
Appeal Decision

Site visit made on 10 January 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/X0360/X/16/3153354

Bluebell Farm, Commonfield Lane, Barkham, Wokingham RG40 4PR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr William Elgar against the decision of Wokingham Borough Council.
 - The application Ref 152107, dated 8 December 2014, was refused by notice dated 8 January 2016.
 - The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is: *the existing chalet or mobile home requires a lawful development certificate as has had separate residence to the main dwelling for more than 4 years. The dwelling has been occupied since April 2010, therefore 4 years and 8 months to date.*
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is considered to be lawful.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matters and Main Issue

3. Bluebell Farm is a property that comprises a relatively modern dwelling and a number of other buildings the use of which I did not investigate as this is not material to my decision. I also noticed at least one mobile home/caravan and what appeared to be a camper van partially obscured by fencing.
 4. The appeal structure, which I shall refer to as the chalet, is situated at the far end of the plot. There is a separate access to it from the track. However, the gate across this access was not attached to either of the gate posts. Instead, it was secured to each by a chain and stood on supporting bricks. In my view it presented a barrier to entry rather than a gate. Access was therefore obtained via the principal entry to the property.
 5. The description of the development for which the certificate (LDC) is sought is set out in the summary details above. This is taken directly from the application form. Although this is the basis on which the Council dealt with the application and made its decision, the references in the application to 'separate
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residence' and time periods as, presumably, establishing immunity from enforcement action are confusing. I am not at all clear from the application about the development for which the LDC is sought.

6. A local planning authority and by extension the Secretary of State on appeal is empowered by s191(4) of the Act to modify the description or substitute another if on the information provided they are satisfied as to the lawfulness of that development so described; the use of the word 'shall' means that this is not a discretionary power. The appeal has been pursued by a different agent to that which submitted the application. In the final comments letter dated 8 September 2016 it was confirmed that the appeal should be determined on the basis that the chalet is a building and that, as operational development, the 4 year rule should apply.
7. It is however 'building operations' that fall within the meaning of development set out in the Act, not the erection of a building. Included among 'building operations' in s55 of the Act are 'other operations normally undertaken by a person carrying on business as a builder'. The court has held that if what has been done has resulted in the erection of a building, the court would '...want a great deal of persuading that the erection of it had not amounted to a building or other operation'.¹
8. The Council does not dispute the evidence of the appellant provided by way of a sworn statutory declaration (SD) that the chalet was occupied from 8 May 2010; that is more than 4 years before the application was made. Other evidence says that it was substantially complete in April 2010. Therefore, if the chalet is a building, the appeal will succeed and an LDC in those terms will be issued. If the chalet is a caravan and its stationing is a use of land as the Council contends, the period during which enforcement action may be taken is 10 years. In that case, the appeal would fail.
9. The main issue therefore is whether the chalet is considered to be a building or a caravan. That is a matter of fact and degree judgement in each case having regard to the well-known principles established by the courts. The appeal must be determined on the facts and the interpretation of the law. The planning merits cannot be considered.

Reasons

10. The Planning Practice Guidance confirms that in the case of applications for existing use or development, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. That guidance is based on established case law.
11. The application was supported by a number of 'to whom it may concern' letters and SDs from Lee Elgar, who occupies the chalet, and the appellant. Following refusal of the LDC application the Council began to investigate what it then considered to be a breach of planning control. It issued a number of Planning Contravention Notices and made requests for information outside the statutory

¹ *Barvis Ltd v Secretary of State for the Environment* [1971] 22 P&CR 710

system. These documents and the replies to them have been submitted in evidence by the appellant as part of the evidence.

12. As is frequently the case in appeals of this nature, the Council has little evidence of its own; no criticism is made or implied in noting this. Its case relies largely on the interpretation of the information provided to it by the appellant.

Can the chalet be a caravan?

13. It seems to me that the first question to be answered is whether the chalet could be a caravan as a matter of fact. The definition of a caravan is given in s29(1) of the 1960 Act² and s13(1) and (2) of the 1968 Act³.
14. The chalet has clearly been designed for human habitation. That requirement of both Acts is therefore met. The 1968 Act sets out the dimensions which cannot be exceeded if the structure is to be defined as a twin-unit caravan. The Council says that the dimensions of the chalet do not exceed those set out in the 1968 Act. On this point alone the appellant does not dispute the Council's assertion that the chalet could amount to a twin-unit caravan. Therefore, that factual requirement is also met.
15. On that basis, s13(1) of the 1968 Act then says this:

Twin-unit caravans

A structure designed or adapted for human habitation which:

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

(b) is, when assembled, physically 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), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites & Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

16. Point (a) goes to the way that the chalet was assembled while (b) includes a consideration of the physical attachment of the chalet to the ground on which it stands and its permanence. These are the three factors that the courts have held are relevant to establishing whether or not a structure results from a building operation. It is not therefore possible to conclude on the first question posed without first considering whether or not the chalet is a building.

Is the chalet a building?

Size

17. Of itself, the size of the chalet is not a decisive factor. However, it assists an understanding of the way that the chalet has been brought to site and assembled.
18. The chalet has a gable roof with a gable feature over the central door in the front elevation. To either side of the door are bay windows and there are a further two bay windows in one end elevation. Externally the chalet has a full

² Caravan Sites and Control of Development Act 1960 (as amended)

³ Caravan Sites Act 1968 (as amended)

complement of rainwater goods and a set of steps leading to the door. The chalet is almost wholly surrounded by a brick skirt between the base of the chalet and the ground. There are however two gaps at the rear through which the way it is supported can be seen. I shall return to this when dealing with physical attachment.

19. Internally, the chalet has a double and a single bedroom, a lounge, a fully fitted kitchen, a fully fitted bathroom/toilet and a store room. Although I did not go through it, there is also a hatch which it was pointed out to me gave access to a further storage area in the roof.
20. One of the 'to whom it may concern' letters is from WGR Park Home Services and is dated 5 January 2015. This simply confirms that '...a new mobile home...' was delivered to the appeal site address in the '...last week...' of April 2010. Assuming this refers to the chalet, it says nothing about the way it was delivered.
21. The totality of the appellant's evidence on this point is actually quite vague. It does not seek to dispute that the chalet is prefabricated but does not say how many parts were delivered for on-site assembly or anything about the extent of their readiness for that process. It is said that the chalet is of a bespoke design and the way the internal accommodation is laid out does not reveal clearly where the separate sections might be joined.
22. However, if it was not delivered until the last week of April but was occupied by 8 May the chalet must have been fully assembled and fitted out in a maximum of two weeks. While that is indicative that, on the balance of probabilities, it was delivered in a relatively complete condition, the nature of the internal layout and fittings also suggests that final assembly and connection to services entailed work normally undertaken by a builder.
23. This tends towards a conclusion the chalet is a building.

Physical attachment to the ground

24. The chalet is not attached to the ground. Rather, it stands on a metal framework and is supported by a combination of what looked like metal jack stands and concrete blocks. I noticed at least one axle on the side of the frame that I could see although no wheels were attached. In my judgement both the steps and the utility services could be easily detached.
25. This factor is suggestive that the chalet is not a building.

Permanence

26. By the time of my site visit the chalet had been in the same place for nearly seven years. In terms of significance in the planning context that has given rise to a material change in the appearance of this part of the land which will endure until or unless the chalet is moved to another location.
27. The Council is of the opinion that the chalet can be moved in one or two pieces by being unbolted and/or crane lifted. The appellant says that this would not be possible and that removal would require demolition. Neither party produces any expert evidence to support their respective assertions. I therefore have to make a common sense judgement on the evidence before me.

28. As set out above, to fall within the 1968 Act definition the chalet has to be capable of being moved in one piece. That was the finding of the court of appeal⁴. In my view, the chalet would have to be crane lifted. Given the way the chalet is attached, or more accurately not attached, to the ground I believe it would be a relatively simple matter to pass belts or chains beneath the chalet in order to hoist it onto a lorry or low loader. The internal layout however is such that I doubt very much that it would survive such a manoeuvre. It seems to me that the bracing required to ensure the integrity of the chalet both during the lift and the subsequent journey would be extensive, if indeed practicable at all. I note that the Inspector in the appeal decision⁵ referred to in evidence by the appellant came to a similar conclusion in that case although he was dealing with a converted lorry body rather than a designed chalet.
29. I do not therefore consider that the chalet could be moved as it stands. That is sufficient to answer the initial question posed; the chalet is not a caravan. In my view the degree of permanence that I have identified also determines that the chalet is a building. It follows therefore applying *Barvis* that the erection of it results from a building or other operation.
30. That is development that requires planning permission under s57 of the Act. None has been given but the period during which the Council could have taken enforcement action had ended by the date of the LDC application.
31. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of *the existing chalet or mobile home requires a lawful development certificate as has had separate residence to the main dwelling for more than 4 years. The dwelling has been occupied since April 2010, therefore 4 years and 8 months to date* was not well-founded and that the appeal should succeed but in respect of the development that I have found to be lawful, namely building operations resulting in the erection of a dwelling. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Brian Cook

Inspector

⁴ *Carter v Secretary of State for the Environment and Carrick DC* [1995] JPL 311

⁵ Various appeals at The Pump House, Warfield, Bracknell

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 8 December 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Building operations resulting in the erection of the dwelling were substantially complete on 8 May 2010. At the date of the application the four year period during which enforcement action could have been taken against the unauthorised development had ended.

Signed

Brian Cook BA (Hons) DipTP MRTPI

Inspector

Date : **20 January 2017**

Reference: APP/X0360/X/16/3153354

First Schedule

Building operations resulting in the erection of a dwelling

Second Schedule

Land at Bluebell Farm, Commonfield Lane, Barkham, Wokingham RG40 4PR

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that

described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **20 January 2017**

by Brian Cook BA (Hons) DipTP MRTPI

Land at: Bluebell Farm, Commonfield Lane, Barkham, Wokingham RG40 4PR

Reference: APP/X0360/X/16/3153354

Scale: Not to scale

