



Appeal Decision

Site visit made on 12 October 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 11 November 2020

Appeal Ref: APP/D3125/X/20/3250345

Manor Farm, Park Road, Combe OX29 8NA

- 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 & Mrs Green against the decision of West Oxfordshire District Council.
- The application Ref 19/02418/CLP, dated 26 August 2019, was refused by notice dated 24 February 2020.
- The application was made under section 192(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 described as 'the proposed siting of a caravan, within the garden grounds of Manor Farm, Combe, for ancillary residential use'.

Summary of Decision: The appeal is allowed and a Certificate of Lawful Use or Development is issued, in the terms set out below in the Formal Decision.

Application for costs

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

Preliminary Matters

Nature of the proposal

2. The application form did not include a description of the use for which a lawful development certificate (LDC) is sought, and the description above is taken from the supporting statement accompanying the application. In processing the application, the Council sought clarification as to the detail of the proposal. The appellants therefore provided a plan¹ showing a unit (to use a neutral term) with dimensions of some 10.97m (length) by 6.09m (width).
3. When submitting additional details, the appellants commented that this represented the 'generic type of caravan' that 'might' be sited on the land. Further comment was made that in the appellants' view, the LDC would effectively, if granted, render lawful the siting of any unit on the land provided that it complied with definitions contained within the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 – both as amended (1960 Act and 1968 Act

¹ Drawing No 14698 Rev A dated 9/12/14

respectively).

4. It appears though that the Council officer's assessment was made on the basis of a unit of the dimensions specified. The decision notice also refers to the 'proposed siting of a unit of the dimensions and specification described in the application shown on a plan...'.
5. In determining an application under section 192 of the Town and Country Planning Act 1990 as amended (1990 Act), it is not open to the decision maker to unilaterally modify the appellant's description of what is proposed. However, I find nothing to indicate that this cannot be done with the agreement of the appellant.
6. The appellants confirm in their appeal statement that they are content for the appeal to be determined on the basis of the dimensions specified. This is in line with how the Council determined this key aspect, and so in the light of the appellant's agreement, I consider it appropriate that I determine the appeal on the basis of those details.
7. The appellants have confirmed that decking shown on the plan submitted² was not intended as part of the proposal. Although the Council included this decking within its assessment, given that this was without the consent of the appellant and that the plan showed an 'off the peg' unit, I shall disregard this. Similarly, the appellant's proposal was for a unit to be located anywhere within the red line of the site, and no agreement was given for it to be restricted to the approximate position shown on the application plan. Thus, I treat the proposal as for a unit of the dimensions specified, without decking and located within the application red line.

Additional evidence

8. The appellants submitted with their final comments new evidence which the Council had not previously seen. The Council was given an opportunity to comment on this, with a final comment made by the appellants. As regards additional evidence, Section 195 of the 1990 Act requires me to assess whether or not the Council's refusal was well-founded – that is the decision itself and not the reasons for it. As such, it is proper that I consider the best available evidence, and not only that which was previously available to the Council.

Main Issue

9. The main issue is whether or not the Council's decision to refuse to grant a LDC was well-founded. This will turn on whether the proposal represents development in respect of which planning permission would be required.
10. For a LDC to be granted under section 192 of the 1990 Act, the onus is firmly on the appellant to show that the development would have been lawful at the time of the application. Pursuant to section 192(2) of the 1990 Act as amended, my decision must focus on that same point in time although for ease of reading, I do not use the past tense.

² Drawing No 14698 Rev A dated 9/12/14

Reasons

Whether or not 'development'

11. Section 55 of the 1990 Act states that development requiring planning permission means the carrying out of building, engineering, mining or other operations in, on, over or under land; or the making of a material change in the use of any buildings or other land.
12. As regards the proposed use of the unit, the proposed location for the unit falls within the existing residential planning unit and as the unit would remain in single family occupation and would be intended to function as a single household and not be a self-contained unit, on the evidence before me, no material change of use would result. Thus, the remaining issue for determination is whether the proposal would constitute operational development requiring planning permission.

Parties' submissions

13. The appellants' argument is essentially that a unit which falls within the statutory definitions in the 1960 Act and 1968 Act (I shall use the term 'statutory caravan' for brevity) cannot be a building. The Council, in contrast, submits that a caravan should be assessed, like any other item, to establish whether or not it is a building against case law tests including those in the *Cardiff Rating Authority*, *Barvis*, *Skerritts*, and *Woolley chickens* judgments³. The parties have made reference to various case law and appeal decisions in support of their positions, which I have had regard to.
14. The appellants refer to, amongst others, the *Wealden*⁴ case as evidence for the proposition that siting of a caravan cannot represent operational development. This is based upon the statement from the Court of Appeal in that case that 'planning control of the placing of a caravan upon land' depended 'solely upon the concept of the material change of use'. Whilst this appears as an unequivocal statement, in *Wealden* the Court was not looking at the question of whether stationing of a caravan could ever represent operational development. Indeed, I acknowledge also the Council's comment that what now constitutes a 'statutory caravan' is quite different in size from that which was under consideration in *Wealden*.
15. In contrast, in the case of *Measor*⁵, the Court specifically addressed the question of whether a 'statutory caravan' could ever be a building. In *Measor*, it was held that simply because the definition⁶ of a caravan in the 1960 Act refers to a 'structure', and the 1990 Act definition of a 'building'⁷ refers to 'any structure or erection', does not mean that 'statutory caravans' will be a building 'as of right'.
16. The Judge in *Measor* also held that 'as a matter of law', he would be wary of holding that a structure satisfying the s13(1) definition in the 1968 Act (as was) could never be a building for the purposes of the 1990 Act. However, it

³ *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385; *Barvis v SSE* [1971] 22 P&CR 710; *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No.2)* [2000] EWCA Civ 5569; *R (oao Save the Woolley Valley Action Group Ltd v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

⁴ *Wealden DC v SSE & Day* [1988] JPL 268

⁵ *Measor v SSETR & Tunbridge Wells DC* [1999] JPL 182

⁶ Section 29(1) 1960 Act

⁷ Section 336(1) 1990 Act

was also stated in that case that generally a mobile caravan will not satisfy the case law definition of a building having regard to factors of permanence and attachment. I accept that in *Measor*, the interpretation of the term 'permanence' had not been developed as per, for example, *Skerritts* and *Woolley chickens*. However, this was a statement made of general applicability and specifically in relation to mobile caravans. Thus, the statement in *Measor* remains of relevance in this case.

17. In my view then, I consider that a 'statutory caravan' can potentially be a building for the purposes of the 1990 Act. As such, I must necessarily assess the proposed unit against the tests in the *Cardiff Rating Authority*, *Barvis*, *Skerritts* and *Woolley chickens* judgments. In the light of *Measor*, it is useful though firstly to assess whether or not the proposed unit would be a 'statutory caravan', and indeed some of the considerations in that assessment are of relevance to the case law tests for buildings.
18. It would appear that there is some variance in approach between Inspectors in dealing with the issue of whether a statutory caravan can be a building. I do not have full details of the evidence submitted in respect of those other decisions, but it appears that the detail of that evidence and how it was argued may well have impacted upon the approach taken by Inspectors in each case.

Whether or not a caravan

19. Section 29(1) of the 1960 Act defines a caravan as 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.⁸
20. Where appropriate, the definition in the 1960 Act must be read alongside the definition of twin-unit caravans set out in the 1968 Act. Section 13(1) of the 1968 Act defines a twin-unit caravan as any 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 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 1 of the 1960 Act by reason only that it cannot lawfully be so moved on a road when assembled.
21. Section 13(2) of the 1968 Act sets out the maximum dimensions that a structure cannot exceed if it is to qualify as a twin-unit caravan for the purposes of Section 13(1)(a) and (b) of the 1968 Act. The relevant measurements are a length of 20 metres⁹; a width of 6.8 metres and an overall height of living accommodation (measured internally from the lowest level of the floor to the highest level of the ceiling) of 3.05 metres.

⁸ But not including (a) any railway rolling stock which is for the time being on rails forming part of a railway system; or (b) a tent

⁹ Exclusive of any drawbar

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22. The drawing submitted with the application demonstrates that the proposed unit would fall well within the length and width limits prescribed. The appellants have confirmed that the unit proposed would meet with the statutory size limits, and so the prescribed height limit would be met also. The appellants have indicated that the unit would be delivered to the site in two parts and assembled there. Thus it would comply with the s13(1)(a) construction test in the 1968 Act. The appellants have also provided details of how the unit would be lifted using beams and a crane and so I find that it would pass the mobility test in s13(1)(b) of the 1968 Act.
23. Consequently, I find as a matter of fact and degree that on the evidence before me, the proposed unit would be a statutory caravan.

Whether or not a building

24. As to whether the proposal represents operational development, I firstly consider whether it would be a 'building'¹⁰ since, if so, the process creating it would most likely be a building operation. Section 336(1) of the 1990 Act states that a "building" includes "any structure or erection", and the courts have ruled that regard must be had to size, permanence and degree of physical attachment, but no single factor is decisive¹¹.
25. Turning then to the size of the unit, its size would be such that it could be transported onto the site essentially ready-made (albeit in two sections). This can be contrasted with items that are so large that they would normally be constructed on site from component parts. Further, regardless of whether smaller items have been found to be buildings, the fact that the unit proposed could be transported in one piece points to it being of a smaller size than other items which would be too large to be moved in such a way. It would be smaller than the poultry units in the *Woolley chickens* case and the marquee in *Skerritts* and indeed the installation of both of these appeared to involve activities more akin to construction from component parts.
26. As to permanence, on the evidence before me, the proposed use of the unit means that it would be very likely to be on site for a period of years, rather than months or weeks. However, the proposed unit could be moved in one piece. As such, although the courts have found that mobile items can be buildings, nonetheless, the mobility of the proposed unit points to it having less permanence than something which would need to be taken apart into its constituent parts in order to be moved. Further, whilst both the *Skerritts* and *Woolley chickens* judgments in defining permanence refer to 'significance in the planning context', this was in the sense of how long an item is in situ for, rather than introducing an assessment of planning merits.
27. As to the degree of physical attachment, the unit proposed is not intended to be physically attached to the ground, other than through connections to services, which could be simply and swiftly disconnected. Although it would be held in place by its own weight, its degree of attachment would be limited enough to mean that it could be fairly easily and quickly detached.
28. The Council draws comparisons, including from case law, with other items that have been found to be buildings. The argument is made that the proposed unit would be of greater size/permanence/have a greater degree of attachment

¹⁰ As defined in s336(1) 1990 Act

¹¹ See, *inter alia*, *Skerritts*

than the items considered in various other cases. However, as the Council accepts, these sorts of cases are very fact specific. Further, the fact that no single factor is determinative also renders such comparisons less useful.

29. For example, the Council makes a comparison with the poultry units in *Woolley chickens*. However, it seems that construction/installation of the poultry units involved initial activities more akin to construction. Whilst I note also the comparative reference in *Skerritts* to temporary buildings benefitting from permitted development rights, the Court in *Measor* would have been aware of permitted development rights when making the specific comment about 'mobile caravans' and that these would not generally satisfy the definition of a building.
30. Drawing all of these points together, I find on the evidence before me and as a matter of fact and degree that, in the round, the unit would lack such a degree of physical attachment and permanence as to render it a building within the meaning of s336(1) of the 1990 Act. Whether or not most builders would be capable of carrying out the activities involved in bringing the unit to the land and assembling it there, that is not enough for me to find that these activities would *normally* be undertaken by a person carrying on business as a builder. As such, I find as a matter of fact and degree on the evidence before me that no building operations would be involved in the proposal.

Other operations

31. Section 55 of the 1990 Act also brings within the definition of operational development 'other operations' – being distinct from building, mining or engineering operations¹². I am mindful that the judge in the *Woolley chickens* case held that the construction/installation of the poultry units in that case would fall within the definition of 'other operations'.
32. However, it seems that the process by which the proposed unit would be brought onto, positioned and assembled on the land would be fairly swift and straightforward. Indeed, it would appear to be a simpler process than that involved in constructing/installing the poultry units in *Woolley chickens*, where the initial process was stated to take two days and the units were brought onto site in flat pack form. I find then as a matter of fact and degree that the proposal would not involve 'other operations' for the purposes of s55.
33. Finally, the Council highlights that the height restriction contained in section 13(2) of the 1968 Act requires the measurement to be taken internally up to the highest point of the ceiling. Thus, in the Council's view, permitting a caravan which complies with the s13(2) dimensions allows an object of indeterminate external height. However, since the application has been made for the 'use' of land, and not for operational development, any certificate granted would be for a use of land only. If the appellants sought to do anything amounting to operational development, then the LDC would be of no benefit. Likewise, if the use differed from that certified as lawful.

Conclusion

34. Accordingly, the siting of the proposed caravan as described would not result in a material change in the use of land, nor in any operational development. It would thus not be development requiring planning permission under s55 of the 1990 Act. Planning permission would not therefore be required and so the

¹² See *Woolley chickens*

proposal would be lawful. I conclude thus that the Council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

Formal Decision

35. The appeal is allowed and attached to this decision is a Certificate of Lawful Use or Development describing the proposed use which is considered to be lawful.

V Bond
INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 26 August 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed siting of the caravan within the residential planning unit and its use to provide additional residential accommodation associated with the main dwellinghouse at Manor Farm for the applicant's family would have been part and parcel of the residential use within the same planning unit. It would not have represented a material change of use or operational development and so it would not have constituted development requiring planning permission.

Signed

V Bond
INSPECTOR

Date 11 November 2020

Reference: APP/D3125/X/20/3250345

First Schedule

The siting of a caravan with dimensions of 10.97m (length) by 6.09m (width) within the garden grounds of Manor Farm, Combe, for ancillary residential use in accordance with the application reference 19/02418/CLP and dated 26 August 2019 and the supporting information submitted therewith.

Second Schedule

Land at Manor Farm, Park Road, Combe OX29 8NA

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 November 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

Land at: Manor Farm, Park Road, Combe OX29 8NA

Reference: APP/D3125/X/20/3250345

Scale: DO NOT SCALE

