

Appeal Decision

Hearing held and unaccompanied site visit made on 5 July 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 07 July 2017

Appeal Ref: APP/R3650/X/16/3161457

15 Crondall Lane, Farnham, GU9 7BG

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawfulness of Proposed Use or Development ("the LDC").
 - The appeal is made by Philly Hook ("the Appellant") against the decision of Waverley Borough Council ("the Council").
 - The application Ref WA/2016/1066, dated 18 May 2016, was refused by notice dated 13 July 2016.
 - The application was made under Section 192(1)(a) of the 1990 Act.
 - The use for which the LDC is sought is for the siting of a caravan for ancillary use to the dwelling at 15 Crondall Lane.
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Application for costs

1. At the Hearing an application for costs was made by the Appellant against the Council. This application will be the subject of a separate Decision.

Procedural Matters

2. I will refer to the existing dwelling-house at No. 15 as "the Dwelling-House".
3. Section 192(1)(a) of the 1990 Act explains that if any person wishes to ascertain whether any proposed use of buildings or land would be lawful they may make an application for the purpose to the Local Planning Authority specifying the land and describing the use in question.
4. The plans accompanying the application show that the proposed caravan ("the Proposed Caravan"):
 - a) Would be sited in the rear garden of the Dwelling-House.
 - b) Would contain 4 bedrooms (one with an en-suite facility), a bathroom, a kitchen/dining area and a lounge.
5. The Appellant's agent also wrote to the Council explaining that the Proposed Caravan would be:
 - a) Within the curtilage of the Dwelling-House.
 - b) Used ancillary to the Dwelling-House.
 - c) Used by family and friends related to or associated with the Appellant who is the occupier of the Dwelling-House.
6. Further, he explained that:

- a) The Dwelling-House and the Proposed Caravan would comprise one planning unit.
- b) No fence would be erected between the Proposed Caravan and the Dwelling-House.

7. The LDC was refused because:

- a) The Council considered that the Proposed Caravan would not be ancillary to the primary residential use of the Dwelling-House and as such would amount to a material change of use.
- b) Insufficient information had been submitted to demonstrate that the proposed structure would not be operational development.

8. At the commencement of the Hearing the Council agreed that the proposed structure would be a caravan and not operational development. Accordingly, the Council did not maintain the reason explained at paragraph 7(b) above as part of their case.

Relevant Background Matters

9. I was informed that the Council granted a Certificate of Lawful Use Or Development ("the Approved Certificate") dated 4 November 2016 for the siting of a caravan for ancillary use to the Dwelling-House. The Approved Certificate does not specify the size of caravan to which it relates or cross reference to any specific document which sets out these details. I was informed that the caravan referred to in the application that resulted in the Approved Certificate was significantly smaller than the Proposed Caravan.

Reasons

10. The Council's remaining concerns are that:

- a) The size and scale of the Proposed Caravan cannot be ancillary to the Dwelling-House because they consider it to be too large.
- b) The Proposed Caravan could be used for residential purposes even if the residential use of the Dwelling-House ceased.
- c) They are not satisfied that there would be a functional link between the Proposed Caravan and the Dwelling-House.

Size & Scale of the Proposed Caravan

11. The Dwelling-House is a detached four-bedroom dwelling-house.

12. The dimensions of the Proposed Caravan are set out in the application plans and fall within the statutory limits regarding size of caravans.

13. The Appellant explained that she had a large family some of whom now live away from home. She also has other members of her extended family and a number of friends who would use the Proposed Caravan when visiting her. Further still, she explained that she has, from time to time, fostering responsibilities.

14. Whilst I note that the Council have concerns that adding a further four bedrooms in the Proposed Caravan may be excessive I do not consider this is a

matter which should concern the Council when dealing with a LDC for a proposed use. If the Appellant were to permit the use of the Proposed Caravan for any uses that were not ancillary to the residential use of the Dwelling-House it is likely that planning permission would be required and the Council would retain control over any non-ancillary uses of the Proposed Caravan.

15. Further, whilst the plans show four bedrooms it could well be that these rooms were used for other ancillary uses e.g. as a study room, a home cinema, a home library, a home fitness room.
16. I therefore conclude that the size and scale of the Proposed Caravan do not preclude it from being used for ancillary residential uses to the Dwelling-House.

Continued Residential Use of the Proposed Caravan if the Residential Use of the Dwelling-House Ceased.

17. It is clear that the facilities within the Proposed Caravan could, in theory, allow a residential use to continue if the substantive residential use within the Dwelling-House ceased. This would be equally true of a smaller caravan which contained cooking, bathing and sleeping facilities.
18. However, it was agreed at the Hearing and it is well established in planning law that if the residential use within the Dwelling-House ceased the ancillary residential use of the Proposed Caravan would also have to stop. Accordingly, the Council would retain control if the Proposed Caravan continued to be used in those circumstances.
19. I therefore do not consider that this is an issue that means that the Proposed Caravan would not be ancillary residential accommodation to the Dwelling-House.

The Functional Link Between the Proposed Caravan and the Dwelling-House

20. The Appellant explained that it was her intention that people using the Proposed Caravan would be using it in conjunction with the residential use of the Dwelling-House. People using the Proposed Caravan could obviously make and eat meals within it but the intention was that they would use the facilities in the Proposed Caravan alongside those in the Dwelling-House.
21. If the functional link between the Dwelling-House and the Proposed Caravan was severed and an independent use of the Proposed Caravan commenced this is likely to require planning permission from the Council who therefore retain control over any use of the Proposed Caravan which did not have a functional link to the residential use of the Dwelling-House.
22. I therefore conclude that there is no evidence before me that there would be no functional link between the ancillary residential use of the Proposed Caravan and the residential use of the Dwelling-House.

Overall Conclusions

23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant the LDC in respect of the siting of the Proposed Caravan for ancillary residential use to the Dwelling-House was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act and grant the LDC.

Decision

24. The appeal is allowed and attached to this decision is the LDC describing the proposed use which is considered to be lawful.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

Graham Lea BA(Hons), MRTPI (Retired)	Town & Country Planning Partnership Limited
Grant Marshall	Marshall Arts Design
Mrs Philly Hook	Appellant

FOR WAVERLEY BOROUGH COUNCIL

Louise Yandell MRTPI	Area Team Leader
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Lawful Development Certificate ("the LDC")

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 - (as amended by Section 10 of the Planning and Compensation Act 1991) ("the 1990 Act")

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 May 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the Plan attached to the LDC would have been lawful within the meaning of Section 191 of the 1990 Act, for the following reason:

1. The Proposed Caravan would comply with the definition of a "caravan" as set out in Section 29(1) of the Caravan Sites and Control of Development Act 1960 and Section 13(1) of the Caravan Sites Act 1968.
2. The lawful use of 15 Crondall Lane, Farnham, GU9 7BG is as a dwelling-house.
3. The proposed ancillary residential use of the Proposed Caravan sited within the garden of 15 Crondall Lane would not amount to a material change of use of the planning unit at No. 15.
4. For the reasons explained above no enforcement action could be taken against the Proposed Caravan or the ancillary residential use of the Proposed Caravan.
5. Further, the ancillary residential use of the Proposed Caravan would not constitute a contravention of any requirements of any Enforcement Notice then in force.

Tim Belcher

Inspector

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First Schedule

The siting of a caravan for ancillary residential use to the dwelling-house at 15 Crondall Lane in accordance with Drawing Nos. CN/16/02; CN/16/03A & CN/16/04 submitted with the application.

Second Schedule

15 Crondall Lane, Farnham, GU9 7BG

NOTES

The LDC is issued solely for the purpose of Section 192 of the 1990 Act.

The LDC 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, was not liable to enforcement action, under Section 172 of the 1990 Act, on that date.

The LDC 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 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.

The effect of the LDC is subject to the provisions in Section 192(4) of the 1990 Act which state that the lawfulness of a specified use is only conclusively presumed where there has been no material change, before the use is instituted, in any of the matters which were relevant to the decision about lawfulness.



The Plan

This is the Plan referred to in the LDC dated: 07 July 2017

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Do Not Scale

