Estates Gazette Law Reports/1994/Volume 2/Carter and another v Secretary of State for the Environment and another - [1994] 2 EGLR 194

Carter and another v Secretary of State for the Environment and another

COURT OF APPEAL

March 14 1994

SIR STEPHEN BROWN P and RUSSELL and ROCH LJJ

Estates Gazette July 23 1994[1994] 29 EG 124

Town and country planning -- Development -- Whether a mobile home comprising four units bolted together on site is a caravan within section 29(1) of the Caravan Sites and Control of Development Act 1960

On September 18 1986 Carrick District Council issued an established use certificate, in respect of a smallholding owned by the appellants, providing for the stationing of a caravan for human habitation. The appellants then replaced the original caravan with a form of mobile home; this was delivered by lorry in four prefabricated sections, each section was bolted together and the structure was positioned on concrete blocks on an existing concrete base. The mobile home had no wheels or subframe; it rested on, but was not fixed to, the concrete blocks. Planning permission to retain the mobile home was refused in June 1988 and appeals against two enforcement notices requiring the home's removal were dismissed on April 27 1989. After a remission by the High Court to reconsider whether the structure was a caravan within the meaning of section 29(1) of the Caravan Sites and Control of Development Act 1960, the Secretary of State decided in April 1992 that it was not a caravan, quashed the enforcement notices and gave limited planning permission. This was an appeal from the decision of the High Court upholding the Secretary of State's decision.

Held: The appeal was dismissed. The Secretary of State was entitled to find that the structure was not a caravan within the meaning of section 29(1) of the 1960 Act. That section contemplates that the structure must be capable of being moved as a single unit; the whole of the structure, and not its component parts, must possess the quality of mobility. It must be capable of being towed or transported on a single motor vehicle or trailer.

The following cases are referred to in this report.

Barvis Ltd v Secretary of State for the Environment (1971) 22 P&CR 710, DC

Hobday v Nicol [1944] 1 All ER 302

Wyre Forest District Council v Secretary of State for the Environment [1990] 2 WLR 517; [1990] 1 All ER 780; [1990] 2 PLR 95, HL

This was an appeal by the appellants, Neville James Carter and Audrey Christine Carter, from the decision of Mr Gerald Moriarty QC, sitting as a deputy judge of the Queen's Bench Division, who upheld a decision of the first respondent, the Secretary of State for the Environment, quashing

> enforcement notices issued by the second respondents, Carrick District Council, and granting limited planning permission.

John Hobson (instructed by Coodes, of Truro) appeared for the appellants; Alice Robinson (instructed by the Treasury Solicitor) represented the first respondent; the second respondent, Carrick District Council, did not appear and was not represented.

Giving the first judgment, **SIR STEPHEN BROWN P** said: This is an appeal from a decision of Mr Gerald Moriarty QC, sitting as a deputy judge of the Queen's Bench Division, on March 17 1993. The learned judge granted leave to appeal. The appeal has in fact centred on one quite short point involving consideration of the provisions of section 29 of the Caravan Sites and Control of Development Act 1960. The

matter which has given rise to these proceedings has already occupied the attention of three deputy High Court judges, and has been the subject of two planning inquiries and appeals against enforcement notices. The court is grateful to Mr John Hobson, who appears for the appellants, for providing a helpful skeleton argument which contains a chronology.

The appellants, Mr and Mrs Carter, bought a smallholding at Higher Crescent Farm, Penhallow, near Truro, Cornwall, in 1986. Situated on the land was a caravan which had been occupied for residential purposes. On September 18 1986 Carrick District Council issued an established use certificate providing for the stationing of a caravan for human habitation. Subsequently Mr and Mrs Carter considered that they required rather more commodious living accommodation and Mr Carter sought to replace the caravan with a form of mobile home. He acquired what is described as a "park home". The structure is described in the report of the planning inspector who heard an appeal against a subsequent enforcement notice. It was delivered to the site by lorry in four prefabricated sections. The sections were bolted together and the structure was positioned an concrete blocks on an existing concrete base where, as I understand it, the caravan had been situated. Concrete blocks had been used to support the former caravan, and these were adapted to suit the new unit and were cemented together. When it had been assembled the park home was manoeuvred into place by dragging it with a mechanical digger. In its final location it eventually had a porch which was attached to the north-eastern end. The park home has no wheels or subframe. It rests upon, but is not fixed to, the concrete blocks. Mains electricity and water connections were provided, and there is drainage to a septic tank.

Mr Carter was visited by an officer from the district council. It was Mr Carter's evidence that he was given to understand that this structure would be an acceptable replacement for the caravan which had been previously situated upon the site. He then applied for planning permission in November 1986. In response to the application for planning permission the council resolved to grant only a temporary permission for five years with a requirement that Mr and Mrs Carter should enter into what is termed a "section 52 agreement". This would require the removal of the park home and the relinquishing of established use rights at the end of that period. That did not satisfy Mr and Mrs Carter. A further application for planning permission was made in March 1988 and that was refused by the council in June 1988.

On July 22 1988 two enforcement notices were issued by the council. The first, which is material in the context of the present proceedings, cited in Schedule 2 as a breach of planning control:

> The carrying out on the land of building, engineering or other operations namely the erection of a timber building for habitation.

It required the cessation of the use of the building for human habitation and its removal from the land. The second enforcement notice is not material for the purpose of these proceedings. It is sufficient to say that it referred to the use of a farm building for domestic purposes.

Mr Carter appealed against the enforcement notice, and a public inquiry was held in respect of his appeal. The inspector, who was appointed to determine the matter, made his report, giving his decision on April 27 1989. The inspector, in what may now be referred to as the first inquiry, described the structure in the terms that I have already indicated. He said at para 25 of his report, after referring to the decision in *Barvis Ltd v Secretary of State for the Environment* (1971) 22 P&CR 710:

> it seems to me that an appropriate starting point is to consider whether, on an objective view, the item in question would be recognised as a structure or erection. As a matter of impression I would regard the Park Home as a building. Nevertheless I am mindful that, on the face of it, there might not be much apparent difference between the appeal construction and what might be perceived to be a mobile home. I have therefore considered the matter in greater detail and also had regard to

-- and he cited two decisions of the court --

> My conclusions are these. The physical characteristics of the land were materially changed by the building of the low concrete block wall in the position required to suit the new unit. Furthermore I do not consider the construction of the wall to have been a separate operation, because I believe that the wall is essential to the support of the Park Home and functions in the manner of a prepared and tailored foundation.
>
> In my view, that points to the Park Home at the appeal site being a building. There is other evidence which I find supports that view. It is a relatively large unit; it has no wheels or visible signs of being mobile; and I find no evidence of any intention on the part of the appellants that it should be moved.
>
> Having reviewed all the evidence, it is my judgment that, as a matter of fact and degree, the allegation contained in the enforcement notice correctly describes the breach of control which has taken place. Your client's appeal on ground (c) therefore fails.

In point of fact he quashed the enforcement notice and granted limited planning permission for a period of five years restricted to occupation by Mr and Mrs Carter.

Mr and Mrs Carter appealed to the High Court from that decision under section 246 of the Town and Country Planning Act 1971. The appeal first came before Judge Marder QC, sitting as a deputy judge of the Queen's Bench Division. In fact he did not deal with the matter in substance because he required the presence of the local authority in order to assist him. He did, however, make some observations in passing, which were not definitive. His observations cannot carry any weight in the context of the consideration by this court of this appeal.

Following the necessary adjournment for the local authority to appeal, the matter was considered substantively by another deputy High Court judge, Mr Lionel Read QC. He gave judgment on February 28 1990. He allowed the appeal and held that the inspector had fallen into error in failing to consider whether the park home was a caravan within the statutory definition. He observed at p15G of the transcript of his judgment:

> *Prima facie* -- I say no more than that -- park home was a caravan within the statutory definition.

The Secretary of State remitted the matter for redetermination concerning the enforcement notice to which I have referred. A second inspector considered the matter on further written representations, and then reported to the Secretary of State on August 12 1991. In the report he described the structure which he had been to see. He considered the terms of section 29(1) of the Caravan Sites and Control of Development Act

1960, and he expressed his view in para 18 of his report. I cite the whole of that paragraph in order to indicate how he expressed his opinion:

> In relation to the definition of the word "caravan" in S29(i) of the Caravan Sites and Control of Development Act 1960 Part 1 it is my opinion that the 4 units which make up the Park Home form a structure "designed or adapted for human habitation". The Park Home is capable of being moved from one place to another. The evidence at the inquiry was that it was delivered to the site on a lorry in 4 prefabricated sections. It is clearly capable of being moved again in like manner. There is no criteria to require that the 4 units have to be moved together as a single unit, nor is there any criteria which state that the movement has to be by road. Limitations as to the size of loads that can be moved on public highways do not in my opinion have any bearing here. The ability to move it from one place to another, say within the same field, appears to me to be embraced in the overall definition. The Park Home is not a motor vehicle and (a) and (b) of the definition do not apply either. In my view the Park Home is a caravan in terms of the definition in the 1960 Act.

He was of course reporting to the Secretary of State and not himself giving a delegated decision.

The Secretary of State gave his decision in a letter of April 16 1992. He set out the history of the matter. In para 8 under the heading "Reasons for the decision" he described the appeal site and the relevant planning history. As to the structure in question he said:

> It is constructed of horizontal lapped timber and is sub-divided into four sections by narrow vertical timber uprights. It was delivered by road to the appeal site in separate pre-constructed sections and assembled by being bolted together on-site, adjacent to its present position. After assembly, it was moved

> into place by being dragged, by a mechanical digger, over scaffold poles which acted as rollers.

In para 11 he said:

> The essence of the submissions on behalf of your clients -- that is to say, the appellants -- was that the "Park Home" in question was a "caravan" for the purpose of the planning control legislation, and it was stationed on land which had the benefit of an "established use" certificate for that purpose. Having regard to the definition of the term "caravan" in section 29(1) of the Caravan Sites and Control of Development Act, this "Park Home" was a structure designed or adapted for human habitation. The requirement that it was capable of being moved "from one place to another" was met. This was demonstrated by the fact that, after assembly on your clients' land, it was manoeuvred into place on the concrete blocks: the dragging amounted to towing and thus the "Park Home" could be moved as a structure, after removal of the two extensions. Moreover, the structure could be moved if disassembled into sections.

He recorded the district council's submission in the following terms:

> ... that the structure in question was not a "caravan", within the statutory definition, for the following reasons. The structure required to be lifted or winched and lacked wheels, axles, sub-frames and a chassis. It had not been designed to be moved as a structure and could only be removed from the site after demolition if disassembled. In assembled form it would break up, if moved.

He then gave his decision in para 14. He set out his consideration of certain authorities, and in particular the judgment of the House of Lords in *Wyre Forest District Council v Secretary of State for the Environment* [1990] 2 WLR 517 and accepted that:

> the question whether a particular structure is a "caravan" for the purpose of planning control is to be determined on the basis of the statutory definition in section 29(1) of the Caravan Sites and Control of Development Act 1960.

He said in respect of the structure in question that:

> it is necessary to consider whether [it] "is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)". It lacks wheels and axles, but their absence, whilst it would preclude towing, would not necessarily prevent movement by other means ... However, in the opinion of the Secretary of State, a structure must be capable of being moved *as a structure* (that is, in one piece) in order to come within the definition of a "caravan" in section 29(1) ... As a matter of fact and degree, the view is taken, therefore, that the appeal structure is not a "caravan" within the statutory definition of the term (or in its ordinary sense).

He then made his formal decision quashing the enforcement notice because, in the exercise of the power residing in section 177 of the 1990 Act, as amended, he gave limited planning permission for the occupation of the structure as a residence by the appellants.

The appellants then appealed to the High Court. On this occasion the appeal was heard by Mr Moriarty QC, sitting as a deputy judge of the Queen's Bench Division. It is from his decision that the matter now comes before this court.

I need not dwell on the fact that to some extent a technical matter occupied the attention of that court as to whether the appeal to Mr Moriarty in the High Court was properly brought under section 288 of the 1990 Act. The matter was resolved by treating the appeal as having being brought under section 289. That does not need to trouble this court as it is accepted that the appeal is now properly constituted under section 289.

Mr Moriarty QC considered the terms of section 29(1) of the 1960 Act. The section provides:

> "caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place or another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include --
>
> (*a*) any railway rolling-stock which is for the time being on rails forming part of a railway system, or
>
> (*b*) any tent;

It is submitted to us that three elements are contained in that definition. First, there has to be a structure; second, it has to be designed or adapted for human habitation; and, third, it must be capable of being moved, but not necessarily towed. Mr Hobson, in his concise submissions, has argued that this is a matter of fact and degree, and that the inspector who considered the second appeal had, as a matter of fact and degree, decided that in his opinion this structure was a caravan within the terms of section 29(1) of the Act. Of course, the view of the inspector was properly stated by him as being his opinion, for he was reporting to the Secretary of State who had the responsibility of making the decision. The Secretary of State differed from his inspector in that he considered that this structure could not be regarded as being a caravan within the terms of section 29(1), in particular because it was in four prefabricated sections, which had been bolted together and manoeuvred across the site to its final resting place in the way he described in his decision letter. This showed that it could not be considered as a structure capable of being moved from one place to another as a single unit.

Mr Moriarty QC said at the bottom of p9 of the transcript of his judgment:

> In my judgment, he

-- ie the Secretary of State --

> applies the test to the facts correctly, and he is entitled to reach his own conclusion which is one of law. The process of dragging the completed unit, that is the whole of the park home after the four subunits are bolted together, which was described by the inspector, does not, in my view, demonstrate the capacity for being moved which is indicated in the

statutory definition. Accordingly, the Secretary of State's reasons are, in my view, clear and intelligible and proper and adequate.

He may be criticised on details, for one example, his reference to the extension to the Park Home which were in some measure fixed to the ground, but these are expressly disregarded in his conclusion. For another, there is his reference to the ordinary sense of the word "caravan" which, having regard to the decision in the *Wyre Forest* case, seems to me to be irrelevant. However, it is clear that his conclusion was arrived at without reliance on either of those points, in other words, the Secretary of State disregarded the element of fixture to the ground provided by the extensions to the Park Home, and he disregarded, in effect, the ordinary meaning of the word "caravan" in applying the statutory definition to the facts.

The learned deputy judge dismissed the appeal and upheld the decision of the Secretary of State.

Mr Hobson, as I have said, has rehearsed in attractive submissions the arguments which were placed before each of the planning inquiries and before the two substantive hearings before deputy judges of the Queen's Bench Division. He submits that in this case there is merely the question of mobility to be considered because the other two ingredients of the definition are conceded -- ie that it is a structure and that it is for human habitation. He argues that it is unnecessary to seek to place a limitation in the definition to require that the structure should be capable of being moved as a unit. Mr Hobson submits that the fact that it is in four sections which have to be fixed together is nothing to the point when considering the terms of the statute. He argues that since the statute does not include a specific restriction, the court ought not to imply such a restriction into the language of the section.

In reply, counsel for the Secretary of State submits that this is clearly a structure which falls outside the ambit of the section. It is entirely artificial, submits Alice Robinson, to consider that a structure which is prefabricated in four separate sections and is transported in those separate sections, albeit upon one motor lorry, can be considered to be a unit such as is contemplated by the statute.

For my part, I am satisfied that the minister gave a correct decision in this case. In my judgment, it is straining the language of the section to an unacceptable degree to seek to embrace in the definition a structure which is prefabricated in as many as four separate sections. It cannot be considered to be a unit within the terms of section 29(1). In

my judgment, the deputy judge was correct in the view which he took of the matter, and accordingly I would dismiss this appeal.

It is to be observed that at each stage of the various proceedings which have taken place in relation to this structure a great deal of sympathy has been extended to the position in which the appellants have found themselves. The district council do not accept that they were misled, but the inspector at the first inquiry did find specifically that Mr Carter was allowed to believe that he might replace the then existing caravan with this larger structure. For that reason the limited planning consent was granted. However, this is not a matter which is before this court, and indeed we can consider only the narrow point which has been raised as a matter of law in this appeal.

Finally, I have to say that this court is not in a position to formulate a comprehensive definition to explain further the terms of section 29 in relation to the various types of structure which may fall for consideration in the future. Quite plainly each case will have to be considered on its merits. However, I am quite clear that the section contemplates that the structure must be capable of being moved as a single unit.

Agreeing, RUSSELL LJ said: This appeal turns upon the proper construction of section 29(1) of the Caravan Sites and Control of Development Act 1960. So far as is material to this appeal the subsection provides as follows:

> "caravan" means 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) ...

In order to qualify for the description "caravan" in section 29 it is therefore "the structure" that has to possess two qualities. The first part of the section provides that it is necessary for "the structure" to be designed or adapted for human habitation. This, in my view, clearly contemplates the structure as a whole, as a single unit, and not the component parts of it. The second quality which "the structure" has to possess is mobility. The structure has to be capable of being moved by being towed or transported on a single motor vehicle or trailer. "The structure" contemplated by the second part of the section is, in my judgment, precisely the same structure as that contemplated by the first part of the section, not a structure which has been dismantled before loading has taken place. In my view, the second limb of the definition can therefore refer only to a whole single structure and not to component parts of it.

I am fortified in arriving at this conclusion by some words of Humphreys J in *Hobday v Nicol* [1944] 1 All ER 302 where, with the other members of the court agreeing, he said:

> "Structure," as I understand it, is anything which is constructed; and it involves the notion of something which is put together, consisting of a number of different things which are so put together or built together, constructed as to make one whole, which then is called a structure.

I add only this. There is, in my view, no good reason why "the structure" contemplated in the first part of the section under review should have a different meaning from "the structure" contemplated in the second part of the section. In the first part it is clearly a single unit; in the second part, in my judgment, likewise.

For these reasons and all those which have been adumbrated by Sir Stephen Brown P, in his judgment, with which I agree, I take the view that the Secretary of State came to a correct conclusion upon the effect of the law, and I too would dismiss this appeal.

Also agreeing, ROCH LJ said: I have been concerned that many homes which have long been accepted as caravans will cease to be so as a result of this decision and that the difference between structures which are caravans and structures which are not caravans, but which occupy similar spaces and look the same as structures which are caravans, will be the existence of a subframe or other means of construction which will allow the home to be placed on a single-motor vehicle trailer and transported as a single unit. Nevertheless, the legislation relating to caravans forms an exception to planning control and consequently I have been persuaded that a literal and restrictive approach should be adopted to the definition of "caravan" in section 29(1) of the 1960 Act. The definition refers to a single structure which is capable of being moved from one place to another by being towed or by being transported on a single-motor vehicle or trailer. In short, Parliament has deliberately chosen to use the singular. In the context of this legislation the singular does not include the plural. It follows, in my opinion, that the Secretary of State did not misdirect himself as to the law, and I also would dismiss this appeal for these reasons and also those given by Sir Stephen Brown P.

Appeal dismissed with costs not to be enforced without the leave of the court; application for leave to appeal to the House of Lords refused.