

## **Officer's Report**

### **Application for Certificate of Lawfulness – 21/01896/LDC**

Four Acre Stables, Clewers Hill, Waltham Chase SO32 2LN (the "Land")

Winchester City Council, has received an application for a Lawful Development Certificate on behalf of the owner of the above property who is seeking a Certificate to the effect that the construction of a building (dwellinghouse) and change of use of the Land from use as a mobile home to use as a single residential dwellinghouse is immune from enforcement and lawful.

The applicant claims that the mobile home was converted into a building and that the use of the building as an independent residential dwellinghouse commenced on the Land, at least four (4) years before the application was submitted.

The plan submitted with the application shows the mobile home *in situ* on the south-eastern corner of the Land.

The purpose of the application is to obtain a certificate of lawfulness for the construction of a dwellinghouse (by adaptation to the mobile home) and change of use of the Land from mobile home to a use class C3 residential dwellinghouse.

#### **Documentation Submitted:**

The applicant submitted two statutory declarations in support of the application, a motivation letter from Robert Tutton Planning Consultants, a site plan and a location plan.

#### **Representations:**

The Council has received one representation from a nearby occupier / local resident who has objected to the application.

#### **The Law:**

##### **The Town and Country Planning Act 1990**

**Section 191(1)-(2)** of the Act provides as follows:

191.— Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

- (2) For the purposes of this Act uses and operations are lawful at any time if—
- (a) no enforcement action may then 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);

**Section 191(4)** of the Town and Country Planning Act 1990 (as amended) (“the Act”) provides as follows:

191(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

Section 171B of the Act provides as follows:

**171B Time limits: -**

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, 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.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) 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.

Where there is no change of use of an actual “*building*”, the change of use of land is only immune after a period of ten (10) years.

Definitions in the Act:

“***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 leading common law precedent which sets out the “test” for determining whether a structure is a building or not for the purposes of the definition of “building” in the Act is:

*Skerrits of Nottingham Limited v The Secretary of State for the Environment, Transport and the Regions Harrow London Borough Council (2000)*

**Guidance Note:**

Paragraph 005 17c-005-20140306 of the National Planning Guidance (NPPG) states:

*‘in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events*

*less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'.*

The burden of proof regarding decisive matters of fact rest with the applicant and the relevant standard is the balance of probability.

### **Relevant Enforcement History and WCC records:**

There is no Enforcement Notice in force which prohibits the use of the Land as a single dwellinghouse.

### **Analysis:**

#### **Building**

- A Council enforcement officer conducted a site visit on 4 August 2021 to determine the nature of the structure (mobile home) on the Land and to evaluate whether the structure could as a matter of fact constitute a 'building' as defined in s336 of the Act.
- The material observations and facts are assessed by the officer are:

"The wheels and A frame have been removed but the mobile home is still physically capable of being moved in one piece. There is no evidence to indicate this is not the case."

"There is an addition of a metal skirt around the majority of the base to hide the underneath, however this is only attached with screws and can be easily removed, as demonstrated on site by the owner when I asked to see underneath to take photos. Once removed I could see that the mobile home sits on stands with no obvious attachment to the ground."

"To the front and rear doors there are wooden steps; there is nothing to indicate that these are physically attached to the mobile home. But, even if they were, they do not create a form of permanency that would prohibit the mobile home from being moved."

"The dimensions of the mobile home are:  
Width: 3.07m  
Length: 10.05m  
Outside height from ground to pitch: 2.5m  
Skirt height: 35cm  
Internal height: 1.96m"

- The officer took photographs of the structure from outside, inside and beneath. The mobile home was not observed to be permanently fixed to the ground and upon consideration of all of the facts and circumstances, was determined to still be moveable and falling within the definition of a "Caravan" under Part III of the Caravan Sites Act 1968.
- The test for determining the existence of a "building" applies. The Court of Appeal set down the test for a building in *Skerrits of Nottingham*

*Limited v The Secretary of State for the Environment, Transport and the Regions Harrow London Borough Council (2000)*, where consideration of the following criteria on the bases of fact and degree is required:

1. **Size;**
2. **Degree of Permanence;**
3. **Physical attachment to the ground.**

- On the matter of “size” the court held:  
“It would be undesirable to attempt, and, indeed, I think impossible to achieve, any exhaustive definition of what is meant by the words, ‘is or is in the nature of a building or structure’. They do, however, indicate certain main characteristics. The general range of things in view consists of things built or constructed. I think, in addition to coming within this general range...”
- On the matter of “permanence” the court held:  
“It further suggests some degree of permanence in relation to the hereditament (land), i.e. things which once installed on the hereditament (land) would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces.” In my judgment, that test introduces a degree of flexibility into the approach to permanence. It does so, first, by qualifying the word “permanence” by the expression “some degree.” Secondly, it does so by using the word, “normally”. Thirdly, it does so by introducing the concept of removing the building, “by taking to pieces.” Those are all factors which, in my view, bear upon the facts of the present case.”
- On the matter of “Affixment” the assessment requires consideration for the degree of the structure’s attachment to the ground e.g. foundations, entrenchment or other fixation works.
- Applying the test in *Skerrits* to the extended mobile home structure, the Land constitutes a building as it is inextricably interconnected and permanently positioned. The built extension and the mobile home are connected and constituted a one structure, a building, by 30 September 2017.

### **Use of the Land for residential purposes**

- The applicant’s statutory declaration states that the Land has been used by the applicant for residential purposes since 30 May 2017.
- For the residential use of the Land to acquire immunity from enforcement and become lawful, the applicant would need to demonstrate that the Land has been used continuously for residential purposes for a continuous period of ten (10) years.
- In *Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council* [2011] UKSC 15, the Supreme Court found that there had been no change of use because the building in that instance was originally constructed as a dwellinghouse and not as a barn.

Lord Mance stated at para. 17:

*"Protection from enforcement in respect of a building and its use are thus potentially very different matters. Mr Beesley could have applied for a certificate under subsection (1) in respect of the building as soon as July 2006 was over, but he has not done so. He has focused on the use of the building for four years, in respect of which, he submits, he must now be entitled to protection by reference to roughly, though not precisely, the same four year period. If the right analysis were that there has been no change of use within subsection (2), the only alternative analysis must, he points out, be that use of the building as a dwelling house, which is either impermissible or positively prohibited under the relevant planning permission, can be the subject of an enforcement notice at any time within a ten year period under subsection (3). I agree that that would, on its face, seem surprising. However, it becomes less so, once one appreciates that an exactly parallel situation involving different time periods applies to the construction without permission and the use of a factory or any building other than a single dwelling house. The building attracts a four year period for enforcement under subsection (1), while its use attracts, at any rate in theory, a ten year period for enforcement under subsection (3)".*

- In **Lawson Builders Ltd and others v Secretary of State for Communities and Local Government and another** [2013] EWHC 3368 (Admin) Lord Mance stated at para. 17:

*"If a dwelling house is erected unlawfully and used as a dwelling house from the outset, as in the present case, the unlawful use can still properly be the subject of enforcement action within ten years, even if the building itself, as a structure, becomes immune from enforcement action after four years."*

- According to the application documents, the use of the Land for residential purposes commenced on 30 May 2017. The change of use from mobile home to use class C3 residential will only be lawful after a period of 10 years which would only occur, assuming no interruption, by 30 May 2027 at the earliest.
- Inspector K R Saward (Solicitor) stated in an Appeal Decision dated 17 August 2017 (Ref: APP/G2245/X/16/3160695) regarding the question of when a mobile home remains mobile, relating to land at Hazeri, Button Street, Swanley BR8 8DY:

*"If a caravan/mobile home remains mobile then the likelihood is that a use of land is involved. "Mobility" does not require the caravan to be mobile in the sense of being moved on its own wheels and axles. It is sufficient that the unit can be picked up intact (including its floor and roof) and put on a lorry by crane or hoist. In Carter v SSE7 it was held that the transportation criterion applied to the whole caravan structure and not to its component parts. It was accepted in that case that the stationing of a mobile home without wheels, which satisfied the definition of a caravan in section 29 CSCDA, would not amount to a building operation."*

**Conclusion:**

After considering the applicant's evidence, the Council's own evidence gathered from a site inspection and all of the relevant facts and circumstances, the Council has determined that the mobile home on the Land remains a mobile home and does not constitute a building under s336 of the Act. Therefore, the change of use of the Land from mobile home to residential (use class C3) is subject to the 10 year rule and would need to continue uninterrupted until 30 May 2027 to establish a lawful change of use on the Land. The certificate of lawfulness for existing use and/or development is therefore refused.

**James Liebetrau**  
**Planning Lawyer**  
**For the Service Lead: Legal**

Dated: 15 February 2022