



Appeal Decisions

Site visit made on 25 June 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal A: APP/L3245/X/24/3336476

Fenemere Lane Farm, Fenemere Lane, Baschurch, Shrewsbury, Shropshire SY4 2JB

- 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.
 - The appeal is made by Mr Rich Hill against the decision of Shropshire Council.
 - The application ref 23/02507/CPL, dated 9 June 2023, was refused by notice dated 1 August 2023.
 - The application was made under section 192(1)(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 described as development under Class A and E of the General Permitted Development Order 2015 (as amended) Schedule 2 Part 1 (Development within the curtilage of a dwellinghouse) for the erection of a single storey side and rear extension is lawful.
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Appeal B: APP/L3245/W/24/3336477

Fenemere Lane Farm, Fenemere Lane, Baschurch, Shrewsbury, Shropshire SY4 2JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Richard Hill against the decision of Shropshire Council.
 - The application ref 23/02512/BHE, dated 6 June 2023, was refused by notice dated 1 August 2023.
The development proposed is an application for prior approval under Schedule 2 Part 1, Class AA of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the construction of one additional storey.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary matters – Appeal A

3. In an application for a certificate of lawful use or development (LDC), the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. For the

avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

4. The burden of proof lies with the applicant to show that, on the balance of probabilities, the development proposed would at the time of the application be lawful. Article 3(1) of The Town and Country Planning (General Permitted development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for the classes of development set out in Schedule 2 of the Order. It includes at Part 1, Class A, the enlargement, improvement or other alteration within the curtilage of a dwellinghouse.

Preliminary matters – Appeal B

5. Under Article 3(1) and Schedule 2, Part 1, Class AA of the GPDO, planning permission is granted for the enlargement of a dwellinghouse consisting of the construction of one additional storey, where the existing dwellinghouse consists of one storey, immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction.
6. Development under Class AA is permitted subject to conditions which include the requirement that before beginning the development, the developer must apply to the local planning authority for prior approval. The local planning authority may refuse the application where it considers that the proposal does not comply with the limitations or restrictions that are applicable to such permitted development.

Main issues

7. The applications were refused because the Council considered that the unit that is currently on the appeal site does not benefit from permitted development (PD) rights. That is because it is not a dwellinghouse.
8. Therefore, I consider the main issue for Appeal A is whether the council's decision to refuse to grant an LDC was well-founded. This will turn on whether the proposal represents development for which planning permission would be required. I consider the main issue for Appeal B is similarly whether the proposal represents development for which planning permission would be required.

Reasons

9. The appeals relate to a unit of accommodation (the "unit") that was originally approved in 2006 for its siting for residential use in association with an egg production unit. This would have involved a material change of use to allow for the residential use of the agricultural land. The permission was time limited, and the unit restricted by an occupancy condition.
10. In October 2020, having gained immunity from enforcement action for breaching the 'occupancy condition', an LDC was granted for permanent residential use of the unit. I will refer to this as the "2020 LDC".
11. The 2020 LDC established that "the temporary residential unit subject to application referenced N/06/420/BA/375 dated 19 May 2006 has been occupied

in breach of the Permission for a period in excess of ten years and therefore it is considered that the use of the unit as a permanent residential dwelling is lawful". It did not, however, establish that the unit was a building.

12. Planning permission was subsequently approved in February 2023 (Ref: 22/04728/FUL) for the replacement of the unit with a permanent, brick built single storey dwellinghouse. That permission is yet to be implemented. Therefore, the development sought by the subject LDC and the development sought by the application for prior approval are additions to the unit that is currently on site.
13. The appellant claims that the unit has been on site since 2006 and has been designed for long term use and used as such. Thus, they consider that the unit has a lawful permanent residential use and is a dwellinghouse which benefits from PD rights. Although "dwellinghouse" is not comprehensively defined in Article 1(2) of the GPDO, the contents of Part 1 are predicated on the basis that a building is involved. The Council's position remains that even though the unit has a permanent residential lawful use, it remains that the siting of the unit for residential purposes is a use of the land which would not benefit from PD rights for development within the curtilage of a dwellinghouse in Part 1 of the GPDO.

Whether or not the unit is a caravan

14. Section 29(1) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) 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) and any motor vehicle so designed or adapted¹'.
15. Section 13(1) of the Caravan Sites Act 1968 (the 1968 Act) defines a twin-unit caravan as any 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 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 1 of the 1960 Act by reason only that it cannot lawfully be so moved on a road when assembled.
16. It is a well-established principle that when considering whether or not a structure is deemed to be a caravan or a twin-unit caravan, the commonly applied 'construction' and 'mobility' tests should be considered. There is no dispute that the unit is designed for human habitation.
17. The appellant has provided a 'statement of truth' dated 3 January 2020 from the previous occupants which states that 'the unit was constructed on site by M Morgan Builders. The unit was not delivered to site as a whole or in two parts.' However, this is not a formal statutory declaration signed before a solicitor and

¹ But not including (a) any railway rolling stock which is for the time being on rails forming part of a railway system; or (b) a tent

therefore I give it limited weight. While the unit has roof trusses to support the shallow pitch roof, there is no specific evidence to demonstrate that the unit was erected on site as a building. In this respect, and regarding its planning history with the original permission for its temporary use for residential accommodation in association with the fledgling agricultural business on the land, I am not persuaded that the unit would not meet the requirements of the construction test in s13(1)(a) of the 1968 Act.

18. Turning to the question of mobility, the unit does not need to be mobile in the sense of being moved on its own wheels and axles. It will be sufficient that it can be picked up intact, including its floor and roof, and put on a lorry by crane or hoist for transportation. The appellant maintains that the unit is constructed not to be moved and cannot be moved without dismantling. However, no detailed evidence has been provided to support the appellant's assertion that the unit would not be physically capable of being moved from the site in one piece.
19. It is not clear to what extent the unit would need dismantling and whether that refers only to the connections to utilities and secure anchors. Without evidence to support the appellant's stance, I am not persuaded that the unit would not physically withstand being loaded onto a trailer. From my observations, the unit is of a size and form that would enable mobility and as it is currently lived in, it would appear to be structurally sound. Accordingly, I consider that, on the balance of probabilities, the unit would meet the requirements of the mobility test in s13 (1) (b) of the CSA.
20. Section 13(2) of the 1968 Act sets out the maximum dimensions that a structure cannot exceed if it is to qualify as a twin-unit caravan for the purposes of Section 13(1)(a) and (b) of the 1968 Act. The relevant measurements are a length of 20 metres; a width of 6.8 metres and an overall height of living accommodation (measured internally from the lowest level of the floor to the highest level of the ceiling) of 3.05 metres.
21. The unit as illustrated in the drawings measures 6.1m in width and 12.19m in length. While there is nothing to suggest the internal height of the ceiling in the drawings, at my visit I noted that it does not exceed 3.05m. It therefore falls well within the length and width limits of a statutorily defined caravan and is substantially smaller than a caravan is permitted to be by law.
22. Overall, as a matter of fact and degree, I find that on the evidence before me, the unit complies with the definition of a caravan as set out in section 29(1) of the 1960 Act, including section 13 of the 1968 Act.

Whether or not the unit is a building

23. As to whether the unit represents operational development, I must consider whether it would be a 'building'² since if so, the process creating it would most likely be a building operation. Whether a particular structure is a building requires judgement of fact and degree having regard to factors established by case law and I have had regard to case law that has been brought to my attention by the appellant³. The court in *Cardiff Rating Authority*, endorsed by

² s336(1) 1990 Act

³ *Chester CC v Woodward* [1962]. *Street v MHLG & Essex CC* [1965]. *R v Swansea CC ex parte Elitestone* [1993]. *Burroughs Day v Bristol CC* [1996]. *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 Court of Appeal in *Skerrits* identified three primary tests for assessing whether a structure amounts to a building - a) being of a size to be constructed on site as opposed to being brought to site; b) permanence; and c) degree of physical attachment. Applications of the criteria are fact-specific and dependent upon the exercise of planning judgment. No one factor is decisive, and any assessment will be a matter of fact and degree in the given circumstances.

24. The question of whether a caravan would amount to a building has also been the subject of established case law. In *Measor v SSETR & Tunbridge Wells BC* [1999] JPL 182 it was found that a conclusion that all caravans are buildings would offend against the provisions of the 1990 Act and be contrary to common sense. That is not to say that a caravan could never become a building but generally a caravan would not constitute a building due to the factors of permanence and attachment.
25. Turning initially to size, the unit is modest in size, providing some 70sqm of floor space. I acknowledge that it is smaller in area than some caravans and larger than some domestic garages that can be regarded as buildings. Accordingly, I consider that it is of sufficient size and substantial enough to constitute a building.
26. In terms of permanence, it is claimed that the unit has roof trusses, although designed for long term use is not permanent structure but has been in situ for a considerable number of years. The unit has a degree of permanence, but that is often the case with static caravans or mobile homes. Whilst not of direct relevance, I am also mindful of the planning history for the site which shows that the original temporary permission was for a structure that would likely be replaced by a dwellinghouse if the viability of the agricultural business was established. This is supported by the series of applications for a replacement dwelling, the most recent having been granted in February 2023.
27. Turning to the degree of physical attachment, the unit has a breeze block skirt covered with cladding, a commonplace addition to development of this nature, enclosing the area between the floor of the unit and the ground. There are no foundations, and the floor is suspended. The unit is positioned on a concrete pad, is mostly held down by its own weight and secured by anchors, thus it seems that the built plinth is merely decorative and does not aid the physical attachment of the unit to the ground. There are no permanent appendages to the rectangular form that would make the unit less mobile, whereby additions would need to be removed or demolished to enable the unit to be moved. There is also no evidence to demonstrate that the original structure has been affixed to the ground and that it could not be simply and swiftly disconnected from the utilities and the anchors dismantled.
28. Overall, I find that the limited evidence put forward in support of the contention that the unit is a building within the meaning of s336(1) of the 1990 Act, falls well short of discharging the burden of proof. I consider that the unit, does not have the degree of permanence and physical attachment to the land necessary for it to be reasonably regarded as a building. Consequently, as a matter of fact and degree, the unit remains within the definition of a caravan and has not become a building.

Other matters

29. I have had regard to the Legal Opinion originally provided to support the previous applications for a replacement dwelling. It seems to me that the Opinion is focused on whether or not a dwellinghouse which derives its lawfulness from an LDC (as opposed to a grant of permission) can benefit from PD rights. As he rightly concludes, it can. However, it fails to address what is really at issue between the parties in this case, which is the question of whether or not a residential unit which is a "caravan", rather than "a building", can be "a dwellinghouse" and consequently benefit from PD rights.

Conclusion

30. For the reasons outlined above, the proposed extensions would not constitute PD by virtue of Article 3 of the GPDO because, notwithstanding the 2020 LDC which confirmed its lawful use as a "permanent dwelling", the unit is not a building and therefore it does not benefit from PD rights.

Conclusion on Appeal A

31. I conclude that the Council's refusal to grant an LDC in respect of development under Schedule 2, Part 1, Class A and E of the GPDO (Development within the curtilage of a dwellinghouse) for the erection of a single storey side and rear extension 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).

Conclusion on Appeal B

32. For the above reasons, and taking account of all other matters raised, prior approval is refused and the appeal is dismissed.

S A Hanson

INSPECTOR