
Appeal Decision

Site visit made on 24 January 2017

by Mr K L Williams BA, MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 February 2017

Appeal Ref: APP/E2205/X/16/3152318

Spinney Park, Faversham Road, Charing, Ashford, Kent, TN27 0NS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs I Saunders against the decision of Ashford Borough Council.
- The application, ref:15/01342/AS and dated 30 September 2015, was refused by notice dated 14 March 2016.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the stationing of three mobile homes for residential purposes.

Summary of Decision: The appeal is allowed and a Lawful Development Certificate is issued.

Background

1. Spinney Park is a broadly rectangular block of land to the south east of Faversham Road. It has a varying width of about 40 metres and a depth of about 200 metres. The first section of Spinney Park provides an access from Faversham Road and contains a mobile home and a residential garden. Within the middle section there is a further mobile home, office building, garage, gardens and vehicle turning area. The appeal site is the rearmost part of Spinney Park and extends to about 0.39 hectares. It contains one mobile home, a domestic garage, an office and gardens. The south-eastern part of the appeal site is an extension of the garden area. Within it there is a building containing a workshop and providing cover for a touring caravan. There are other small garden structures dotted around the appeal site. The proposed site layout shows two further mobile homes, one near the south-western boundary and the other near the south-eastern boundary of the site.
2. On 21 July 2015 a Lawful Development Certificate (LDC) was issued (15/00728/AS) in respect of use of the appeal site for the stationing of a mobile home for residential purposes.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a Lawful Development Certificate was well-founded.
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Reasoning

4. Planning merits are not relevant in this case. They are not an issue for consideration in an appeal under section 195 of the Act, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. It is consistent with *Planning Practice Guidance* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that the appellant's evidence is sufficiently precise and unambiguous.
5. The Council contends that an increase from one mobile home on the site to three would result in an intensification of the use and a material change in the character of use of the land such that planning permission would be required. It is consistent with caselaw that intensification does not amount to a material change of use unless the fundamental character of the use changes. It is therefore appropriate to address whether the proposed increase in mobile homes would result in such a change. This entails consideration of whether the increase in the scale of the use would reach the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, there would be a change in the definable character of the use sufficient to amount to a material change of use. In approaching these matters it is necessary to consider the effect of the proposed change on the site itself and any off-site impacts.
6. Notwithstanding the mobile homes, buildings and the access road Spinney Park retains a spacious character. That character is shared by the appeal site. The additional mobile homes would be within the existing garden area. This would result in a greater extent of the site being taken up by mobile homes and it is likely that there would be more vehicles, hard surfacing, related domestic paraphernalia and activity. There would be a degree of change in the appearance of the site. Nevertheless, given the extent of the site, its spacious character would not be fundamentally changed.
7. Turning to external effects, Spinney Park is bounded in several directions by extensive residential gardens. There is considerable tree and shrub cover to the south-east, north-east and south-west of the site, so that it is very well screened. The additional mobile homes would not be prominent features in views from public or private viewpoints. Nor would the proposed increase be likely to result in material change by virtue of noise or disturbance to neighbouring residents. There would be some increase in traffic movements along the access road and at the access onto Faversham Road. However, in the context of traffic likely to be generated by the existing uses in Spinney Park, the traffic effects would not be sufficient to result in material change.
8. I conclude as a matter of fact and degree that the proposal would result in some change to the appearance of the site. However, its effect would not be sufficient to result in a fundamental change in the character of the use such that a material change of use of the land would result. The appellant has submitted several other appeal decisions where Inspectors have decided that increased numbers of mobile homes did not result in a material change of

use. They include examples of greater increases in numbers than in this appeal but they rely on the particular circumstances in each case.

Overall Conclusion

9. Having regard to the above and to all other matters raised I conclude that the Council's decision not to issue a certificate was not well-founded. The appeal should therefore succeed.

Formal Decision

10. I allow the appeal and attach to this decision a certificate of lawful use or development describing the extent of the proposed use which I consider to be lawful.

K Williams

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 30 September 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use would not have resulted in a material change of use so that planning permission would not have been required.

Signed

K Williams
INSPECTOR

Date **3 February 2017**

Reference: APP/E2205/X/16/3152318

First Schedule

The stationing of three mobile homes for residential purposes.

Second Schedule

Spinney Park, Faversham Road, Charing, Ashford, Kent, TN27 0NS

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended). It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, not liable to enforcement action under section 172 of the 1990 Act on that date. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the decision dated: 3 February 2017

by Mr Keri Williams BA MA MRTPI

Land at Spinney Park, Faversham Road, Charing, Ashford, Kent, TN27 0NS

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