
Appeal Decision

Site visit made on 21 November 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 29 November 2017

Appeal Ref: APP/Y1138/X/17/3180671

The Bungalow, Cheriton Fitzpaine, Crediton, EX17 4HF

- 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 Neil Marks against the decision of Mid Devon District Council.
 - The application Ref 17/00334/CLU, dated 15 February 2017, was refused by notice dated 26 April 2017.
 - 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 use of a former caravan, portacabin and connecting structure as a single dwelling.
 - **Summary of Decision:** Appeal dismissed.
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Procedural Matter

1. As the Council did not attend the site visit, I conducted the visit as an access required site visit in the presence of the appellant and his agent.

The site and relevant planning history

2. The site is a grassed triangular area of land within which is the structure subject to this appeal. It is composed of a caravan/mobile home and a portacabin set a short distance apart but linked at the sides by concrete blockwork (described by the appellant as being 6 feet wide) and roofed over. The caravan contains a living room and kitchen with the living room extending into the link structure and the bedrooms and bathroom are contained in the portacabin. Part of the linked section of the structure is used as a store/boiler room. There is also a concrete section garage and a shed elsewhere within the site.
3. The land has been used for the siting of a residential caravan for many years, with permission allowed on appeal in 1983 and a modification of an occupancy condition in 1998.
4. A Certificate of Lawfulness (LDC) for the use of a building as a single dwelling for a period in excess of 10 years was refused in June 2011 for the reason that the dwelling is not contained within a single permanent structure in that the kitchen/lounge is contained in within a separate mobile/caravan section and subsequently attached to a separate portacabin unit; it is capable of being moved in no more than two sections and does not form part of a permanent

structure; the remaining structure contained in the portacabin does not have the physical attributes of a dwelling (11/00532/CLU).

5. In January 2012 an LDC was granted in part for the existing use of a mobile home as a caravan in breach of a condition as the caravan had been permanently lived in for a period in excess of 10 years. It was refused in part in respect of the portacabin which does not satisfy the statutory definition of a 'caravan' or twin unit caravans¹, given that it is not fully adapted for human habitation nor is it capable of being moved from one place to another since it remains joined to a larger caravan and which together are not capable of being so moved, nor that any such movement would not cause damage to its structural identity (11/01783/CLU).

Reasons

6. The central issue is whether the dwelling is a mobile structure involving a use of land, even though it may be in permanent residential use; or whether operational development has occurred such that the structure now constitutes a building used as a dwelling within the definition of a dwelling house for the purposes of planning law.
7. Declarations submitted by the appellant and his step-father, Mr P H Watts confirm that in 1997 a single mobile home was sited on the appeal site; in 1998 a portacabin was sited to the north of the mobile home and joined together by concrete block walling on concrete foundations with a roof spanning the gap; part of the mobile home wall was removed and a timber and steel frame 'goal post' support on concrete foundations was introduced.
8. The Council does not dispute these works and accepts that the appellant has lived in the caravan part of the structure for a period in excess of 10 years and consider the issue to be whether the whole unit (caravan and portacabin) can be considered as a single permanent structure 'building' for planning purposes and consequently whether an LDC for a dwelling house should be granted.
9. The appellant draws attention to the apparent tension between two LDCs relating to whether or not the mobile home and portacabin are capable of being moved in view of them being joined together. *Jones v Green* is cited in support² which at paragraph 57 of the judgement states "There was at least a sustainable argument that each of the mobile units taken as a whole amounted to a single fixture consisting of a caravan or caravans bolted on to other structures. If each unit was considered as a whole then it was more than arguable that each unit was incapable of being moved as a single unit." However, that case concerned whether the units met the statutory definition of a caravan as defined in the 1960 Caravan and Control of Development Act as amended and the effect this had on gypsy status and was relevant to the circumstances of that appeal. In the current appeal, the Council's position on the status of the portacabin was made clear in the 2012 LDC decision in which it was not considered to be a caravan.
10. The party's arguments have concentrated on what may or may not constitute a caravan, whether it meets the statutory definition of a caravan and whether it could be moved within the limitations imposed by the 1960 Act as amended. I attach only limited weight to the overall size of the structure not meeting the

¹ S29(1) Caravan and Control of Development Act 1960 and s 13(1) Caravan Sites Act 1968

² *Jones v Green* obo the Friends of Fordwich and District [2005] EWHC 691 Admin

size or other requirements to be regarded as a caravan. The two principal elements now comprising the structure were moveable when they were brought onto the site and now a structure composed of three distinct elements exists on the site and has been used as a dwelling for some time.

11. A building is defined by s336 and the courts have held³ that three primary factors are identified as being decisive of what was a building (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive and all three factors need to be applied and considered but it may be appropriate to give greater weight to one over another in reaching a conclusion.
12. In this appeal the major parts of the structure are represented by the mobile home and the portacabin which were constructed off-site and remain either on a sub-frame or set on foundation blocks. The lesser part of the structure is the central infill link but as it has concrete block walls at the ends and the 'goal post' frame supported by concrete foundations, it constitutes operational development. However it is not dissimilar to other operational development often associated with mobile homes such as permanent porches and lean too storage structures which are of insufficient significance such that they do not alter the planning status of the land from the siting of a mobile home for the purposes of habitation. The structure has been immobile and in situ for 18 years but this alone does not over-ride other considerations.
13. The Council considers an appeal in Cheriton Bishop (APP/Y1138/X/16/3149507) to be comparable. Whilst there may be some similarities, there are distinct differences as it is apparent from that decision that the mobile home remained an intact entity whereas in the current appeal the layout of the existing structure arising from the alterations made leaves only the kitchen and living room in the original mobile home.
14. The appellant refers to *Hand v SOS* but fails to provide a citation or to provide relevant paragraph numbers to two quotes included in Planning Statement at paragraph 2.2 and Appeal Statement at paragraph 2.3. I am aware of *Hand v SSCLG*⁴ but cannot identify the source of these two quotes. That case centred on whether a mobile home was a building used as a dwelling house such that the 4 year immunity from enforcement applied. The mobile home was fixed at one end to a concrete wall and foundation, had a wooden porch and a wooden lean-to extension, was connected to services underground and the towing bar had been removed. Notwithstanding the attachments, the Inspector in that case rejected the engineer's conclusions and considered that the mobile home could be unbolted from the foundation, the timber extensions removed and the works were not such as to significantly decrease its mobility. He dismissed the appeal against the refusal to issue an LDC. The court upheld the inspector's decision.
15. The submitted structural survey dated 6 December 2016 concludes the caravan is no longer an independent structure and that any attempt to move it would result in significant instability and irreparable damage to the caravan and the remaining structure.

³ *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 10271

⁴ *R (Hand) v SSCLG* [2014] EWHC 314 (Admin)

16. I have had regard to the engineer's report and note his comment that moving the caravan would mean 'tearing away' the caravan from the 'goal post' frame damaging the caravan. However no consideration appears to have been given as to whether there is scope for temporary supporting works to be inserted on the side of the caravan to facilitate its movement and prevent damage. It may be the case that it would be extremely difficult to disconnect the mobile home but in the absence of knowing whether there are other measures available leaves me unclear about such options.
17. Having regard to the findings of *Hand v SSCLG* and the other cases referred to, I consider as a matter of fact and degree that the extent of any substantial attachment to the ground in this appeal is generally limited through the construction of the link between the mobile home and portacabin. However, I do not regard the internal changes to materially affect the central issue of whether the structure now constitutes a building.
18. I accept that the removal of the caravan may have implications for the stability of the block work walls but this alone does not lead to a conclusion that the structure is a building in planning terms. Having regard to the totality of the structure which primarily consists of the portacabin and mobile home which were originally designed to be transportable and remain so in the sense that temporary supporting works may be required to enable this to be achieved, I regard the existence of a 6 feet wide connecting structure between them does not lead to a conclusion that the whole structure represents a building. Furthermore other connections to the ground such as required for the provision of services could easily be dismantled.
19. In appeals such as this the onus of proof rests with the appellant and the level of proof is the balance of probability. I do not consider that this has been achieved in this appeal as the appellant has not demonstrated that the caravan and portacabin have ceased to be used as a temporary structure for full time residential occupancy and has become a dwelling house.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of a former caravan, portacabin and connecting structure as a single dwelling was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

21. The appeal is dismissed.

P N Jarratt

Inspector