



Appeal Decision

Inquiry held on 13, 14 and 15 April 2021

Site visit made on 26 April 2021

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 26 May 2021

Appeal Ref: APP/Y3940/X/19/3241027

5 Spaines, Great Bedwyn, Marlborough, Wiltshire SN8 3LT

- 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 iHUS Projects Limited against the decision of Wiltshire Council.
 - The application Ref 19/03611/CLE, dated 9 April 2019, was refused by notice dated 3 October 2019.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development was sought is:
The placement of the existing twin unit caravan at 5 Spaines, Great Bedwyn, Marlborough SN8 3LT.
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Decision

1. The Appeal is dismissed.

Procedural matters

2. The Inquiry was a “virtual” event, using the Microsoft *Teams* digital platform, and all oral evidence was given either under affirmation or on oath.

Background

3. On 16 November 2016 the Council granted a LDC (“the 2016 LDC”)¹ for the proposed stationing of a mobile home to provide ancillary residential accommodation in connection with the occupation of 5 Spaines.
4. The Appellant subsequently stationed an iHUS unit (for clarity, I shall hereafter refer to this unit as “the Original Unit”) on the appeal site. Following discussion with the Council as to whether or not that Original Unit met the terms of the 2016 LDC, the Appellant submitted an application for retrospective planning permission for the erection of “an ancillary granny annexe and associated timber decking.” The Council refused planning permission on 28 July 2017.²
5. On 1 June 2017 the Council issued an enforcement notice in respect of the Original Unit, alleging the unauthorised construction of a building and associated timber decking. An appeal against this enforcement notice was dismissed by the appointed Inspector on 5 March 2018 (“the 2018 Appeal”)³.

¹ Ref 16/09613/CLP

² Ref 17/04617/FUL

³ Ref APP/Y3940/C/17/3183025 & 3183026

6. On 3 September 2018 the Original Unit was craned off the appeal site, having first been separated into two sections. The two separate sections were craned back on to the appeal site later that same day, and were subsequently connected together to form the unit that now stands on the appeal site (which I shall hereafter refer to as "the Current Unit"). On 9 April 2019 the Appellant applied for an LDC in respect of the Current Unit, and it is the Council's refusal to grant that LDC that forms the subject of this appeal.

Main issues

7. It is important to be clear that the subject of this appeal is an application for a Certificate of Lawfulness, not for planning permission. If it were an application for planning permission, my decision-making process would involve an assessment of the planning merits of the proposal (such as its effect on living conditions at neighbouring properties) and its compliance with national and local planning policies. However, since it is an application for a LDC, none of those considerations are before me: rather, my assessment is confined to the narrow point of determining whether the use described in the application would be lawful if instituted at the date of the application.
8. In this case, it is common ground that the 2016 LDC remains extant. It is also common ground that the Current Unit falls within the statutory size limits of a caravan⁴, as set out in section 29(1) of the Caravan Sites and Control of Development Act 1960, supplemented by section 13 of the Caravan Sites Act 1968 ("the CSA"). The key area of dispute between the parties concerns the compliance of the Current Unit with sub-section 13(1) of the CSA, which contains what are commonly termed the "construction test" and "mobility test" for twin-unit caravans. It will be helpful to set out that sub-section here in full:

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 and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

9. The parties also dispute the status and effect of the 2017 Enforcement Notice. The Appellant contends that the removal of the Original Unit means that the Enforcement Notice has been complied with, whereas the Council contends that the requirements were not met in full, and that it remains in force.
10. The two main issues for this appeal, then, are whether the Current Unit complies with (1) the construction test and (2) the mobility test, so as to meet the statutory definition of a caravan. If I conclude that it does, a third issue arises. That is whether or not its placement on the appeal site constitutes a contravention of any requirements of any Enforcement Notice in force.

⁴ In planning (and caravan site) law the terms "mobile home" and "caravan" are interchangeable.

Reasons

First Main Issue: The Construction Test

11. The Appellant has provided very little information concerning the construction of the Current Unit. The supporting letter which accompanied the LDC application in April 2019 contained, under the heading "Construction", one paragraph stating "Please see a video of the installation process under Appendix B. This complies with the requirements of the Act." However, that video simply shows the two separated halves of the Original Unit being craned back on to the appeal site. It does not show them being joined together to create the Current Unit.
12. Four plans were provided as Appendix A to the 2019 LDC Application, and while the drawings titled "Footprint" and "Elevations" both contained a dotted red line labelled "Joint line", none of the plans contained any further information about that join, or how it was effected. The Witness Statement of Mr Smeaton, who appeared for the Appellant, states that "We... craned the two sections of the caravan back into place, exactly as described in the original build method which was approved by the local planning authority as part of the original certificate of lawfulness decided on November 2016" but is silent about the re-connection of the two sections.
13. In response to questions about the lack of evidence as to the construction of the Current Unit, Mr Smeaton referred me to the details submitted in support of the 2016 LDC application.⁵ He was subsequently recalled to give further evidence, and provided a still⁶ from the installation video which showed four square holes in the base of one of the two halves of the Original Unit that were craned to and from the site. Mr Smeaton described these holes as access points for bolting the two sections together, and referred to the annotated plan at Appendix 4 of Mr Smith's proof of evidence, but in cross examination did not clarify why the four holes in the photograph did not appear to correspond with the six "jointing bolt" locations shown on that plan.
14. Mr Woodward-Court, who appeared for the Appellant, drew my attention to pages 84-86 of his Proof of Evidence, which he said provided information on construction methodology and included photographs of the structure at 5 Spaines. However, those pages form part of the "Construction Methodology" submitted in support of a LDC application for a different appeal site in Porton, and are dated 9 January 2017. Mr Woodward-Court accepted that the photographs must have been taken during the construction of the Original Unit, not the Current Unit. Similarly, the construction photographs provided in the written submission of Mr and Mrs Rutt,⁷ the owners of the appeal site, appear to relate to the Original Unit rather than the Current Unit.
15. The Appellant's case is, in essence, that the construction test is met because the iHUS unit was designed as two sections to be assembled on site by means of bolts, clamps or other devices and, given that no other way of combining the

⁵ The Application Form for the 2016 LDC was accompanied by plans, photographs, and an explanatory letter dated 3 October 2016. Under the heading "Construction", that letter simply stated: "To comply with the act the structure must not be composed of more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps and other devices. The structure will be manufactured at our Factory and assembled as 2 units on site."

⁶ Inquiry Document 4

⁷ Inquiry Document 3

two halves in this case has been suggested, it has at the very least been proven on the balance of probabilities.

16. I appreciate that iHUS Units may well be designed in this way. Certainly the Council was satisfied, when it issued the 2016 LDC, that if the proposed unit were installed in accordance with the proposed method it would meet the construction test.⁸ But of course, just because something is designed to be assembled in a certain way, it does not follow that the proposed construction method will necessarily be followed. Indeed, a different construction method from that proposed was found to have been used for the Original Unit. The 2018 Appeal Inspector determined that the Appellant's "Caravan Installation Method" had not been followed, in that the Original Unit had been constructed from numerous parts rather than two separate sections, and the final act of assembly went "far beyond" joining the two sections together using a series of bolts along the wall and floor line.⁹
17. The evidence before me in this appeal indicates that the Current Unit was composed from two sections. The manner in which they were joined together has not been explained, but even if I were to accept the Appellant's argument that they can only have been bolted together, in order to accord with the statutory definition it is necessary that the two sections be *separately constructed*, and *designed* to be assembled on a site by means of bolts, clamps or other devices.
18. The two sections that were joined together to create the Current Unit were clearly not delivered direct from the Appellant's factory for assembly on site. There is no evidence to suggest (and the Appellant does not claim) that the components of the Original Unit were dis-assembled, and then re-assembled so as to create the two designed sections from which it would have been formed IF its construction had been undertaken as originally proposed in the 2016 LDC application. Rather, the Original Unit was split into two, with each half retaining incorporated components such as exterior roof tiles and cladding, and interior plastering and flooring.
19. In my judgment, the two sections that were fixed together to create the Current Unit were not "separately constructed", but rather were formed by cutting in half an existing structure, which had itself been established not to have been constructed from two separate sections. Put more simply, an existing building was cut in half, and the two halves then fixed back together.
20. The Appellant has not provided any evidence of design in terms of how the two severed halves of the Original Unit (as distinct from the two factory-manufactured sections proposed in the 2016 LDC application) were to be joined together. There is, for example, no "Caravan Installation Method", such as was provided in respect of the Original Unit in the 2018 Appeal, and no drawings to show how many clamps, bolts or other devices would be required and where they should be placed, or how the sliced edges of plaster, flooring and cladding would be fixed back together. As such, it has not been demonstrated that there was a designed approach to assembling the Current Unit. I am not satisfied, on the basis of the evidence before me, that the two sections created by cutting

⁸ The Officer's Report on the 2016 LDC application, under the heading "The Local Planning Authority's Assessment of the Evidence" states that "If the mobile home is installed in accordance with the proposed plans and as described within the covering letter it is considered that the three tests of construction, mobility and size, as referred to within the legislation, will be met."

⁹ Appeal ref 3183025 & 3183026, para 10

an existing building in half were *designed to be assembled on a site by means of bolts, clamps or other devices*.

21. I therefore conclude that the Current Unit does not meet the “construction test” set out at s.13(1) of the CSA.

Second Main Issue: The Mobility Test

22. The provisions of s.13(1), set out above, require that a twin-unit caravan must be physically capable of being moved by road “when assembled”: that is, it is the unit as a whole which must be mobile, not just each of the two sections from which it is formed. For the purposes of the mobility test, the question of whether or not transportation of the assembled unit on the public highway would be illegal is irrelevant, as is the question of whether or not it could be physically transported along the road leading to the site.
23. The 2018 Appeal Inspector found that the Original Unit did not meet the mobility test, concluding that “Without a method statement detailing how the object can be lifted as one integral unit and having regard to the method of construction of the object and the location of the lifting beams as indicated in the appellants’ structural calculations, I am not convinced that the object is physically capable of being moved as a whole without structural damage.”¹⁰
24. Mr Richardson, who appeared for the Council, explained in his oral evidence his concerns relating to the fact that the Current Unit had been reconstituted from two halves. The lifting strategy for iHUS units relies on supporting the floor; ordinarily, the eight floor cassettes should all be attached together, but here there is no evidence as to how well - if at all - those in each half have been re-connected. This could create problems with torsion, and longitudinal sag, resulting in structural damage. The structure would be vulnerable to cracking and separation along the join.
25. Mr Smith appeared for the Appellant, and in his oral evidence to the inquiry confirmed that he had not provided a method statement for the lifting of the Current Unit, and that the structural calculations referred to in his written evidence dated from October 2017. He also confirmed that his evidence only assessed whether the structure, once assembled, could be moved as a whole unit (that is, without any reference to whether or not there would be structural damage to the unit) and that he had not advised on the lifting plans submitted as part of Mr Smeaton’s proof of evidence.
26. Mr Bull also appeared for the Appellant. His evidence to the inquiry was that it would be possible to lift and transport the Current Unit whole: he confirmed that he had been provided with its dimensions and weight, but not any lifting diagrams or calculations, and had not considered the precise design of lifting apparatus recommended by Mr Smith.
27. I have no reason to doubt Mr Bull’s professional evidence that his haulage company can move larger – and more unusual – loads than the Current Unit. But the fact (which Mr Richardson accepted in cross examination) that the Current Unit could be lifted using an appropriately designed lifting cradle and transported by road if the right steps were taken, does not indicate that it is necessarily a mobile home. It is possible to lift and transport buildings as a single unit if the right steps are taken; the example given by Mr Richardson

¹⁰ Appeal ref 3183025 & 3183026, para 13

was moving a house away from a cliff edge to a more secure location. Here, there is no evidence to indicate that the Current Unit (as distinct from the proposed iHUS unit detailed in the 2016 LDC application) was designed to be mobile.

28. The Appellant points out that in granting the 2016 LDC the Council was satisfied that the proposed iHUS Unit met the mobility test, and contends that the structure has not changed. However, in my view it is clearly of relevance that (1) the Current Unit has been formed from the two halves of a pre-existing structure, joined together by a method that is not detailed in the evidence; and (2) the construction of that pre-existing structure was itself not carried out in accordance with the method proposed by the Appellant. The structure of the Current Unit differs in these two material ways from the structure described in the 2016 LDC application, but the Appellant has not provided any evidence as to the significance and impact of these differences for the mobility of the structure here assembled.
29. The structural calculations that informed the lifting strategy for iHUS units have not been re-worked to take account of the differences in the Current Unit's construction (or reviewed, to say why there would be no change, if that were the case). No method statement has been provided to explain how this specific unit would be lifted, having regard to the manner of its assembly and any consequent structural weaknesses or strengths. There are also unexplained discrepancies between the position and measurements of the lifting beams shown in Appendix C to Mr Smeaton's proof of evidence, and those shown in exhibit GS4 to Mr Smith's proof of evidence.
30. In summary, I am not satisfied that the mobility evidence provided by the Appellant has fully considered or addressed the particular manner of the Current Unit's construction: it remains unclear whether it has the structural strength to withstand the loadings that any attempt to move it would impose. I find that the Appellant has failed to discharge the evidential burden of demonstrating that the Current Unit is, on the balance of probabilities, physically capable of being moved in its assembled form without structural damage. I therefore conclude that the Current Unit does not meet the "mobility test" set out at s.13(1) of the CSA.

Other Matters

31. Section 191(2)(b) of the 1990 Act, which sets out the circumstances in which a LDC for existing use or development may be issued, explains that uses and operations are only "lawful" if (among other criteria) "they do not constitute a contravention of any of the requirements of any enforcement notice then in force." This means that if I had reached the conclusion that the Current Unit is a caravan, such that the LDC here applied for could potentially be issued, I would need to address the disputed issue of whether the 2017 Enforcement Notice remains "in force" and, if it does, whether the stationing of the caravan on the appeal site contravenes any of its requirements. However, since I have found that the Current Unit fails both the construction test and the mobility test, it follows that the requested LDC for "the placement of the existing twin unit caravan" on the appeal site could not be issued in any event. It is therefore unnecessary, for the purposes of determining this appeal, to resolve the issue of compliance with the 2017 Enforcement Notice.

32. The Appellant drew comparisons between the circumstances of the current case and those of two LDCs issued by the Council, and an enforcement appeal decision concerning the installation of one of the Appellant's mobile homes.
33. The evidence submitted in support of the LDC application for the stationing of an iHUS unit in Porton¹¹ included a document entitled "Lifting Methodology", which incorporated a Method Statement provided by the Crane Company. The evidence submitted in support of the LDC application for the stationing of a twin-unit caravan in Southbrook¹² included on-site photographs of the construction unit in two halves. It is not clear to me how the fact that the Council considered this (more comprehensive) evidence sufficient in those applications assists the Appellant's case in the current appeal. I have not been provided with a "Lifting Methodology" or any on-site photographs of the construction of the Current Unit. I note that the "Lifting methodology" in the Porton case included photographs of the Original Unit at 5 Spaines, but these are unattributed and serve merely to illustrate the steps set out in the text.
34. Similarly, the appeal against an enforcement notice in Romford¹³ was supported by more comprehensive evidence than has been submitted by the Appellant in this case. There, the Appellant's evidence on mobility included a "Structural integrity and craning method statement", the findings of which were not disputed by the Council. Here, the Appellant has not provided any method statement for the lifting of the Current Unit, or any up-to-date structural calculations, and such evidence as it did provide was disputed by the Council.

Conclusion

35. A failure to meet either the "construction test" or the "mobility test" results in a failure to accord with the requirements of s.13(1) of the CSA. For the reasons set out above, I have found that the Current Unit does not meet either of those two tests. It does not, therefore, fall within the statutory definition of a caravan. This means that its "placement" on the appeal site, in the terms of the LDC here at issue, is not certified as lawful by the 2016 LDC. Neither does it fall within any of the provisions for Permitted Development.¹⁴ Rather, it amounts to development, for which planning permission was required but not obtained.
36. I therefore conclude that the Council's refusal to grant a LDC in respect of "the placement of the existing twin unit caravan" at 5 Spaines, Great Bedwyn, Marlborough, Wiltshire SN8 3LT 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.

Jessica Graham

INSPECTOR

¹¹ Ref 20/10182/CLP: "Case 3" in Mr Woodward-Court's Proof of Evidence

¹² Ref 18/09890/CLE: "Case 4" in Mr Woodward-Court's Proof of Evidence

¹³ Ref APP/B5480/C/17/3174314: "Case 5" in Mr Woodward-Court's Proof of Evidence

¹⁴ As set out in The Town and Country Planning (General Permitted Development) (England) Order 2015

APPEARANCES

FOR THE APPELLANT:

Timothy Jones of Counsel

Instructed by Kate Haigh of Stewart
& Co Solicitors

who called the following witnesses:

Trevor Smeaton
Graham Smith BEng(Hons) CEng MStructE

Managing Director, iHus Projects Ltd
Structural Engineer, SEJC Consulting
Engineers

John Nicholas Bull
Ian Woodward-Court BSc(Hons) MSc

Owner, N.B. Overland (hauliers)
Founder and Planning Consultant,
Plainview Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

James Neill of Counsel

Instructed by the Legal Services
Department of Wiltshire Council

who called the following witnesses:

Steven Jenkins
Colin Richardson BEng CEng FICE MCIWEM
MASCE MCI Arb MEWI
Andrew Hole
Julia Hole

Planning Enforcement Officer
Civil Engineer, Rexon Day Forensic

Neighbouring resident
Neighbouring resident

DOCUMENTS SUBMITTED AT THE INQUIRY:

- 1 Copy of opening submissions made on behalf of the Council (including a copy of the judgment in *North Wilts DC v SSE & Clover* [1992, 65 P&CR])
- 2 Copy of opening submissions made on behalf of the Appellant
- 3 Written submissions from Mr and Mrs Rutt (first submitted on 12 April, then subsequently revised and re-submitted on 14 April. For the avoidance of doubt, the Inquiry document is the revised version dated 14 April 2021).
- 4 Photographic still, taken at 00:14 in the video at Appendix B of the 2019 LDC application, provided by the Appellant
- 5 Copy of closing submissions made on behalf of the Council
- 6 Copy of closing submissions made on behalf of the Appellant (including copies of the judgments in *Brightlingsea Haven Ltd v Morris* [2008] EWHC 1928; *Howard v Charlton* [2002] EWCA Civ 1086; and *Wyre Forest DC v SSE & Anor* [1990] 2 WLR 517)

DOCUMENT SUBMITTED AFTER THE INQUIRY (AS AGREED AT THE EVENT)

- 7 Note for the Inspector of specific points to be viewed in the course of the site visit, compiled by the Appellant and approved by the Council