



Appeal Decision

Inquiry held on 16 November 2021

Site Visit made on 16 November 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Appeal Ref: APP/X1545/X/20/3263594

Ringdoves , Goldsands Road, Southminster CM0 7JR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr A Litscher against the decision of Maldon District Council.
 - The application ref LDE/MAL/20/00690, dated 7 July 2020, was refused by notice dated 2 September 2020.
 - 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 use of the land for the stationing of a mobile home for use ancillary to the residential dwelling known as Ringdoves, Goldsands Road, Southminster CM0 7JR.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Application for costs

2. An application for costs has been made by the appellant. This application is the subject of a separate Decision.

Preliminary Matters

3. An application for costs was made by the Council prior to the inquiry. However, it was verbally withdrawn during the inquiry and subsequently confirmed as being withdrawn in writing following the close of the inquiry.
4. I have taken the description of the lawful use from the application form but have corrected the word 'Southminter', as it is clear it was intended to read 'Southminster'.
5. Evidence was given under affirmation.
6. The appellant submitted closing submissions and referenced case law following the close of the inquiry. While I have not, therefore, identified it as a document submitted during the inquiry, since it reflects the closing submissions made during the inquiry I have taken it into account.

Reasons

7. An application under S191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land was lawful at the time of the application. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
 - i) No enforcement action may be taken in respect of them (whether because

- they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
8. The main thrust of the appellant's case is that the mobile home has been stationed within the appeal site in excess of 10 years and its use is ancillary to the use of the main dwelling. Although not set out in its decision notice, the Council's case is made on the basis that the mobile home was a building at the date of the application and is physically and functionally distinct from the main dwellinghouse such that a material change of use has occurred.
 9. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. That will turn on whether the mobile home comprises development, for the purposes of Section 55 of the Town and Country Planning Act 1990 (as amended); and if so, whether, at the date of the application, the Council was too late to take enforcement action.
 10. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits form no part of the assessment of an application for a LDC under S191 of the Act. The proposed development must be considered in the light of the facts and the law.
 11. Section 55(1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land.

Whether it is a building: The first limb

12. The siting of a caravan is generally held to constitute a use of the land and not operational development. However, where a caravan has permanent appendages, it will be a matter of fact and degree as to whether what is on site has become a building or structure. I will therefore need to consider whether the mobile home is a caravan for the purposes of the Caravan Sites and Control of Development Act 1960 or is a building or structure.
13. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968. The term 'caravan' is defined as meaning '*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...*'.
14. Section 336 of the Act, on the other hand, states a "building" 'includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' The main characteristics of a building found in the *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385, as endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR* (No 2) [2000] JPL 1025, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive.
15. The appellant states that the mobile home was brought to site on the back of a low loader and has provided a number of photographs of the mobile home

within the site. From my inspection of the site, the mobile home appears to be a typical single unit static caravan and not a twin-unit for the purposes of the Caravan Sites Act 1968. I therefore have no reason to doubt the appellant's evidence in this regard.

16. Although removed by the time of my site visit, the appellant has previously attached a porch to the front of the mobile home. Decking and a wooden and breeze block skirt has also been placed around the mobile home. These do not form part of the LDC application but nevertheless, were *in situ* at the date of the LDC application.
17. During my visit, I was able to look underneath the mobile home and saw that it was raised off the ground with metal supports and a void beneath, consistent with the appellant's description that it is 'jacked up'. Whilst the supports were resting on concrete slabs, it is not uncommon for a caravan to be located on some sort of hard surface.
18. Although there was wooden panelling around the base of the mobile home, this appeared to be for aesthetic purposes rather than support and did not extend all the way around the mobile home. Breeze blocks were also placed against the mobile home, however, these did not appear to provide any support, nor were they attached in any meaningful way to the mobile home itself.
19. The porch had been removed by the time of my visit and was being stored in pieces on a trailer elsewhere in the appeal site. I was able to see remains of mastic and tape on the mobile home itself, and the dismantled porch. The appellant explained during the inquiry, that he had removed the porch using a knife in around 15 minutes. Even if it took longer to break the porch down into pieces once removed, given its modest size and the nature of its construction, I consider it unlikely it would take significantly longer.
20. Although the porch would have affected the mobility of the mobile home, once removed, I see no reason why it would not be possible to move the mobile home on a vehicle or trailer. Similarly, I consider the wooden plinth and decking would be relatively easy to remove and would not affect the mobility of the mobile home.
21. The mobile home is connected to services, however, such connections could be disconnected relatively easily in a matter of minutes. While complete removal of the services would inevitably take longer, this would not be necessary in order for the mobile home to be moved.
22. While a fence has been erected around the mobile home, it is not physically connected to it and so does not affect whether it is a caravan or not, for the purposes of the Act.
23. Thus, on the evidence before me, as a matter of fact and degree, I consider the mobile home falls within the definition of a 'caravan' and is not a building or structure.

Material change of use: The second limb

24. The mobile home is located to the rear of the main dwelling, within an area which was granted planning permission on 13 May 1998, reference FUL/MAL/98/0266, for the change of use of agricultural land to residential garden land. Since I have found the mobile home is a caravan, whether or not

the mobile home is within the curtilage of the mobile home, if there is no material change of use of the land, then development for the purposes of the Act has not occurred and no planning permission is required.

25. I will therefore go on to consider whether a material change of use, the second limb, has occurred. This will turn on whether the use of the mobile home would be part and parcel of the use of the dwellinghouse, Ringdoves, such that the dwellinghouse and mobile home remain part of the same planning unit.
26. It was established in *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207 that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
27. The appeal site comprises a rectangular plot, which is within the appellant's ownership and comprises a number of other buildings, including the main dwelling, a kennels and cattery. Since the application relates to the mobile home, it is not necessary for me to determine whether the cattery and kennels form part of the planning unit, rather I shall focus on the mobile home and its relationship with the dwellinghouse.
28. The appeal site is located off Goldsands Road, with an 'in-out' driveway and enable access to the dwelling and rear garden, including land used for the cattery, kennels and mobile home. I saw that the mobile home sits within a part of the garden which has been fenced off and is accessed by a gate. While this has resulted in a degree of physical separation, it cannot of itself be indicative of functional separation.
29. It is not disputed that the mobile home contains a range of facilities for day to day living, as per *Gravesham BC v SSE* [1982] 47&CR 142. Indeed, a caravan will typically contain such facilities and so this cannot be determinative of whether a material change of use has occurred. How the mobile home has actually been used will be important in determining whether or not a material change of use has occurred.
30. The mobile home is occupied by the appellant's stepson and his children, when they visit. Although the appellant's stepson was not able to attend the inquiry, he has provided a signed, but unsworn statement which explains that he eats in the main house with the family.
31. The appellant's wife gave a detailed account of her son's use of the mobile home during the inquiry. She explained that her son uses it primarily for sleeping and that, although he uses the kitchen in the mobile home to prepare snacks, his main meals are taken in the main house with the family. The appellant's wife explained that her son also takes showers in the main house, that she does the shopping and that she also does his washing and ironing in the main house.
32. Although the mobile home is some distance from the main dwelling, it is not so far that it would deter the occupant of the mobile home from walking to the main house for his meals. Indeed, the appellant's wife set out in some detail during the inquiry why it is necessary for her son to come to the main dwelling for each meal, given his health issues, as outlined in the application. In this regard, I found her sworn evidence compelling and there was no evidence from the Council or otherwise to cast doubt on it.

33. When I viewed the mobile home, although it appeared to be a typical static caravan, with the facilities required for day-to-day existence, there was a clear lack of food stuffs stored in the mobile home, which would be expected if someone was using it as a self-contained unit of accommodation. The position at the date of the LDC application is what matters, but photographs provided by the Council, dated 5 April 2019, similarly show very limited food stuffs within the mobile home.
34. Post is delivered to the main house and the services are shared. From the evidence provided and from my inspection of the site, it is clear that there is a close functional link between the occupant of the mobile home and the main dwelling, Ringdoves.
35. Although fencing delineates the land, the appellant's explanation for constructing it, to keep apart his stepson's dog and his own dogs, appears a reasonable one and does not inhibit the functional link with the dwellinghouse. The occupant's use of the mobile home remains part and parcel of the residential use of Ringdoves and is therefore within the same planning unit.

Condition 3 of the 1998 Permission

36. Planning permission FUL/MAL/98/0266 granted planning permission for the change of use of agricultural land to residential garden land subject to condition 3, which states *'The proposed residential garden shall be used for domestic purposes only incidental to the enjoyment of the dwelling and not for any industrial, commercial or business use.'*
37. Notwithstanding the argument put forward on behalf of the appellant during the inquiry, the use of the mobile home by the appellant's step-son is not, in my view, incidental to the enjoyment of the dwellinghouse but forms part and parcel of the use.
38. On a strict interpretation of condition 3, the use of the mobile home for activities which are not incidental to the enjoyment of the dwelling would be in breach of the condition. However, a condition should not be construed narrowly or strictly but benevolently and in a common sense way.
39. It is clear from the wording of the condition that the Council was seeking to prevent commercial or industrial use. Indeed, the reason given for the condition was *'To ensure that the proposed development does not prejudice the amenities of the area by reason of noise and general disturbance. The local planning authority considers commercial development on this site would be inappropriate'*.
40. Reading the condition in conjunction with the reason for its imposition, I cannot agree that its purpose was to restrict the residential use of the site. Consequently, I do not believe the use of the mobile home is in breach of condition 3.
41. Thus, as a matter of fact and degree, I find that the use of the land for the stationing of a mobile home for use ancillary to the residential dwelling known as Ringdoves was lawful at the time of the application.

Conclusion

42. 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 use of the land for the stationing of a mobile home for use ancillary to the residential dwelling known as Ringdoves was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Hopkins

Solicitor

He called:

Adrian J. Litscher

Appellant

Jan Litscher

Witness

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Dale-Harris

Of Counsel

He called:

Mr Michael Johnson

Lead Specialist Development
Management at Maldon.

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Google Earth Pictures.
2. Appellant's opening statement.
3. Council's opening statement.
4. Closing submissions of the Council, including *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* [2000] EWCA Civ 5569, *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226, *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307, *Challenge Fencing Ltd v SSHCLG & Elmbridge BC* [2019] EWHC 553 (Admin)¹.

¹ These documents were submitted electronically to the Planning Inspectorate and the appellant prior to the close of the Inquiry.

Plan

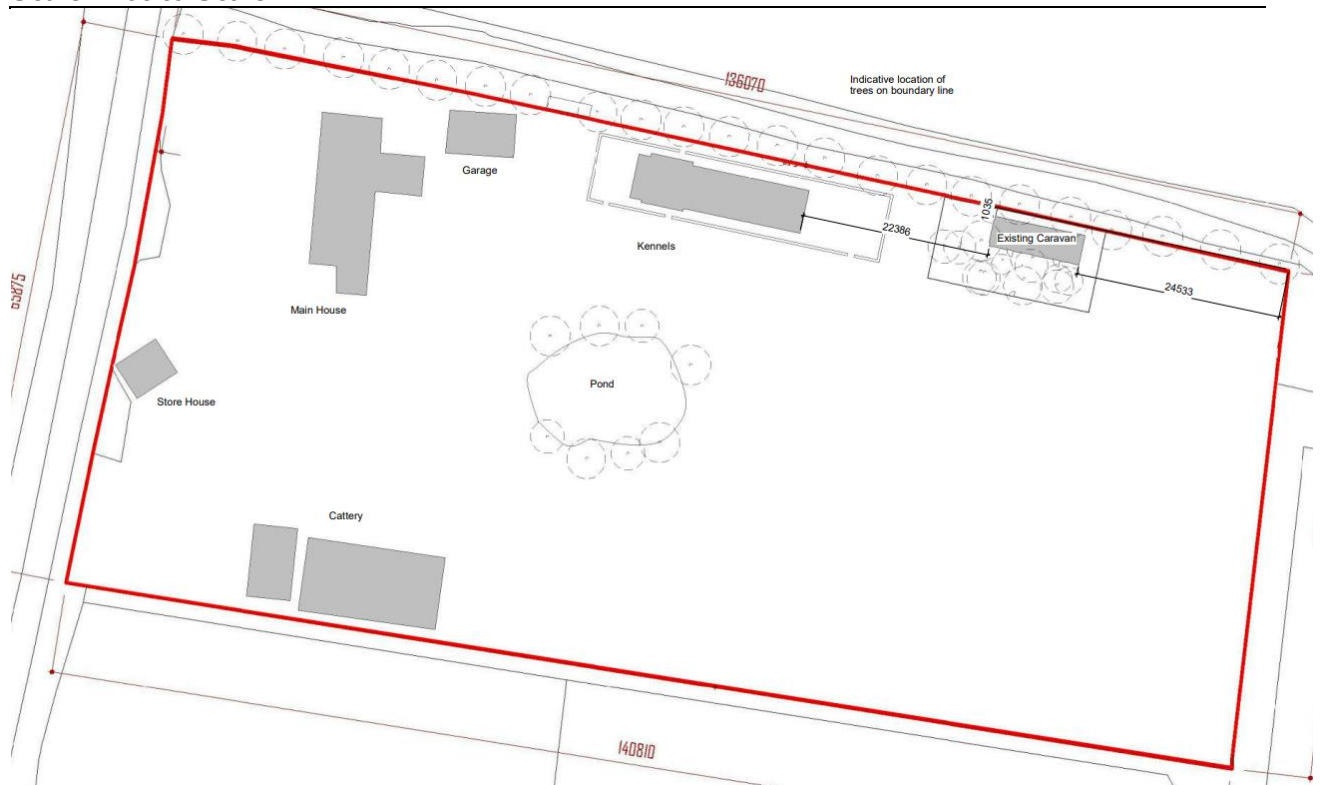
This is the plan referred to in the Lawful Development Certificate dated: 22 December 2021

by M Savage BSc (Hons) MCD MRTPI

Land at: Ringdoves , Goldsands Road, SOUTHMINSTER, Essex, CM0 7JR

Reference: APP/X1545/X/20/3263594

Scale: Not to Scale



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 7 July 2020 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The siting of the mobile home and its use as ancillary accommodation to the residential dwelling known as Ringdoves, was part and parcel of the residential use within the same planning unit and did not constitute development requiring planning permission.

Signed

M Savage

Inspector

Date: 22 December 2021

Reference: APP/X1545/X/20/3263594

First Schedule

Use of the land for the stationing of a mobile home for use ancillary to the residential dwelling known as Ringdoves.

Second Schedule

Land at Ringdoves, Goldsands Road, Southminster CM0 7JR

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

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