

# Appeal Decision

Site visit made on 17 September 2024

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> OCTOBER 2024**

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**Appeal Ref: APP/D0121/X/23/3334137**

**Perries, Hillend, Locking, North Somerset, BS24 8PG**

- 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 Martin Locke against the decision of North Somerset Council.
  - The application ref 23/P/0295/LDE, dated 6 February 2023, was refused by notice dated 5 June 2023.
  - The application was made under section 191(1)(a) and (b) of the Town and Country Planning Act 1990 as amended.
  - The use and development for which a certificate of lawful use or development is sought is described as 'Certificate of Lawfulness in respect of use of a park home as a dwellinghouse including associated operational development'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have taken the description of development in my banner heading above from the appeal form as this better reflects the nature of the development described in the application documents, and since 'retention' as referred to in the application form does not represent development under s55 of the 1990 Act<sup>1</sup>.

## Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development ('LDC') was well-founded. This will turn upon whether the development described in my banner heading above would have been lawful as at the date of the LDC application.
4. Planning merits are not relevant to the assessment and the onus is on the appellant to make their case on the balance of probability. Evidence should not be rejected because it is uncorroborated; if there is no evidence to contradict the appellant's version of events or make it less than probable, and that evidence is sufficiently precise and unambiguous, it should be accepted.

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<sup>1</sup> Town and Country Planning Act 1990

## Reasons

### *Legislation*

5. Section 191(2) of the 1990 Act states that development is lawful at any time if (a) no enforcement action may then be taken in respect of it (whether because it did not involve development or require planning permission, because the time for enforcement action has expired, or for any other reason); and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. The dispute here is whether the time for enforcement action has expired.
6. As in force at the date of the application, s171B(1) of the 1990 Act stated that for a breach of planning control consisting of operational development, no enforcement action could be taken after the end of the period of 4 years from the date on which the operations were substantially completed. A change of use of a building to use as a single dwellinghouse was immune from enforcement action after the end of the period of 4 years beginning with the date of the breach (section 171B(2)). In respect of any other breach of planning control, no enforcement action could be taken after the end of the period of 10 years beginning with the date of the breach (section 171B(3)).
7. The appellant argues that the 'park home' object referenced in the application is a building and has been used as a dwellinghouse for a period of more than four years and so is immune from enforcement action and thus lawful. The Council disputes that the object is a building and so whether the four year immunity period is applicable.

### *Whether or not a building*

8. As part of its analysis as to whether or not the 'park home' object is a building, the Council has made an assessment as to whether or not the object meets with the criteria for a caravan contained within section 29 of the Caravan Sites and Control of Development Act 1960 and Section 13(1) of the Caravan Sites Act 1968.
9. Whilst an item meeting the criteria in the 1960 and 1968 Acts typically would not meet the case law tests for a building, an object that meets the statutory caravan criteria is not precluded from being a building. As such, I consider the 'park home' object as against the case law tests for a building (which will in any event involve overlap with the statutory criteria for a 'caravan').
10. As to whether or not the 'park home' object represents a building, section 336(1) of the 1990 Act states that a 'building' includes 'any structure or erection', and the courts have held that regard must be had to size, permanence and degree of physical attachment, but no single factor is decisive.
11. With respect to the size of the 'park home' object, it is sufficiently small that it was able to be brought onto the site in one piece rather than it being so large that it needed to be constructed on site from component parts. Whilst I note the appellant's comments as to the practical difficulties in removing the object from the site, there is nothing to suggest that its size alone precludes this. It would fall within the statutory size constraints for a 'caravan' which are frequently not regarded as buildings.

12. Turning to permanence, on the available evidence, the object has been in place for a period of years and seems likely to remain in place for a further period of years, rather than months or weeks. Mobility of an object can point towards it having more or less permanence. The appellant suggests here that the 'park home' is not capable of being moved including because of land rising following the object being brought to the site, removal of wheels, fixation to the ground by U-bars, along with its position relative to surrounding structures. A supporting letter from a caravan transport company with over 45 years' experience states that the position/location of the object on the appeal site meant that it was not possible to quote for removal.
13. As to the mobility of the object, I accept that land rising and relative positions of surrounding structures would mean that the 'park home' object could not be transported from the appeal site in the same way that it was moved onto site. However, there is no detailed evidence to indicate why a crane and related equipment could not be used to move the object from the appeal site, even taking into account the land rising and position of surrounding structures. Similarly, while I have taken account of the presence of U-bars, it seems that it would be a relatively simple matter to cut through the U-bars with an appropriate power tool and thus to release the park home. This would likely be a far more simpler and swifter process than moving something which has to be taken apart into its constituent parts to be moved.
14. Finally, as regards physical attachment, the object is attached to the ground including by means of connections to services and with U-bars as referred to above. Attachments to services could be simply and swiftly disconnected and as outlined above, it would be a fairly quick and straightforward matter to cut through the U-bars to release the park home. This can be very clearly contrasted with an object which is attached to the ground through a permanent foundation. As such, although held in place by its own weight, the park home could be fairly easily and quickly detached.
15. Drawing these matters together, I find on the evidence before me and as a matter of fact and degree that, the 'park home' object lacks such a degree of physical attachment and permanence as to render it a building within the meaning of s336(1) of the 1990 Act. The appellant thus has not discharged the burden of proof to demonstrate on the balance of probabilities that immunity from enforcement action has been achieved.
16. Whilst not determinative in view of my assessment above, I am mindful also that the four year immunity period in s171B(2) related to the *change of use* of a building to use as a dwellinghouse. I do not have any evidence here of any former use of the park home object on the appeal site. As such, even if I had found this to represent a building, on the available evidence, it has not been demonstrated on the balance of probabilities that any change of use to a dwellinghouse has occurred; it seems that the 'park home' was used as a dwelling from the outset.

## **Conclusion**

17. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of 'use of a park home as a dwellinghouse including associated operational development' 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).

*V Bond*

INSPECTOR