



Appeal Decision

Site visit made on 2 October 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal Ref: APP/B9506/X/19/3221099

Jan Ruis Nurseries, Shirley Holms Road, Boldre SO41 8NG

- 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 Mrs E Ruis against the decision of New Forest National Park Authority.
- The application Ref 18/00523, dated 3 July 2018, was refused by notice dated 11 September 2018.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as: *"The formation of a permanent dwelling by adaptation of a mobile home into a dwelling (a building) by the carrying out of building works (operational development) over four years before the date of the application."*

Summary of Decision: The appeal is dismissed.

Main Issue

1. The main issue is whether it has been shown that there was a building and consequently a dwelling, on the appeal site at the date of the application and if that were the case, that substantial completion occurred more than four years before the application date.

Reasons

2. It is for the appellant to show that what has been applied for is lawful, the relevant test of the evidence being on the balance of probability.
3. The planning history shows that temporary planning permission was granted for a mobile home at the site in 1997¹. Following successive temporary permissions for what was described as 'continued use of land for the siting of a mobile home for an agricultural worker', permission was granted in 2014 for retention of a mobile home for the duration of the appellant's retirement².
4. A building is defined by s336 of the 1990 Act as including any structure or erection and any part of a building. The Courts³ have identified three primary factors as being determinative of a building: that it is of a size to be constructed on site, as opposed to being brought onto the site; permanence,

¹ Ref: 97/60823.

² Ref: 14/00902.

³ *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385 & *Skerritts of Nottingham Ltd v SSTER* (No 2) [2000] 2 PLR 102.

and; physical attachment to the ground. No one factor is decisive. In *Measor*⁴ the Court held that generally, a caravan would not satisfy the definition of a building, having regard to the factors of permanence and attachment.

5. According to the appellant the structure on site, which I shall henceforth refer to as "the structure", originated as a twin-unit mobile home. The effect of s13 (1) of the Caravan Sites Act 1968 is that a twin-unit can fall within the statutory definition of a caravan in s29 (1) of the Caravan Sites and Control of Development Act 1960: "...means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...". The available evidence indicates that the structure does not exceed the length, width and overall height limits for a twin-unit in s13 (2) of the 1968 Act.
6. According to the appellant, when the structure arrived at the site following the 1997 permission, it was placed on a pre-existing concrete slab. In my view, it is likely that the structure was brought to the site in two pre-assembled sections. The central join between the two halves, still clearly visible externally when I visited, suggests that this was the case. Joining the two halves together is likely to have involved bolting or clamping and would have been a straightforward and quick activity. Therefore, there is little in terms of the size of the structure or its method of assembly which would suggest that it no longer fell within the definition of a caravan.
7. The appellant stated that various operations were carried out to the structure, including construction of a brick plinth, two porches and a septic tank, around the time of its installation in 1997 and that later, central heating, double glazing and cladding had been added. She also stated that more recently, the porches had been replaced. The available evidence suggested that at least one porch had been replaced or substantially enlarged since the original porches were erected.
8. During my site visit, I observed that the porches are of reasonably modest size and mostly constructed in lightweight materials, having timber walls with translucent plastic sheeting on the roof. The porches are attached to the structure by timber battens. There was little to suggest that the porches had a substantial physical connection with the structure. The above factors do not suggest that the porches provided a significant measure of support for the structure. Although I am given to understand that the structure had recently been redecorated internally, no significant defects were apparent during my visit. Therefore, to my mind it is likely that the porches could be demolished relatively easily and without any appreciable adverse effect on the fabric of the structure. None of the above supports the appellant's claim that the porches are 'permanent' additions.
9. Cladding the exterior in timber, installing double glazing and re-covering the roof are all likely to have improved the insulation properties of the structure. Together with installing central heating, such works have undoubtedly made living conditions in the structure more comfortable. Even so, there is little firm evidence to suggest that those works, either individually or in accumulation, have had any significant implications for the mobility of the structure.

⁴ *Measor v SSETR & Tunbridge Wells DC* [1999] JPL 182.

10. The structure had been in situ for around twenty one years by the application date. Nevertheless, this is not an unusually long time in terms of the likely lifespan of a caravan. A twin-unit can potentially be stationed on land for many years. Additionally, unlike portable buildings twin-units tend to be sited in one place for relatively long periods; often they are not moved unless they are being taken off site altogether or are being replaced. As a result, having regard to how permanence should be construed according to the Courts in *Skerritts* and *Woolley*⁵, I consider that the duration of time that the structure has been on site does not have great significance in a planning context.
11. Consequently, as a matter of fact and degree, none of the available evidence suggests that the structure has made a permanent physical change to the site with planning consequences consistent with that of a building.
12. Little evidence was provided to show that the structure has a significant degree of physical attachment to the ground. When I viewed the underframe, support for the structure appeared to be mostly provided by a series of unfixed concrete blocks and wooden chocks which rested on top of one another above the concrete slab. The plinth is likely to have been built after the structure was sited. There was little to indicate that the plinth was taking a significant part of the weight of the structure, or that the structure could not be detached from the plinth with relative ease, even if the plinth itself had to be removed by mechanical tools. Whilst the jacks for the structure might have been enclosed by the plinth, no details were provided to indicate that substantial works would be required to free them. As a result, there was little to show that enclosing the jacks had resulted in the structure having a significant level of physical attachment to the plinth. Consequently, the available evidence does not indicate that the presence of the plinth has affected the mobility of the structure.
13. There are service connections to the structure, including water and electric. Drainage is to a septic tank. However, the presence of such services does not indicate any significant physical attachment to the ground or have implications for the mobility of the structure. Disconnection of the services is likely to be a straightforward matter accomplished in a short space of time.
14. The structure does not have to be capable of being moved on its own wheels and axles; it is sufficient that it could be picked up intact (including its floor and roof) and put on a lorry by crane or hoist in order for it to still be 'mobile'. Therefore, the absence of a drawbar and wheels is of limited significance in terms of the mobility of the structure.
15. In *Byrne*⁶, moving the log cabin would have carried a very real risk of structural damage due to its intrinsic construction. However, to my mind the circumstances in this appeal are materially different. As set out above, it has not been shown that removing the porches and plinth would cause any significant damage to the structure. The appellant's evidence did not offer a detailed explanation as to why moving the structure would be particularly complex and/or would cause greater external and internal damage than that which might normally be associated with moving a twin-unit. There was little to indicate that the roof would require demolition. There was no firm evidence to show the nature or extent of any inherent problems with the existing

⁵ *R (oao Save Woolley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161.

⁶ *Byrne v SSE & Arun DC* [1998] JPL 122.

structure which might be exacerbated on moving it. The advanced age of the structure does not necessarily correlate with it having significant defects. An absence of visible lifting points does mean that the structure could not be lifted in practice. Consequently, there is little to indicate that the structure could not be taken apart into two halves and picked up and put on a lorry, in the same manner as a twin-unit. As a result, the available evidence indicates that the structure does not have a degree of physical attachment to the ground similar to that of a building.

Conclusion

16. Therefore, as a matter of fact and degree and on the balance of probability, based on the available evidence I am not persuaded that the structure is of a size or has a degree of permanence and physical attachment to the ground consistent with a building. The available evidence points towards the structure falling within the definition of a caravan. This being the case, it is not necessary to consider the matter of substantial completion as an LDC could not be issued in the terms applied for in any event.
17. 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 formation of a permanent dwelling by adaptation of a mobile home into a dwelling (a building) by the carrying out of building works (operational development) over four years before the date of the application 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.

Formal Decision

18. The appeal is dismissed.

Stephen Hawkins

INSPECTOR