



Appeal Decision

Site visit made on 11 December 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2021

Appeal Ref: APP/G2245/X/19/3235716

Land at Deans Farm, Firmingers Road, Well Hill, Chelsfield, Orpington, Kent BR6 7QQ

- 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 Dean Truder against the decision of Sevenoaks District Council.
 - The application Ref 19/01195/LDCEX, dated 19 April 2019, was refused by notice dated 15 July 2019.
 - The application was made under section 191(1)(a)&(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 the formation of a building by the adaptation of a mobile home, and a material change of use of the resultant building and land to a residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In this appeal I have used the term 'unit' to describe what the appellant refers to as a building on site, but the Council maintain is a mobile home. I have also referred to the 'original unit', which in this case means the unit without the conservatory or utility room additions that have been described by both parties.
3. In the application forms the appellant has described the matter for which the LDC is sought as a 'use as a single family dwellinghouse'. However, in the same form the appellant confirms that the LDC is sought for 'existing building works'; he has not ticked the box to indicate that the LDC is sought for an existing use. In the appellant's statement of case it is suggested that the LDC should be granted for the unit, 'confirming that it is a dwelling house (Class C3) and a building, not a mobile home'.
4. Having regard to the above, the matter for which the LDC is sought consists of both a building or other operation in the form of the formation of a building by the adaptation of a mobile home, and a material change of use of the resultant building and land to a residential use. The application was, therefore, made under sections 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act). The description of the development in the header above reflects this and, although different to that stated in both the

application form and the decision notice, I am satisfied that this will cause no injustice to either party. The appeal has been determined on this basis.

Main Issue

5. Section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development referred to in the application was lawful on the date the application was made.

Reasons

Background

6. Both parties refer to a LDC granted by the Council in May 1995¹. The certificate states 'a residential caravan has been stationed on the land for more than 10 years'. The appellant has provided a plan at appendix 8 of his grounds of appeal which shows the appeal site and the wider area. On this is shown a 'mobile home' within the appeal site and a 'caravan' located on the wider area. It has not, however, been confirmed whether this plan shows the land to which the 1995 LDC relates. Nevertheless, the appellant suggests that, if the appeal fails, the 1995 LDC applies to the unit that is the subject of this appeal and that this is lawful. This is not disputed by the Council.

Considerations

7. The appellant has provided evidence to suggest that the utility room addition was added to the original unit in 1995 and suggests that, as a result of this, the unit became a building within the definition of the 1990 Act. The appellant suggests that this position is reinforced with the addition of a conservatory in 2011. In refusing to grant the LDC, the Council suggest that 'it has not been established, on the balance of probability, that the formation of a building by the adaptation of a mobile home and the use of the building as a dwelling has occurred and is lawful'.
8. Having regard to the above, the first main consideration in this case is whether the works undertaken to the original unit have, on the balance of probability, resulted in the formation of a building and, if so, whether a period of four years has passed beginning with the date on which these were substantially completed². If I conclude that the works have resulted in the formation of a building, the second main consideration is whether, on the balance of probability, the residential use of the resultant building and associated land has been continuous for a period of ten years beginning with the date on which the use commenced³.

¹ Council reference SE/95/0599.

² Section 171B(1) of the 1990 Act.

³ Section 171B(3) of the 1990 Act.

9. With regard to the first main consideration, both parties refer to the definition of a caravan, as set out in section 29(1) of the Caravan Sites and Control of Development Act 1960 as amended (the 1960 Act). They also refer to sections 13(1) and 13(2) of the Caravan Sites Act 1968 as amended (the 1968 Act) which relate to twin-unit caravans. The appellant points to the dimensions of the original unit and suggests that, whilst the external wall dimension measures some 6.12 metres, the overhang of the gables on each roof slope take its width beyond the 6.8 metre width dimension stated in section 13(2) of the 1968 Act. This is not disputed by the Council.
10. Whilst I note the appellant's contentions in this regard, the consequence of this is that it may not be possible to regard the original unit as a caravan for the purposes of the above legislation⁴. However, it does not automatically follow that the original unit must be regarded as a building.
11. There is no suggestion that the dimensions of the original unit complied with those set out in section 13(2) of the 1968 Act when it was first brought onto the site, and that its dimensions were subsequently altered. Indeed, the only alterations brought to my attention are the utility room and conservatory additions. Yet the appellant refers to the original unit as a 'mobile home'. It is only the addition of the utility room that in his opinion has resulted in the change from what he refers to as a mobile home to a building. In this regard, whether or not the dimensions of the unit comply with those stated in section 13(2) of the 1968 Act (i.e. whether or not the unit can be regarded as a caravan for the purposes of the 1960 Act and 1968 Act) is not decisive in this case to the matter of whether or not it is a building.
12. Section 336 of the 1990 Act provides a definition of a building as including 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building'. Settled caselaw (*Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385⁵) has also identified three primary factors as decisive of what is a building. These are: (1) that it is of a size that it would normally be constructed, as opposed to being brought ready-made onto the site; (2) there would be physical attachment to the ground; and (3) it would cause a physical change of some permanence. None of the factors are necessarily decisive.
13. Whilst the size of the unit can be compared to that of a small dwellinghouse, the appellant confirms that the original unit was **placed** on the land in 1994. As I note above, he refers to this as a mobile home and I note that it has the appearance of a twin unit, as described in the 1968 Act, that would have been brought on to the site in two parts. I was able to see the join through the centre of the unit where the two parts would have been fixed together. As such, it is likely that the original unit would not have required construction on site, other than fixing the two parts together. Whilst I noted a brick plinth around the base of the unit, these are not uncommon decorative features on such units. Nevertheless, the appellant does not indicate when this plinth was constructed; neither does he suggest that its construction is decisive to the matter of whether or not the unit is a building. It is the addition of the utility room on one side of the original unit and the subsequent addition of the conservatory on the other side that has, in the appellant's view, resulted in the unit becoming a building.

⁴ Section 13(2) of the 1968 Act.

⁵ This was endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102.

14. In this regard, I note that both the utility room and the conservatory have a single skin brick plinth that has been constructed on a hard surface, which the appellant suggests are 'permanent foundations'. Above the plinth the utility room has been completed with timber framed glazing units, whilst the conservatory has been finished in UPVC frames and glazing.
15. The additions adjoin gable projections in the front and rear roof slopes of the original unit. The gable projections are visible in the 2001 aerial photograph provided by the appellant and are, therefore, likely to be a part of the original roof of the unit, rather than having been subsequently added along with the utility room and conservatory. The utility room addition to the rear has a centrally ridged roof, the pitch of which matches that of the gable projection. Its roof has been finished with prefabricated panels similar to those used in the gable projections. The conservatory roof has a shallower pitch that has been constructed with UPVC and opaque panels.
16. As is noted in the 'Hazeri' appeal decision⁶ referred to by both parties, it is not uncommon for conservatory or porch additions to a mobile home and, provided these can be easily detached, they may not affect the mobility of the main unit. In this regard, the appellant has provided photographs showing the means of connection of the utility room and conservatory to the original unit, which I observed on site myself.
17. In the case of both additions, the brick plinth and window frames abut the external wall of the original unit. The external finish of the original unit was still visible and intact inside both additions, as was the entrance door and doorway that provide access from the additions into the original unit. Save for a form of in-filler between the additions and the external wall of the original unit, I could see no other means by which the plinth and frames of the utility room and conservatory were attached, and none have been suggested by the appellant.
18. The conservatory roof abuts what appeared to be an older timber canopy structure that is above the front doorway of the original unit and below the projecting gable. The prefabricated roof panels of the utility room addition overlap the rear projecting gable that was also above a similar canopy over the rear doorway. I could see no substantial means of attachment of the roof of either the utility room or the conservatory to the projecting gables. Certainly, the silver tape visible at the join between the conservatory roof and the front gable suggests that this is not an integral extension to the original unit.
19. Whilst the Council has compared this case to the dismissed Hazeri appeal, the appellant has suggested that there are differences between the two. I have been provided with limited information regarding this case and have not, of course, viewed that appeal site. Nevertheless, I note that the porch addition to Hazeri had a single skin construction and that the additions were bolted on to the unit. Although these additions might not have been constructed with foundations, there are similarities with the case before me with regard to the type of additions and the less than secure means of attachment to the unit.
20. Having regard to the above, whilst the additions can be regarded as having been constructed and firmly attached to the ground, their means of attachment to the unit itself are likely to be less secure. It would, therefore, be relatively

⁶ Appeal reference APP/G2245/X/16/3160695.

easy to detach the additions from the original unit and, in doing so, I have no reason to conclude that this would affect the integrity of the original unit. As noted above, the external finish of the original unit, together with the doorways and doors covered by the additions were still in place and could once again serve as the external doors to the unit. Accordingly, I consider the original unit, as a matter of fact and degree, to still be mobile and the additions have not affected the mobility of the unit.

21. I acknowledge that the unit possesses a degree of permanence and that it has not been moved since it was first placed on the site in 1994. This is often the case with prefabricated twin units such as this, but I do not consider this to be a decisive matter in this case. I have not been given any reason to conclude that, once the conservatory and utility room additions have been detached, it would not be possible to remove the original unit from the site in two parts using appropriate lifting machinery and transportation.
22. I also acknowledge that the original unit is likely to be physically attached to the ground by the water and electricity supply, and by the waste water pipes. In this regard, I note that the Inspector in the Hazeri appeal states that 'almost invariably detachment from such services is a simple matter which can be achieved within minutes'. I have no reason to reach a different conclusion in this case.
23. The appellant has drawn my attention to a decision of the Council relating to and LDC application for a site known as Woody Holm⁷. Without the full details of this case it is difficult to make an informed comparison. Notwithstanding this, the Council's decision notice in that case refers only to a use rather than building or other operations. Furthermore, the decision notice refers to the period of 10 years, as opposed to the 4 year period that is relevant when considering the lawfulness of building or other operations. Based on the information I have of that case, it would appear that it is not relevant to the principal matters considered in the case before me.
24. Having regard to all of the above, I conclude that the appellant has not demonstrated that, on the balance of probabilities, the works undertaken to the original unit have resulted in the formation of a building. As such, it is not necessary to consider whether a period of four years has passed beginning with the date on which these works were substantially completed. As a consequence, the application for a LDC for the residential use of a building and associated land also fails.

Conclusion

25. 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 formation of a building by the adaptation of a mobile home, and a material change of use of the resultant building and land to a residential use 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.

J Moss

INSPECTOR

⁷ Appendix 9 of the appellant's grounds of appeal.