



Appeal Decision

Site visit made on 2 May 2024

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

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal Ref: APP/G2245/X/23/3320456

Flintstones, Bunkers Hill Road, Ash, Kent TN15 7EY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Laurence Banks against the decision of Sevenoaks District Council.
 - The application ref 22/01311/LDCEX, dated 6 May 2022, was refused by notice dated 16 December 2022.
 - The application was made under section 191(1)(a) and (b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is to confirm that the existing structure known as Flintstones Bungalow is a building in use as a residential dwelling house.
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Decision

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

Preliminary Matters

2. An application under s191(1)(a) and (b) of 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.

Main Issue

4. The main issue is whether the Council's decision was well-founded. From the evidence, that turns on whether:
 - the original structure is a caravan/mobile home, and if not whether it is a building; and
 - if the structure is a building, whether the construction of that building and its use as a dwelling are lawful.

Reasons

Whether the structure is a caravan/mobile home or a building and, if a building, whether it is lawful

5. The term 'caravan' is defined in s29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA 1960) 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)...*'¹.
6. S13(1)(a) and (b) of the Caravan Sites Act 1968 (CSA 1968) provide that a twin-unit caravan designed or adapted for human habitation '*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 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)...*'. The whole unit must be transportable – but the legality of such transportation on the public highway is irrelevant. Additionally, s13(2) imposes size limits on twin-unit caravans.
7. The above prerequisites of the Acts are usually referred to as the '*construction test*', the '*mobility test*' and the '*size test*'.
8. Planning permission was granted in 1988 for the use of land for the siting of a mobile home for an agricultural worker and provision of cesspool drainage. The Council refer to that as a temporary permission, which was renewed in 1990 and then extended by two years in 1991 and by a further year in 1993.
9. It does not appear to be a matter of dispute that when it was originally brought to site, what is described as a mobile home fell within the definition of a twin-unit caravan. Part of the dispute lies in whether at the time of the application it remained a twin-unit caravan or whether it had become a building.
10. For the purposes of this appeal, I shall refer to the twin-unit caravan/mobile home as the original structure, as that is a neutral term, which could be applied to a twin-unit caravan/mobile home or building, without any inference that it is any of them.
11. The appellant's statutory declaration (SD) explains that he constructed a concrete slab with reinforcing meshing as a base for the original structure and that services were provided underneath and through the slab. He states that the original structure is fixed to the slab by concrete blocks and that the outside was bricked up between the slab and the underside of the floor of the original structure. However, it is not explained how the floor of the original structure is fixed to the concrete blocks.
12. The appellant's external inspection report (December 2020) - by a chartered surveyor - states that the mobile home was originally constructed on a steel rolling chassis but has been raised up onto half brick thick external load bearing walls. It is explained that to assist the inspection report, a couple of bricks were removed from the west facing external wall. That revealed further load bearing dense aggregate concrete block piers and sleeper walls supporting the original structure.

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

13. The report is therefore broadly consistent with the appellant's SD, except that the SD refers to attachment whereas the report appears to infer that the mobile home is held in place by its own weight.
14. The appellant's report on the '*Status of dwelling and its transportability*' (August 2019) also refers to concrete blocks between a concrete base and long wooden joists supporting the floor. That report further states that the original structure is permanently connected and rooted to the concrete base by the outer and inner support walls. As the author of the 2019 report acknowledges that he does not consider himself to be a specialist property surveyor, I have attached greater weight to the 2020 inspection report.
15. Nevertheless, the August 2019 report states that a '*considerable amount of care and planning would be required if an attempt was made to move the dwelling. The external support walls would need to be dismantled in stages in order to keep the structure supported without flexing, to avoid damage. The structure would also need to be braced and supported inside. The dwelling would need to be moved onto a series of platforms, adapted specifically for the dwelling as a whole, to provide an even spread of support. The steel chassis of the twin units are very old, therefore their ability to withstand the loads during transportation is likely to be compromised due to deterioration.*'
16. It is unclear whether that assessment relates only to the original structure (the twin-unit caravan) or to the original structure and its later extension, referred to below. Given the reference to 'dwelling as a whole' it is likely to be the latter. However, my initial focus must be on the mobility of the original structure. In that regard, I appreciate there may be difficulties in moving it, but the assessment does not suggest they are insurmountable.
17. Indeed, the general arrangement described is not uncommon for twin-unit caravans and the practice of detaching such units from their services and what they rest on, such as blocks and a plinth, is not unusual or prohibitive.
18. Moreover, the 2020 inspection report also found that the original rolling chassis frame and axle remain in place. Although it is confirmed that the wheel hubs have been removed, a caravan does not need to be mobile in the sense of being moved on its own wheels. It will be sufficient that the unit can be picked up intact, including its floor and roof, and put on a lorry by crane or hoist.
19. I appreciate that the steel chassis may have deteriorated with age and that the original superstructure is relatively old and in a poor state of repair, and that those factors are likely to affect its structural integrity should attempts be made to move it. However, such matters cannot be determinative.
20. The appellant's SD explains that the occupant asked if he could install a fireplace in the original structure and that he told him that the floor would not take the weight. He says he therefore agreed to construct a foundation on the concrete slab, running through the chassis and floor of the original structure to provide a base for the fireplace, with a chimney routed vertically through the ceiling and roof.
21. The appellant's statement of case clarifies that the chassis member is imbedded into the foundation, as shown on the existing foundation plan. That clearly increases the attachment of the mobile home to the concrete slab and the overall degree of permanence. It is also likely to affect the mobility of the

- original structure as cutting out part of the chassis may affect its overall structural integrity if it were to be lifted out of place.
22. Turning to the extension, the appellant states that it was added to the original structure in 1998. Whilst the Council has no planning or building control records of it, it accepts, based on aerial imagery, that the extension was added sometime between 1998 and 2003. It was therefore substantially completed four years prior to the date of the application and is lawful through the passage of time, pursuant to s171B(1) of the 1990 Act.
23. Whether the original structure can be moved together with the extension is somewhat moot because their combined width exceeds the prescribed dimensions of a caravan set out in s13(2) of the CSA 1968 (the size test). However, that does not mean that the original structure, on its own, cannot still be a caravan in law. Nor does it mean that the structure is a building. For the purposes of this appeal, the critical aspect is the physical relationship of the extension with the original structure.
24. In his SD, the appellant explains that he built low brick walls around the area of the extension off the original concrete slab and then attached a timber plate on top of those walls fixing it to the original structure at floor level. He further explains that he constructed timber stud walls on three sides with openings for windows and a door and that the walls were fixed to the original structure by use of a wall plate and jiffy hangers to support the roof rafters. He says he needed to be certain that no gaps could open up between the extension and the mobile home.
25. The appellant goes on to explain that he placed roof joists on top of the walls and fixed them to the original structure and that the roof was covered with ply boarding and three layers of felt connected to form a joint with the roof of the original structure.
26. Therefore, even if the extension has no below ground foundations, it is fixed to a concrete base, and was likely built in situ and intended to be permanent rather than being mobile.
27. Although likely built separately from the original structure, the appellant asserts that the whole of the extension was fixed to the original structure such that there would be significant damage to both parts if they were to be separated. The August 2019 report goes a little further, stating that if the extension and original structure were to be separated, they would be almost completely destroyed. It states that the structure has been sited for many years and would not easily lend itself to disassembly without causing very significant external and internal damage.
28. Although no further evidence is provided in support of those assertions, based on the described manner and extent of fixing, aligning to both sides of the original structure and across the entire length/width of the eastern elevation, it is likely that fairly intrusive and extensive work would be required to separate the extension from the original structure. The size of the extension is also likely to add to the overall degree of difficulty such that it cannot be reasonably compared, in general terms, to a porch or conservatory.
29. The addition of the extension, built in situ, of permanent, conventional construction and a building in its own right, has clearly increased the overall

degree of permanence and attachment of the original structure. Moreover, I could see that, rather than being an adjunct to the original structure, the extended area forms an integral part of the overall accommodation with two doors opening into it. Therefore, the original structure and extension have become intrinsically connected, amounting to a single structure, as a matter of fact and degree.

30. There are, therefore, a combination of relevant factors, namely, the removal of part of the original floor and embedding part of the original chassis in a concrete foundation; the removal of part of the ceiling/roof for the chimney; and the likely damage that would be caused by separating original structure from the extension. Those factors would likely result in the requirement for the original structure to be 'physically capable of being moved by road' being failed, as lifting the remaining parts onto a trailer by crane would carry a very real risk of structural damage.
31. Consequently, the original 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. Accordingly, I find that the original structure no longer amounts to a twin unit caravan, as defined by the CSA 1968, on the balance of probabilities.
32. These conclusions distinguish that which is before me from the appeal decision referred to by the Council for the case at Deans Farm², where it was found that it would be relatively easy to detach the additions from the original unit and that doing so would not affect its integrity and mobility. That is similarly so of the Hazeri appeal decision³, where it was found that the conservatory and porch could be detached without too much difficulty, and that no evidence was provided to show that once detached, the unit could not be moved in its totality.
33. Given my findings, it is appropriate to assess whether the structure would amount to a building. S336 of the 1990 Act defines 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.*'
34. To assess whether the structure is a building, established case law⁴ has set down three primary tests: 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.
35. As noted, it is likely that the original structure brought to the site was a twin-unit caravan. It was not therefore of a size that it had to be constructed on site. Nevertheless, the extension was likely built in situ 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. That is similarly likely for the foundation to the fireplace.
36. Attaching the original structure to a permanent extension, clearly points to a substantial degree of permanence and attachment. The act of imbedding part of the substructure frame into the foundations for the fireplace and cutting into

² Appeal Ref: APP/G2245/X/19/3235716

³ Appeal Ref: APP/G2245/X/16/3160695

⁴ *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 floor of the same, also materially increases the degree of attachment, as well as permanence.

37. Indeed, the original structure has been on site since around 1990 and the Council acknowledge that it has not moved since. The extension was added sometime between 1998 and 2003, so the former has been on site in excess of 30 years and the latter somewhere between 21-26 years. The combined form of both elements results in a structure of significant size and has resulted in a physical change to the characteristics of the land.
38. The provision of services through the floor of the structure is not determinative but does contribute to the overall degree of physical attachment and permanence.
39. On the balance of probabilities, taking account of all three factors, the overall structure amounts to a building for the purposes of the 1990 Act, for which planning permission was required.
40. As noted, the Council accepts that the extension was erected sometime between 1998 and 2003 and does not dispute or provide contradictory evidence that the foundation to the fireplace was carried out around 2013/2014. Therefore, the factors which are largely determinative to the structure being a building, as a matter of fact and degree, were substantially completed four years prior to the date of the application, and the building as a whole is now immune from enforcement action by virtue of s171B(1) of the 1990 Act.

Use

41. S191(2) of the 1990 Act explains that uses are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
42. In terms of time limits, the Council states that it needs to be established whether a change of use to a dwelling existed for four years or more. However, in this case, it is common ground that the structure has always been used for residential purposes so there has been no *'breach of planning control consisting in the change of use of any building to use as a single dwelling house'*. The provisions of s171B(2) of the 1990 Act do not therefore apply.
43. S171B(3) of the 1990 Act 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.
44. In that regard, the use of the building has not changed since it was substantially completed; it was used for residential purposes from the onset. Consequently, the use of the building cannot have become lawful through the passage of time, by virtue of s171B(3) of the 1990 Act.

45. However, the land on which the building was constructed was already in residential use by virtue of the planning permissions granted for the siting of a mobile home for an agricultural worker. Whilst those were temporary planning permissions, there has been no change from residential use since they were granted or since the temporary periods have expired.
46. So, there was no material change of use, and having regard to s191(2) of the 1990 Act, there was nothing in terms of the use of the land which involved development. Moreover, as it is not shown that the residential use did not contravene the terms of an enforcement notice then in force, the residential use of the land was therefore lawful at the time of the application, on the balance of probabilities.
47. Having regard to the application description, the evidence submitted is largely focused on the building, despite the application site including land around it. I note the Council confirms⁵ that the garden area around the mobile home has been used as a 'residential curtilage' for over 10 years and has become lawful curtilage. The Council is therefore evidently satisfied that the residential use of land around the building is immune from enforcement action through the passage of time (notwithstanding that curtilage should not be confused with the use of the land).
48. However, I do not have the previous site plans to confirm that they reflect that before me. In any case, the application and appeal is clearly made in respect of the building rather than the land around it. Nevertheless, I have found that the residential use of the land on which the building has been erected, is lawful. As a matter of law, the land will include the building.
49. 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.
50. In this case, that is the erection of a building and the residential use of the land on which the building has been constructed.

Conclusion

51. For the reasons given above I conclude, on the evidence now available, that the Council's refusal 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

⁵ In the delegated report for LDC application ref: 17/03881/LDCPR, with reference to earlier LDC application ref: 17/02000/LDCEX



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 6 May 2022, the use and operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto, and hatched 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 reasons:

The original structure does not amount to a 'caravan' as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.

For the purposes of the Town and Country Planning Act 1990 as amended (the 1990 Act) the structure as a whole 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 probabilities 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.

The land on which the building was constructed was already in residential use by virtue of the planning permissions granted for the siting of a mobile home for an agricultural worker. Whilst those were temporary planning permissions, there has been no change from residential use since they were granted or since the temporary periods have expired.

Consequently, there was no material change of use, and having regard to s191(2) of the 1990 Act, nothing in terms of the use of the land involved development. The residential use of the land was therefore lawful at the time of the application, on the balance of probabilities.

Signed

Richard S Jones

INSPECTOR

Date: [12 July 2024]

Reference: APP/G2245/X/23/3320456

First Schedule

Erection of a building and the residential use of the land on which the building has been constructed.

Second Schedule

Land at Flintstones, Bunkers Hill Road, Ash, Kent TN15 7EY

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 and 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 use and operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or 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: [12 July 2024]

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

Land at: Flintstones, Bunkers Hill Road, Ash, Kent TN15 7EY

Reference: APP/G2245/X/23/3320456

Scale: Not to Scale

