
Appeal Decision

by Thomas Shields MA DipURP MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/J0405/X/17/3170455
17 Russell Avenue, Aylesbury, HP21 8NE

- 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 Angela Clark against the decision of Aylesbury Vale District Council.
 - The application Ref 16/03385/ACL, dated 6 October 2016, was refused by notice dated 6 January 2017.
 - 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 proposed stationing of a mobile home within the curtilage.
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Decision

1. The appeal is allowed and attached to this decision is a LDC describing the proposed development which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's refusal to issue a LDC was well founded. This turns on whether the proposal would constitute operational development or a material change of use of the land.

Reasons

3. The appellant wants to site a mobile home unit in the rear garden of her house as residential accommodation for her elderly parents who need a close degree of care and support. The unit would measure 12120mm in length, 3906mm in width, and 2371/3452mm in height to the eaves/ridge. It would comprise two bedrooms, a living room and a bathroom.
 4. The appellant confirms that the existing kitchen facilities in the main house would be utilised rather than a separate kitchen, and that utility services would be taken from the main house with no separate billing and no separate postal address. Also, there would be no sub-division of the curtilage, and her parents would share the residential occupation and enjoyment of the principal dwelling, spending most of their day with the family in the main house including for all their meals and socialising. As such, the mobile home would not be occupied independently.
 5. In terms of its dimensions, and that it can be carried to and from the site in
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one piece, the Council does not dispute that the proposed unit falls within the limitations set out in the statutory definition of a caravan¹.

6. However, they argue that the size of the unit is substantial such that transportation of the unit and moving the unit around within the site are operations unlikely to be undertaken by a family member, but rather most likely to be carried out by a skilled operator responsible for its loading and careful and safe transportation; that being a task likely to be undertaken by a person carrying on business as a builder.
7. On that basis the Council argue that the unit should be regarded as having permanency as a building and that its erection on the land would amount to development under Section 55(1)(A) of the Act for which planning permission would be required. As such, it is said that it provides accommodation that would not be incidental to the enjoyment of the dwelling house and so consequently it would not benefit from the planning permission available for curtilage buildings at Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.
8. I disagree with the Council's interpretation of the proposal. Notwithstanding that the appellant confirms that the unit would be removed once it is no longer required, mobile homes quite often stay in the same position in which they are first sited, on prepared ground or solid pads (as in this case) laid to facilitate their siting. There is no requirement that they are capable of being moved around from time to time by or for the unit occupiers. The appropriate test is whether the mobile home, once fully assembled, is capable of being transported by a single vehicle². The appellant's statement that it would be so capable is not disputed by the Council.
9. The Council refers to legal advice³ in support of its arguments. However, no case law is referenced and it does not persuade me that the siting of the mobile home would amount to operational development.
10. I conclude that the proposed development would be a use of land and not operational development. Moreover, since the use would fall within the same use as the rest of the planning unit, there would be no material change of use of the land.

Conclusion

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a Certificate of Lawful Use or Development in respect of the use of part of the established residential curtilage for the proposed stationing of a mobile home 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 as amended.

Thomas Shields

INSPECTOR

¹ Section 29 Caravan Sites and Control of Development Act 1960 and Section 13 Caravan Sites Act 1968

² *Carter v SSE & Carrick DC* [1991] JPL 131; [1995] JPL 311 (CoA)

³ Council's statement paragraphs 6.9-6.10



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 6 October 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use of the rear garden for the stationing of a mobile home would not constitute a material change of use or operational development for which a grant of planning permission would be required.

Signed

Thomas Shields

INSPECTOR

Date 11 July 2017

Reference: APP/J0405/X/17/3170455

First Schedule

The proposed stationing of a mobile home within the curtilage.

Second Schedule

Land at 17 Russell Avenue, Aylesbury, HP21 8NE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations 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, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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 certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 July 2017

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Land at: 17 Russell Avenue, Aylesbury, HP21 8NE

Reference: APP/J0405/X/17/3170455

Scale: DO NOT SCALE

