IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND REGULATIONS THERETO

and

IN THE MATTER OF AN APPLICATION FOR A CERTIFICATE OF LAWFUL USE OR DEVELOPMENT IN RESPECT OF THE USE OF A BUILDING AS A SINGLE DWELLINGHOUSE

WITH RESPECT TO LAND AT THE PADDOCKS, NORTHFIELD LANE, ALDINGBOURNE

UNIT D2

QUALIFICATIONS AND EXPERIENCE

1. My name is Dr. Angus Dougal Stanislaw Murdoch and I am a Chartered Town Planner in private practice. My qualifications include a BA with Honours (Goldsmith's College, University of London, 1989), an MSC (Bristol University, 1996), a Ph. D (Bristol, 2000) and an MA in Town and Country Planning (University of the West of England, 2006). I am a Member of the Royal Town Planning Institute. I am widely published in the field, including in the Journal of Planning and Environment Law (2002 and 2008), and am co-author of the Planning Chapter in the lead text-book on the subject, *Gypsy and Traveller Law* (Commission for Racial Equality/Legal Action Group, 2008). I have also been called to give evidence to the House of Commons Select Committee in relation to this area of law and policy.

THE APPLICATION

2. This Certificate of Lawful Use or Development [CLUED] Application concerns the use of a building as a single dwelling house. In brief, Boxhill Caravan haulage delivered the original structure in 4 sections in September 2010. Once sited Mr Darren Searle and his son-in-law Brett Strudwick fitted a kitchen and bathroom. In September 2010 GMS Electrical *"connected main electric cable to the property and tested for any faults."* (Invoice dated 13th September 2010 attached). Once the electrical work was completed, Glitheroe and Keet Plastering "*plastered the ceilings in lounge, hallway and bedrooms of the property*" (Invoice

dated 18th October 2010 attached).

3. Therefore the building work was substantially complete by October 2010. The residential use of that dwelling house commended in July 2009 and has continued unabated ever since. As the use has continued ever since that time in the absence of enforcement action, it is now immune from enforcement action and is lawful development. Accordingly, the Certificate as applied for should be granted.

4. S171B (2) of the Town and Country Planning Act 1990 provides 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."* As will be evidenced below, the change of use of the building to that as a dwelling house on the Application site has continued since October 2010 - well in excess of the requisite four year period in the Act - is consequently immune from enforcement action and is lawful development.

5. The Planning Encyclopaedia states that a useful way of testing the position in relation to lawful development is to ask what the outcome would be if an Enforcement Notice were issued and an Appeal made under Ground D of s171(1) of the Act: *"that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters."* The outcome should be the same in both cases. Once it is established that the use of the building as a dwelling house has continued for more than 4 years since the date of the breach, it is clear that an Enforcement Notice would be defeated on Appeal under Ground D.

SITE HISTORY

6. The wider Application site was granted planning permission for the *"change of use of land to a private Gypsy and Traveller caravan site consisting of 3 no mobile homes (2 of which have extensions) and associated work"* pursuant to AL/67/10. In the recent Officer's Report for AL/123/16 on page 3 it states that Officers from the Local Planning Authority *"visited ... in November 2015 to establish which mobile homes were licenced but instead we found that Units A, B* ***and D2*** *did not meet the definition of a caravan and therefore do not need a licence."*

7. The legal definition of a caravan was established in the Caravan Sites and Control of Development Act 1960. It was modified in 1968 to include twin-unit mobile homes and again in 2006 when the sizes where increased.

8. Section 29 (1) of the Caravan Sites and Control of Development Act 1960 defined a caravan as:

"... Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...

9. Section 13 (1) of the Caravan Sites Act 1968, which deals with twin-unit caravans. Section 13 (1) provides that a 'caravan' is:

"A 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 a site by means of bolts, clamps and other devices; and*

(B) Is, when assembled, physically capable of being moved by road from one place to another (whether being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or have been) a caravan within the means of Part 1 of the Caravan Sites Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled".

Amendment of the definition of caravan 2006 (Permissible Additional Purposes) (England) Order 2006[4]□ Paragraph 3 of article 3 of the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (meaning of caravan) shall be amended:

"(a) Length (exclusive of any drawbar) 20m (65.6FT)

(b) Width: 6.8m (22.3ft)

(c) Overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m (10ft)."

10. When the CLUED structure was first moved on the land in September 2010 it consisted of 4 parts which were then constructed on site by builders to make a whole dwelling. Further plastering and electrical works then took place. The LPA has accepted that Unit D2 is not a caravan. The questions then arises: if it is not a 'caravan' what is it?

11. Before considering the case law, it is clear that this Application is on all-fours with that permitted by your authority pursuant to application reference AL/98/13/CLE from which:

"Do you agree with me that the mobile home is now a dwelling or does the existence of the S.106 mean that it is still a mobile home?

REPLY ... I conclude this is a building due to all the above, and 4 years would apply. But, it appears the application should be refused because the applicant cannot prove a breach of condition due to dependants being in residence. And secondly (01/04/14): "I believe that S193 TCPA 1990 and Guidance [both NPPG and previous 10/97] says that CLEs can be "negotiated" and descriptions changed. So it appears they have altered or clarified their claim. I agree, that if they now say they are seeking a CLE based on 4 years use of the mobile home, as permanent, fixed dwelling, they will need evidence of siting, plus building works, fixtures, and "annexation" to the land, if it isn't there already.

Comments on Consultation responses:

The Council's solicitor has revised his original comments and agrees that the relevant period is 4 years based on the fact that the property is no longer a mobile home"

12. The Searle's Unit D2 CLUED structure has all – and more - of the features that made the structure above a building for planning purposes in terms of size, permanence and attachment to the ground, as well as also exceeding the dimensions of a 'caravan' in that it was comprised of 4 parts not the 2 stipulated in the Statute.

13.

REASONING

14. In brief the argument runs thus: what kind of structure is it that is the subject of this CLUED application? By reference to the legislation, attendant case law and matters of fact relating to the Appeal site that will also be addressed below, it is submitted that the structure is a *'building'* (s336(1) Town and Country Planning Act 1990). A further question is then begged by that answer: what has that building been used for? The answer in this case is, of course, for residential purposes – that is, as a *'dwelling house.'* As the building has been used as a dwelling house for more than 4 years without enforcement action having been taken against that use, it is lastly submitted that it is now immune from enforcement action (s171(B) (2) the 1990 Act refers) and the Application should be allowed.

15. Section 171B (2) of the Act provides that *"no enforcement action may be taken in respect of a breach of planning control after the end of the period of four years beginning with the date of the breach."* As has been evidenced in this Application, the use of the Application structure as a dwelling house has continued for well in excess of the requisite 4 year period in s171B (4) of the Act, is immune from enforcement action and is lawful development.

Question 1: is the structure a 'building'?

16. Section 336 (1) of the Town and Country Planning Act 1990 states that the term *"building includ*[es] *any structure or erection, and any part of a building, as so defined..."*

17. At paragraph 55.10 the Encyclopaedia of Planning refers to the case of *Barvis Ltd v Secretary of State and Another (1971) 22 P&CR 710)* where the Court considered whether a structure on wheels (in that case a mobile crane) could amount to a *'building'* in the statutory sense of

that term, holding that it could, even in circumstances where it retained a limited degree of mobility, provided that its erection *"changed the physical character of the land."*

18. In reaching this conclusion, Barvis referred to Cheshire County Council v Woodward *[1962] 2 QB 126; 13 P&CR 157]* which involved a mobile hopper and a mobile conveyor, both of which were on wheels and were, theoretically at least, fully mobile in the sense that, given a sufficiently smooth surface, they could be moved in one piece for any distance in any direction:

> *"...the mere fact that it can be moved and is not affixed does not determine the matter. It seems to me the position is analogous to the problems with which one is faced in dealing with fixtures when deciding what fixtures pass with the freehold. There is one test: you look at the erection, equipment, plant whatever it is, and ask: in all the circumstances is it to be treated as part of the realty? So here, as it seems to me, under this Act one must look at the whole circumstances, including what is undoubtedly extremely relevant, the degree of permanency with which it is affected... the structures were attached to the land only by their own weight ... and although both structures were on wheels their situation on the site made them virtually immovable."*

19. Barvis then goes on to cite from Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd *[1949]"...the description of buildings or structures... suggests built or constructed things of substantial size: I think of such size that they either have been or would normally be built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament i.e. things once installed on the hereditament would normally remain in situ and only be moved by a process amounting to pulling down or taking to pieces. I do not mean to suggest that size is necessarily a conclusive test in all cases, or that a thing is necessarily removed from the category of buildings...because by some feat of engineering or navigation it is brought to the site in one piece...The question whether the thing is or is not physically attached to the hereditament is, I think, certainly a relevant consideration but I cannot regard the fact that it is not so attached as being in any way conclusive against its being a building or structure...Nor can I regard the fact that the thing has a limited degree of motion in use...necessarily prevents it from being a structure...if otherwise is possesses the characteristics of such..."*

20. The fact that the Application structure has remained immobilised for so many years (since at least 2010) "*…suggests some degree of permanence in relation to the hereditament* [since it has been] *installed on the hereditament* [it has] *remain*[ed] *in situ…* "

21. In relation to the factor of size, in the case of *R v Swansea CC, ex parte Elitestone Ltd [1993] 2PLR 65* the Court of Appeal held that self-built wooden chalets – many of which *"little more than sheds"* – amounted to *'buildings'* in the statutory sense: even though *"they were not incorporated into the realty …* [they] *were suspended on pillars and had been erected with a prospect of permanence. That prospect had hitherto been fulfilled over many years and its fulfillment had inevitably affected the physical quality of the land. In those circumstances, the only conclusion as a matter of objective judgment was that the chalets were structures or erections and thus buildings within the definition in section 336 (1)…* "

22. The Application structure "*had been erected with a prospect of permanence. That prospect had hitherto been fulfilled over many years…* " - in this case since at least 2009. Moreover "*its fulfillment had inevitably affected the physical quality of the land"* in a way which clearly indicates of a *"sense of permanence."*: it is submitted that the legislation and attendant case law supports the argument that the Application structure is a '*building*.'

23. It is submitted that the proper approach to be adopted when considering whether this structure is a building/structure for the purposes of section 171B of the Town and Country Planning Act 1990 is set out in *R ex parte Hall Hunter Partnership v Tuesley Farm Campaign/Residents Group [2006] EWHC 3482 (Admin)* case at paragraph 66 as follows:

> *"For the purpose of considering ground 1, it is unnecessary to either set out the statutory framework or to list the relevant authorities because Mr Straker accepted that the Inspector's "self direction" in paragraphs 35 to 40 of the decision letter as to the legal principles to be applied could not be faulted. Under the heading "Whether 'Development'", the Inspector said:*
>
> > *"35. Section 57 of the 1990 Act (as amended) indicates that 'planning permission' is required for the carrying out of 'development' of 'land'.* ***By s.336 (1), 'land' includes a 'building', the definition of which '... includes any structure or erection...' The 1990 Act (as amended) contains no further definition of 'structure'*** *and the term would need to be given its*

ordinary meaning; 'erection' (in relation to 'buildings') includes extension, alteration and re-erection. By s.171A (1) (a), the carrying out of 'development' without the required 'planning permission' constitutes a breach of planning control.

36. Section 55(1) defines 'development', for the purposes of the 1990 Act (as amended), as meaning '... the carrying out of building, engineering, mining or other operations in, on, over or under any land, or the making of any material change in the use of any buildings or other land'. By s.55(1A),'... building operations' includes - (a) demolition of buildings; (b) re-building; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder'.[1]

...

38. It is common ground between the main parties that Skerrits of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow LBC (No.2) [2000] 2 PLR 102; [2000] JPL 1025; [2000] ECGS 43 provides valuable guidance in the interpretation of the meaning of 'development'. In that case, it was held that whether 'building operations' have occurred involves the application of a legal test.

39. That test is set out in Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd [1949] 1 KB 385; three factors - size, permanence and degree of physical attachment - were ***relevant*** [that is, not necessarily individually determinative] *in deciding what was a building or structure. That was a case concerned with rating legislation, but its appropriateness to planning legislation was confirmed in Barvis Ltd v Secretary of State for the Environment [1971] 22 P&CR 710.*

40. In Skerritts, Pill LJ approved the approach adopted by Bridge J in Barvis; the approach to the question of whether there had been a building

[1] In that respect I note that the Smths used a carpenter to convert the farm office into their dwelling.

operation was to consider, first, whether there was a building. If there was a building, applying the test set out in Cardiff Rating Authority, then what had created it was a building operation. The Courts have held that all of the circumstances have to be taken into account."

In this case the structure **is** physically attached to the land by more than its own weight and case law has established that attachment to the land solely by a structure's own weight is sufficient to demonstrate that a structure is a building. Paragraph 44 of the *Market Cafe* case provides:

"Two propositions emerge from this passage: first, it is important to consider whether the operation changes the physical character of the land; secondly, the fact that a structure fixed to land is mobile is not determinative. It may still be part of a building operation".

24. From the above authorities it is submitted that by October 2010 a building had been erected. The Applicants family members then commenced the residential use of that building and have continued to use it residentially ever since.

Question 2 : is this building a dwelling house?

25. It now becomes necessary to consider the law and jurisprudence in relation to dwelling houses, a matter to which we now turn. Perhaps unsurprisingly, there is much law and case law on this subject. The first thing to establish is: what is meant by *'dwelling house'*? In *Moore v SSE and N Forest DC 1998 77 P & CR 114 @ 119*, the Court of Appeal cited with approval *Gravesham BC v Secretary of State for the Environment (1982) 47 P&CR 142* that *"the distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities required for day to day private domestic existence."* In this case, the Application structure does indeed provide the facilities necessary for everyday existence, including separate bedrooms, a fully fitted bathroom, a kitchen equipped with cooker, sink, running water, workspaces and fitted cupboards, a dining area with table and chairs and sitting room with a thee piece suite. It is clear that the Application structure has afforded the Applicants and their family the facilities required for day to day domestic existence since October 2010 at the latest. Thus the Application proposal draws support from Moore and Gravesham

26. In *Gravesham* the Court found that a modest chalet whose *"... external measurements are 20 feet three inches by 17 feet... had three rooms: a living room with a fireplace, a kitchen and a bedroom* [with] *neither bathroom nor a w.c. ..."* nevertheless constituted such facilities which rendered the building a dwelling house. In this case the dimensions are far in excess of that in Gravesham.

CONCLUSIONS

27. It is submitted that the Application structure in question is, due to its size, permanence and attachment to the ground, a building by reference to the legislation, attendant case law and matters of fact. As the building has been used as a single dwelling house for more than 4 years without enforcement action having been taken against that use, it is lastly submitted that it is now immune from enforcement action (s171(B)(2) of the 1990 Act. In these circumstances, the Local Planning Authority is respectfully invited to allow the Application and grant the Certificate as sought.

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July 2017