



Appeal Decision

Site visit made on 11 July 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/L1765/X/22/3300679

Midhurst Lands Farm, Bunns Lane, Hipley, Hambledon, PO7 4QY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Steve Anderson against the decision of Winchester City Council.
- The application ref 19/01342/LDC, dated 17 June 2019, was refused in part by the Council by notice dated 4 November 2019.
- The application was made under section 191(1)(a) and (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 C3 residential use of a structure.

Decision

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

Preliminary Matters

2. An application under s191(1)(a) and (b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) seeks to establish whether, at the time of the application, any existing use of buildings or other land, and any operations which have been carried out, are lawful.
3. The burden of proof lies with the appellant to make his case on the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.
4. The application form indicates that the LDC sought was for an existing use (Class C3 – dwellinghouse). The description given is '*C3 residential use of a structure*'. The grounds for the LDC application are '*The use as a single dwelling house began more than four years before the date of this application*'. The stated reason why a LDC should be granted is '*The residential use of this structure has been in excess of a period of 4 years which started in June 2006 and continues to this day*'.
5. The Council considered the application as a LDC for a '*mobile home as a single dwelling house*' on the basis that the mobile home is a building. However, it was not satisfied that there '*has been a breach of planning control consisting of the construction of a building and its use as a single dwellinghouse that took place more than 4 years ago before the date of this application*'.

6. Nevertheless, on the basis of the evidence submitted, the Council was satisfied that a mobile home had been sited on the land for more than 10 years, and therefore the use of land for the siting of a residential mobile home had become immune from enforcement action. The Council changed the description accordingly and a LDC was granted for *'the change of use of the land to use for the stationing of a residential mobile home'*.
7. As the Council approved the application, albeit with an amended description, I asked the parties whether there is anything for me to determine under provisions of s195 of the 1990 Act, which states that an appeal may be made where an application for a LDC is refused or is refused in part (s195(1)(a)), or the authority do not give notice of their decision within the prescribed period (s195(1)(b)).
8. The Council responded that a view could be taken that changing the description of development has resulted in a right of appeal as the original description of development was not determined. Nevertheless, the Council highlight that the appeal has been made against a refusal/refusal in part.
9. The appellant argues that the approval only dealt with the application in part and failed to determine the use of a single dwelling house. It is also argued that the Council has effectively refused the application by granting another use and failed to give a decision on what was applied for. It is requested that I modify the certificate issued, on the basis of a building which had been constructed for more than four years and occupied for ten years plus.
10. It is clear from those submissions and the evidence before me that granting the LDC in the terms described effectively amounts to a refusal to the appellant. Nevertheless, as an LDC was granted with an amended description, I shall deal with the appeal under s195(1)(a), as a refusal in part.

Main Issue

11. The main issue is whether the Council's decision was well founded.

Reasons

12. The Council describe the structure as a mobile home but it is evident from its reasoning that it considered it to be a 'caravan' within the meaning of the Caravan Sites and Control of Development Act 1960 (CSCDA60). S29 of the same 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)...'*¹. In law, a caravan is only a caravan if it meets that description.
13. It appears undisputed that the structure was a caravan when it was brought to the site following the grant of a temporary planning permission on 4 April 2006 for *'a mobile home to provide accommodation for equine manager'*.
14. However, the appellant states that in May 2006 the timber floor, metal supports and axel of the caravan were removed and the structure was sunk into a 100mm concrete base, which served to replace the old rotting wooden floor.

¹ It goes on to list exclusions which are not relevant in this appeal

15. The structural survey submitted in support of the application states that the *'The internal ground floor construction was not as typical for a mobile home which would use a series of metal joists and timber flooring to act as a suspended floor construction. It was obvious both by physical inspection below the carpet tiles and generally over the plan area by foot-drop response that the current ground floor is in fact an instu concrete construction which replaces the conventional original lightweight suspended floor.'*
16. The survey goes on to state that *'This form of construction does render the unit immobile without significant demolition works; any attempt to remove the lightweight superstructure would, in our opinion, compromise the structural adequacy of the removed construction and still render the removed part immobile unless transported by separate means. Typically, such mobile homes rely on the floor plan as the principal bracing to the superstructure - the lack of this structural component renders the remainder unstable'.*
17. The Council's position is that the survey does not confirm that the structure is incapable of being moved from the land (by, for example, being lifted onto the back of a trailer). Furthermore, it is the Council's understanding that the structure still has the appearance of a mobile home (with a tow bar visible). The Council state that due to the aforementioned lower portion of the structure being concealed by a profiled metal cladding sheet in the form of a 'skirt', it is not possible for it to be satisfied that the structure is fixed permanently to the ground.
18. I saw from my site visit that the structure has the appearance of a caravan, although no tow bar was visible. However, the concrete floor was evident in several locations underneath the carpet. In one location it was possible to see where the floor joists of the caravan had been sunk into the concrete.
19. The structure is therefore incapable of being picked up intact as its floor is permanently attached to the ground. Even if the superstructure is capable of being lifted, it would not have a floor and would likely carry a very real risk of structural damage without that bracing. My findings are therefore consistent with the appellants' survey.
20. Consequently, the structure has a high degree of permanence and fails the mobility test, being incapable of being moved from one place to another, on the balance of probabilities. The structure does not therefore amount to a 'caravan' within the meaning of the CSCDA60.
21. Given that finding, it is appropriate to assess whether the structure would amount to a building. Established case law² has set down three primary tests for doing so: size, permanency and the degree of physical attachment. No one factor will be decisive and any assessment will be a matter of fact and degree in the given circumstances.
22. As noted, it is likely that the structure was brought to the site as a complete caravan. It is not therefore of a size that it had to be constructed on site. Nevertheless, the act of removing its timber floor and embedding the joists into a concrete base would likely have been undertaken by a builder or similar tradesman with specific skills - having regard to the definition of building operations at s55(1A)(d) of the 1990 Act. The resultant physical attachment to

² *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

- the concrete base and ground clearly points to an intention for it to be permanently in one place. It is also attached to services and has resulted in a physical change to the characteristics of the land.
23. On the balance of probabilities, taking account of all three factors, the structure amounts to a building for the purposes of the 1990 Act, for which planning permission was required.
24. S171B(1) of the 1990 Act states that no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The Council does not dispute or provide contradictory evidence to the appellant's version of events that the building operations were carried out in 2006.
25. Therefore, on the balance of probabilities, the building is immune from enforcement action through the passage of time.
26. In terms of use, s171B(2) states that '*Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*'. In this case, the appellant confirms that his family has continuously lived in the structure in its present construction since June 2006. The inference of that is that the building has always been used for residential purposes and there has been no breach of planning control consisting of a change of use of the building to use as a single dwelling house. The provisions of s171B(2) do not therefore apply.
27. S171B(3) states that '*In the case of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*'. For a breach of planning control to have occurred in this case, there must have been a material change of use and it is only a material change of use which can have become immune from enforcement action. Having regard to s171A(1), use, in itself, is not an act of development. As the building was used as a dwelling from the time it was constructed, there was no material change.
28. Under s191(4) of the 1990 Act, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue an LDC for any existing use or development that is shown to be lawful on the facts and evidence.
29. In this case, the operational development which has become immune from enforcement action is the erection of a building in the form of a dwellinghouse.

Conclusion

30. For the reasons given above I conclude, on the evidence now available, that the Council's refusal in part to grant a LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Richard S Jones

INSPECTOR



The Planning Inspectorate

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 17 June 2019 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The structure does not amount to a 'caravan' within the meaning of the Caravan Sites and Control of Development Act 1960.

For the purposes of the Town and Country Planning Act 1990 as amended (the 1990 Act) the structure is a building, having regard to its size, permanence and physical attachment to the ground and thus constituted development in the form of a building operation. On the balance of probability the building operations were substantially completed more than four years before the date of the application and the time for taking enforcement action has expired, by virtue of s171B(1) of the 1990 Act. It is evident that the building was constructed as a dwellinghouse.

Signed

Richard S Jones

INSPECTOR

Date: [21 August 2023]

Reference: APP/L1765/X/22/3300679

First Schedule

Erection of a dwellinghouse

Second Schedule

Midhurst Lands Farm, Bunns Lane, Hipley, Hambledon, PO7 4QY

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: [21 August 2023]

by Richard S Jones BA(Hons), BTP, MRTPI

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Scale: Not to Scale

