. The home followed the previous presence on the site of a caravan and has been at The Orchard for a long time; but length of presence in itself is not an overriding consideration - if it were, the homes on numerous "mobile home parks" around the country would come within the planning definition of buildings used as dwellinghouses.
13. The case now before me is not directly comparable with the circumstances in *Woolley Valley*. The poultry units near Bath (which were 20 metres long and 6 metres wide) were more than twice the size of the home at the present appeal site. The poultry units were also constructed and installed as whole units, whereas I am dealing with a mobile home brought to the site which then had things added to it and around it. I have also had regard to other judgments which have some relevance but are not conclusive for the decision on this case.
14. I have no doubt that Mr and Mrs Guscott are valued members of the local community and I note that neighbours consider the home to be discretely sited. For the reasons I mention in paragraph 3 above, these comments have no bearing on the legal aspects of the case. The same applies to some of the other submitted evidence such as the flood risk assessment.

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<sup>3</sup> According to the appellant, the council suggested making the certificate application, after this refusal of planning permission. If that was so, it seems an odd suggestion to make, given that the council must have inspected the site, knew its history, and have not disputed basic facts about the work carried out in 2001-3.

15. In reaching my decision I have taken account of all the other matters raised in evidence, including the view of an architect who (in a written opinion dated November 2015) concludes that "what was once a mobile home is now a dwelling...this is further evidenced by the Lawful Use Certificate". I do not disagree with the opinion that the home is a dwelling as evidenced by the 2010 certificate. That has been so for years, but it misses the point - a dwelling is not the same thing as a building used as a dwellinghouse.
16. There are grounds for argument both ways in this case; but on balance, I find as a matter of fact and degree that the home at The Orchard is not a dwellinghouse for the purposes of planning law; it is a mobile home, and the use of the site is in line with the certificate issued in 2010. In my judgment the council's decision was correct, so the appeal does not succeed.

**Formal Decision**

17. For the reasons given above I conclude that the council's refusal to grant a certificate of lawfulness in respect of the application (Reference No. 15/01850/CLU) dated 15 November 2015 was well founded. I therefore dismiss the appeal.

*G F Self*

Inspector