



Appeal Decision

Site visit made on 28 November 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 06 December 2017

Appeal Ref: APP/V3310/X/17/3180697

Hackness House, New Road, East Huntspill, Highbridge, Somerset TA9 3PU

- 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 Mr Matthew Wall against the decision of Sedgemoor District Council.
 - The application Ref 25/17/00024/LE, dated 17 May 2017, was refused by notice dated 13 July 2017.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is create stone hardstanding, replace existing fencing (removed to site caravan) or installation of hard standing for mobile home/caravan.
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Decision

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

Procedural matters

2. The appellant does not appear to have been professionally represented at any stage in this matter.
3. Where an application is made under s192 of the Act it is for the applicant alone to describe what it is s/he wishes to do. The development for which the LDC is sought was described on the application form as set out in the summary details above. Two descriptions are set out because the copy of the application form supplied by the appellant had two, different, versions of section 8, '*Description of the proposal*'.
4. Although there is no power for a local planning authority to do so where an application has been made under s192, the Council altered the description of the proposed development on both the officer's delegated report and the decision notice. On the latter the Council described it as: '*the proposed use of land to site a static caravan to be used as ancillary accommodation for existing dwelling.*' There is no evidence that the applicant agreed to that change.
5. The appellant has then described the development as follows on the appeal form: '*Proposed use of land (garden & parking) within curtilage of house to site static caravan to provide ancillary accommodation for family member (son)*'. That is the basis on which I have considered this appeal. Notwithstanding the original description, which would be operational development and thus an

application under s192(1)(b) as set out above, I believe the proposal to be for a use of land and therefore made under s191(1)(a).

Main Issue

6. The reason given by the Council for determining that the development proposed would not be lawful is: *'The proposed caravan does not lie within the curtilage of the dwellinghouse and accordingly the development is not permitted by virtue of Section 192 of the Town and Country Planning Act 1990 and Part E (a) of Part 1, Schedule 2, Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 and would result in material change of use of the adjoining land and as such requires planning permission'*.
7. The stationing of a caravan on land is generally held to be a use of land. However, Schedule 2, Part 1, Class E (a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 is concerned with the provision of buildings or enclosures and swimming or other pools, not the use of land. Although not entirely clear, I understand the decision notice to mean that the Council considers that the development would give rise to a material change in the use of the land. Nevertheless, from its appeal statement it appears that the primary reason for the refusal of the LDC application is that the Council does not consider the place where the caravan would be sited to be within the curtilage of the dwelling.
8. I believe this approach to be misconceived and do not consider 'curtilage' relevant to the determination of this appeal. The main issue therefore is simply whether or not what is proposed would be development that requires express or deemed planning permission.

Reasons

The evidence

9. Very limited information has been provided about the proposal. Nevertheless, I believe the proposed development to be clear in respect of both the intended purpose and the proposed location of the caravan within the land holding.
10. The proposal is to site a static caravan of what the appellant describes as the 'normal size (12 feet by 28/30 feet)'. Insufficient further information has been provided however to determine whether or not it would be a caravan as defined in the 1960 and 1968 Acts referred to by the Council. It would be used by the appellant's son and his partner for most residential purposes. However, the appellant confirms that they would eat their main meals with 'us' in the house; they would also use the washing facilities in the house. Pending a move to their own property once acquired, they are currently living in the main house but space is limited hence the application.
11. The gist of the appellant's case is that in discussions with the Council he was told that the proposal to site a static caravan within the curtilage of the property as ancillary accommodation to the main house was acceptable and that to regularise the proposal a LDC application should be submitted. This he did but it was then refused.
12. The Council does not dispute the appellant's version of events leading to the submission of his application. However, the essence of its case is that on

further assessment the land on which the caravan would be sited is not considered to be within the curtilage of the dwelling.

Appraisal

13. Hackness House is a detached dwelling standing towards the front of a large plot. Pedestrian and vehicular access to the front of the property from the highway is via a gate. This leads to a double garage attached to the house and an area of parking to the front of the dwelling. The rest of the front garden is laid to grass with boundary shrubs and hedges against fencing on two sides. To the rear of the house is a further garden predominantly laid to grass with similar fencing and boundary planting to that at the front. Near to the house there is a patio area on which there were placed some items of garden furniture. Within the lawn area there was a rotary clothes-line.
14. To the rear of this area of garden there is a further fence which runs across the majority of the plot. Beyond, through a gap, is an overgrown vegetable area, a greenhouse where some chickens were present at the time of my site visit, an area of hardstanding where vehicles were parked and some materials were stored and, beyond, a further tapering area of rough grass with what may have been a single fruit tree. The hardstanding can be accessed via a track which is outside of the appellant's ownership but over which he has a right of access.
15. The whole of the land described above is within the appellant's ownership and is, for the most part, enclosed. The principal means of access is via the gate at the front. The caravan that is the subject of the application would be sited on the hardstanding area near to the greenhouse. The occupants would be able to get to the house either through the gap in the fence at the rear of the garden and then through the garden itself or along the adjacent track.
16. The courts have considered the issue of curtilage many times. Generally, it is held to be an area of land around the building the use of which is intimately associated with the use of the building. It is a fact and degree assessment in each case. I do not disagree with the Council's conclusion in this case that what amounts to the curtilage of the dwelling ends at the fence at the foot of the rear garden. To that extent, I agree with the Council that the caravan would not be sited within the curtilage of the dwelling.
17. However, it is not uncommon for the curtilage, which relates to a building, to be more limited in extent than the planning unit, which relates to the use of the land. As pointed out above, the stationing of a caravan on land is generally held to be a use of land. Whether or not that use amounts to a material change in the use of the land (as the Council may be arguing) and thus development for which planning permission is necessary, requires an understanding of the planning unit in the first instance. If the use of the planning unit does not change as a result of the development proposed and it remains a single planning unit, a material change in the use of the land is unlikely to occur. Critical to my determination therefore are matters relating to the planning unit.
18. In my judgement all of the uses I have described above as taking place throughout the whole of the appellant's landholding are those associated with the residential use of land. Having regard to the findings of the courts in this respect I conclude that the land is now a single planning unit in residential use.

19. The question then becomes whether or not the proposed development would alter the use of the planning unit, affect its extent and/or create a new planning unit.
20. Turning first to the use, the terms 'ancillary' and 'incidental' have come to be used interchangeably in planning matters. The court has established that something which is 'incidental' cannot itself be a dwelling-house; nor, therefore, can it be something for the provision of a primary dwelling-house purpose, such as a bedroom or kitchen¹. The accommodation proposed in this case (essentially bedroom and lounge areas as the prime uses) are not therefore ancillary residential uses but part and parcel of the normal facilities of the dwelling. Moreover, the way that the appellant describes the caravan being used would establish a functional link with the dwelling. All that would change in practice would be that the appellant's son and his partner would sleep and relax in the caravan rather than the house. What would be provided is tantamount to a residential annex. The family would still occupy the land as a whole as a single household.
21. Moving then to the extent, the proposed development would not alter the access to the land, the boundaries of the land, its ownership or the way it is arranged. The physical separation of the land where the caravan would be sited from the main dwelling is already in place.
22. To summarise, applying the principles established by the court to the evidence I conclude as a matter of fact and degree judgement that the land would remain a single planning unit. The use of the planning unit is now residential. The use of the caravan would be part and parcel of that residential use of the same planning unit. No new planning unit would be created and the use of the existing planning unit would not change. Therefore there would be no material change of use arising from the development for which the LDC is sought. The proposal does not therefore amount to development as defined in s55(1) of the Act for which planning permission is required. The appeal succeeds and the LDC should therefore be granted.

Other matters

23. I note the appellant's criticisms of the Council in the way that it has dealt with this matter and in particular with the way he considers the decision was reached. I also note the Council's response. Neither is material to my determination of the appeal. No doubt the Council has procedures in place through which the appellant could pursue the matter should he wish to do so.
24. The appellant proposes to provide a caravan. Whether what is actually provided is a caravan for the purposes of the relevant legislation will be a matter for the Council in due course; it is not material to my decision. Whether or not that leads to the establishment of a caravan site and the requirement for a site license is similarly not relevant to this decision.

Conclusions

25. I have noted above that the local planning authority has no power to alter the description of the development proposed in an application under s192 without the agreement of the applicant. That applies also to the Secretary of State on appeal. However, from the above I have concluded that the development

¹ See Encyclopedia of Planning Law and Practice, Volume 6 3B-1042.25 Westlaw UK on-line version

would not be within the curtilage of the dwelling, nor would it provide ancillary accommodation. To grant the LDC in the terms applied for would, on the face of it, appear to be inconsistent with my reasoning for doing so.

26. However, a LDC simply establishes that what is proposed would have been lawful at the date of the application. In effect it establishes a benchmark against which the local planning authority can measure what is actually provided. In this case, the critical components for the Council in this respect would appear to be the provision of a caravan, the exact position where it is sited and the way it is used. In my view, retaining references to 'curtilage' and 'ancillary accommodation' in the LDC do not prejudice the Council's ability to compare the development against the benchmark.
27. 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 *Proposed use of land (garden & parking) within curtilage of house to site static caravan to provide ancillary accommodation for family member (son)* 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.

Brian Cook

Inspector

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 May 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 of land proposed would not amount to a material change in the use of the land on which the caravan is to be sited. It would not therefore fall within the meaning of development set out in s55(1) of the Town and Country Planning Act 1990, as amended and no planning permission is required.

Signed *Brian Cook*

Inspector

Date: 06 December 2017

Reference: APP/V3310/X/17/3180697

First Schedule

Proposed use of land (garden & parking) within curtilage of house to site static caravan to provide ancillary accommodation for family member (son)

Second Schedule

Land at Hackness House, New Road, East Huntspill, Highbridge, Somerset TA9 3PU

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 06 December 2017

by **Brian Cook BA(Hons) DipTP MRTPI**

Land at: Hackness House, New Road, East Huntspill, Highbridge, Somerset TA9 3PU

Reference: APP/V3310/X/17/3180697

Scale: not to scale

