
Appeal Decision

Site visit made on 1 May 2018

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2018

Appeal Ref: APP/H0724/X/17/3180717

Low Throston House, Netherby Gate, Hartlepool TS26 0LF

- 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 Andrew Haygarth against the decision of Hartlepool Borough Council.
 - The application Ref H/2017/0069, dated 7 February 2017, was refused by notice dated 3 May 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is the siting of a caravan, as defined in the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968, for ancillary residential use in relation Low Throston House.
-

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 Matter

2. The application description appearing on the LDC application form refers to the *"use of land to site chalet under Mobile Homes Act definition within the curtilage of Low Throston House for ancillary use"*. However, it has been agreed by the main parties that the application description should in fact be the siting of a caravan, as defined in the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968, for ancillary residential use in relation to Low Throston House. I have used the latter description in the banner heading above as it accurately and precisely reflects how the application/appeal has been made and considered by the main parties.

Reasons

3. In order for a LDC to be granted under section 191 of the 1990 Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability. The planning merits of the use being sought are not before me.
4. Paragraph 006 of the Lawful Development Certificates section of the National Planning Practice Guidance advises in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than

probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

5. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. That turns on whether the appellant can demonstrate, on the balance of probabilities, that (i) the unit for which the LDC is sought is a caravan rather than a building and that (ii) having regard to Section 55(2) (d) of the Act the caravan was within the curtilage of the dwellinghouse known as Low Throston House (LTH) and was being used for a purpose ancillary to the residential use of the site.

Caravan or Operational Development

6. The definition of a caravan is contained with the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. I am satisfied that the LDC application relates to a caravan in so far that it does not exceed maximum size thresholds in the aforementioned Acts.
7. The Council does not dispute the appellant's evidence that the unit was originally brought to site on the back of a trailer and that it was recently towed from a nearby unauthorised position to the appeal site using a tractor: I have no reason to doubt that the movement took less than 30 minutes. On the evidence that is before me, I am satisfied that the unit was brought to the site in one piece and that it could be moved elsewhere in one piece.
8. The unit is positioned on wheels and it is not fixed to the ground. There is some decking surrounding/abutting the unit, but it is not fixed to it. Whilst the decking may to some degree impede any speedy movement of the unit, it would not in itself render the unit as being incapable of being mobile. I am satisfied that the decking could be easily removed or it would be possible to use a crane and lift the unit out and onto the back of a lorry thereby leaving the decking in place.
9. I acknowledge that the caravan is connected to services. However, I was able to see on my site visit that it would be possible to very quickly disconnect the unit from such services including the satellite dish which is positioned on a wall. This mirrors the evidence provided in the statutory declarations provided by Mr Andrew William Haygarth, Andrew Stephenson, Councillor William Ian Ramsay and Jonathan Graham. Consequently, the fact that the unit is connected to the services does not mean that it would be immobile.
10. For the collective reasons outlined above, I am satisfied that unit is mobile and that it meets the statutory definition of a caravan which is "*any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed or being transported on a motor vehicle or trailer) and any other motor vehicle so designed or adapted*". On the evidence that is before me, and on the balance of probabilities, I conclude that a caravan has been sited on the land. Consequently, the Council's reference to it being a building that should be considered against the GPDO¹ permitted development rights as set out in Class E of Part 1 of Schedule 2 is incorrect. The Council refers to the caravan as having the appearance of a

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

dwellinghouse. However, this is not a relevant consideration when considering the statutory definition of a caravan.

Curtilage of Low Throston House

11. The appellant has referred me to other decisions made by the Council where it has referred to the land as forming part of the curtilage of LTH. The Council has not disputed such claims. On my site visit, I was able to see that a bungalow had been erected very close to the site following the grant of planning permission. I consider that this has resulted in the creation of a separate planning unit delineated by means of the associated boundary fencing. However, this does not in itself mean that the appeal site is not part of the curtilage of LTH.
12. I acknowledge that a wall has been erected to the north of the stables and the caravan. However, I have no reason to doubt that the wall was erected to stop mud flow issues and to keep the horses in. The wall does not impede pedestrian movement from LTH to the appeal site. I have also taken into account the appellant's aerial photograph (1981), comments made by the Council about the land in terms of other planning applications relating to the wider site as well as comments made by a previous Inspector relating to the adjacent stables being within the curtilage of LTH².
13. Taking all of the above factors into account, coupled with what I saw on my site visit which was a relatively close and intimate relationship between the appeal site and LTH, I conclude that the subject caravan does fall within the curtilage of LTH.

Incidental to the enjoyment of Low Throston House

14. The stationing of a caravan for a use that is the same as, or ancillary to, that of the lawful use of the planning unit does not require planning permission. Whilst the caravan does have all the facilities in place to enable independent living including a kitchen, bathroom and bedrooms this does not necessarily mean that it is being used for a purpose that is not ancillary to the use of LTH or that a separate planning unit has been created. A fact and degree judgment has to be made on the specific circumstances of the case.
15. In this case, it is necessary for me to determine the LDC appeal on the basis of how the caravan was being used when the application was made and not on the basis of how it could theoretically be used in the future.
16. The appellant considers that the caravan is being used for ancillary residential purposes as (i) it is being used primarily by his eighteen year old son or very occasionally for a few days by a relative when he is away; (ii) that the majority of meals are eaten in LTH; (iii) that all washing takes place in LTH (there is no washing machine in the caravan); (iv) that there are no separate water, drainage or electricity bills; (v) that the caravan has no separate postal address; (vi) that there is no separate garden or parking area (vii) whilst there is a satellite dish attached to the caravan, the subscription is paid for by the occupier of LTH and (viii) that the eighteen year old son sometimes sleeps in a bedroom in LTH, but not on a Monday morning when he needs to leave very early.

² Appeal Reference APP/H0724/A/14/2219037 Low Throston House, 10 October 2014

17. The Council has referred me to the Department for Local Communities and Local Government Permitted Development Rights for Householders Technical Guidance April 2017 (Technical Guidance) which states that "*a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen*". However, this advice relates to buildings, enclosures or swimming/other pools which are considered under Schedule 2, Part 1, Class E of the GPDO and not to caravans. The Technical Guidance is not therefore relevant to this application since I have concluded that the unit is a caravan.
18. Taking into account points (i) to (viii) above, I conclude, as a matter of fact and degree, that the caravan was used for a purpose incidental to the enjoyment of LTH.

Other Matters

19. The Council contends that the decking needs separate planning permission under Part 1, Class E of the GPDO. The decking does not form part of the consideration of the LDC application. It would be open to the Council to investigate this matter separately utilising its enforcement investigatory powers.
20. The Council has drawn my attention to a ground (c) enforcement appeal for the unauthorised siting of a residential unit³ on land immediately adjacent to the appeal site. In fact this is the same caravan as is being considered under this LDC application. However, the application that is the subject of this LDC appeal is not the same as that considered by the previous Inspector. It is in a different location and in contrast is positioned within the curtilage of LTH as distinct from being positioned on a "*separate planning unit*". Furthermore, it does not include a brick lower section and is not physically connected to the ground. The evidence that is before me is different to that considered by the previous Inspector: I am satisfied that in this case the LDC unit would be capable of being moved and is a caravan. Indeed, it has been moved from its previous unauthorised location to its current position.
21. I have considered the case law and appeal decisions referred to by the main parties and have taken these into account in reaching my overall conclusion.

Conclusion

22. In relation to this appeal site, I am required to determine the appeal on the basis of the use that took place when the application was made. Taking all of the above matters into account, I conclude, on the balance of probabilities, that a caravan was sited within the curtilage of the dwellinghouse known as Low Throston House and that it was lawfully used for a purpose ancillary to the lawful use of the land. Consequently, it did not amount to development requiring planning permission taking into account Section 55(2) (d) of the Act.

³ Appeal reference APP/H0724/C/13/2209310 Low Throston House, 28 March 2014

23. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use in respect of the development described above as the siting of a caravan, as defined in the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968, for ancillary residential use in relation Low Throston 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 as amended.

D Hartley

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 7 February 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The mobile unit met the statutory definition of a caravan and did not constitute development requiring planning permission as it was being used for a purpose ancillary to the lawful use of the land within the curtilage of Low Throston House.

D Hartley

D Hartley
Inspector

Date: 08 May 2018

Reference: APP/ H0724/X/17/3180717

First Schedule

The siting of a caravan, as defined in the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968, for ancillary residential use in relation to Low Throston House.

Second Schedule

Land at Low Throston House, Netherby Gate, Hartlepool TS26 0LF

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 was lawful, on the certified date and, thus, was 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 Lawful Development Certificate dated: 08 May 2018

by **D Hartley BA (Hons), MTP, MBA MRTPI**

Land at: Low Throston House, Netherby Gate, Hartlepool TS26 0LF

Reference: APP/ H0724/X/17/3180717

Scale: Not to scale

