
Appeal Decision

Site visit made on 10 April 2018

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2018

Appeal Ref: APP/G3110/X/17/3181229
28 Ringwood Road, Oxford OX3 8JA

- 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 C Wild & Mr and Mrs A Wild against the decision of Oxford City Council.
 - The application Ref 16/02901/CPU, dated 07 November 2016, was refused by notice dated 04 April 2017.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of land for the stationing of a mobile home/ granny annex to be used incidental to the main dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr C Wild and Mr and Mrs A Wild against Oxford City Council. This application is the subject of a separate Decision.

Procedural Matters and Main Issues

3. No description of the proposed development for which an LDC is sought was given on the application form. The description of the proposal in the banner heading above is taken from the letter that accompanied the application and has been used by both parties for the purposes of determining the application and submitting the appeal.
4. If the proposal involved the siting of a mobile home falling within the definition of a caravan and that unit was used for a purpose incidental to the enjoyment of the dwellinghouse, it would be lawful on the basis that no building operations would have taken place and no material change of use of the land would have occurred¹. In other words, no development requiring planning permission would have taken place. However, the assessment of the application and appeal is not merely a theoretical exercise based on the description of the proposed development. It appears to me that it is necessary to go beyond the description and examine whether the proposal in this particular instance would amount to a building operation that would require planning permission and

¹ As also noted by the Inspector in the Nunnery Close appeal decision ref: APP/G3110/X/16/3142024

whether a material change of use would be likely to occur. I have determined the appeal accordingly.

5. In terms of the specifics of the case, the appellants presented two options of how the structure would reach the site². The first would be for a "lodge" to be built in a factory off-site as a single unit, brought to the site on a lorry and then craned into position. Under option 2, the appellant proposes that the structure would be delivered in sectional form and assembled on-site into two separate bays before those bays were then bolted together.
6. When determining an appeal in relation to s192 of the 1990 Act it is necessary to define precisely what the proposed development would be. It is not open to an appellant to pose a general question as to what may or may not be lawful. A decision would confirm that the specific proposal would have been lawful or otherwise at the point the application was made. Options 1 and 2 effectively represent alternate proposals and the implications of each may be different. Unlike an application for planning permission it is not possible to impose conditions on a decision, for example, to the effect that a development would be lawful subject to x, y or z. In other words, I could not impose a condition to the effect that a structure would be lawful if it was constructed in a certain way but not in an alternative way.
7. In a similar way, I must determine whether the use would be lawful having regard to the intended way in which the structure would be occupied which, in this case, would be by the elderly father of one of the appellants. It is not a general question as to whether the proposed structure would be lawful but a specific one.
8. Consequently, it seems to me that I must define the scope of the appeal before determining whether it would be lawful. The letter provided by the appellant states a preference for delivering the structure in sectional form before putting it together on site. That is due to the practical difficulties in craning a single unit over the top of the house. Whilst photographs of units being craned have been provided no specific analysis of how that would be achieved in this instance has been put forward and it would clearly be a complex operation given the height of the dwelling, the presence of neighbouring dwellings and the distance from the adjacent highway to the proposed location of the unit.
9. Accordingly, it seems that the most likely way in which the structure would be brought to the site is that identified in option 2 and it is that proposal that I have based my decision upon.
10. As with all such appeals, the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

11. The appeal site, No. 28 Ringwood Road, is a two-storey, semi-detached, dwelling situated within a suburban location. It has a long and comparatively narrow rear garden which can be accessed either through the house or from the narrow shared driveway which runs between the side of the house and the side of No. 30. The proposal is for a rectangular structure³ to the rear of the

² Letter from Felix Bolger, Managing Director of Homelodge, dated 21 August 2017

³ I use the word structure as a neutral term, which could be applied to a caravan, mobile home or building, without any inference that it is one or the other.

dwelling which would contain a bedroom, bathroom and an open plan living area and kitchen.

Whether a Material Change of Use Would Occur

12. There is no dispute that No. 28 Ringwood Road is presently in use as a single dwellinghouse. The Council contends that the proposal would not be incidental to the use of the existing dwelling on account of the fact that no evidence to justify why the occupant would need to live in close proximity to the household has been provided and on the basis that the home could be accessed independently of the dwelling from the driveway to the side.
13. Firstly, to address the terminology used, it may be that reference to the word "incidental" derives from Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). That Class permits buildings within the curtilage of a dwellinghouse, subject to limitations, for purposes "incidental to the enjoyment" of the dwellinghouse. Established case law and practice has held that term to refer to purposes that do not form part of the primary living accommodation within the dwelling, such as living or sleeping accommodation, but to functions incidental to the primary residential use such as garages, summerhouses, sheds, enclosures for swimming pools and the like.
14. What is proposed here would not be an incidental use but would amount to additional primary living accommodation. That does not automatically entail that a material change of use would occur or that a separate unit of residential accommodation would be created. Whether that will be the case will depend on the specifics of any given case and the physical and functional relationship between the existing and proposed accommodation. Essentially, if the accommodation would be used in such a way that it formed an extension to the existing household, as opposed to the creation of a new residential unit then no material change of use would be involved.
15. It is not necessary for the occupant to have a specific medical need to live in close proximity to the family in the main home; many elderly relatives occupy annexes or other structures within the curtilage of dwellings simply on the basis that it is the preferred way in which the family seeks to care for the person as they move into advanced years. Thus, it is not a situation where the appellant needs to demonstrate exceptional circumstances, or a specific medical need as suggested by the Council.
16. In any event, some information was presented regarding the health of the appellant's father as part of the appeal and I have no reason to doubt that there is a genuine desire for him to live at the site as part of the family unit and to be cared for by members of the family. The Planning Statement identified that he would spend time with the family in the main dwelling and would take meals in the house.
17. In addition, the site plan submitted with the application shows that the structure would be located within the rear garden, close to the main house and not separated or fenced off from the dwelling in any way. Whilst separate access could, in theory, be gained from the driveway to the side that is not what is proposed here. The appeal statement also confirms that no separate postal address would be created, that the structure would share utility services

with the main dwelling, and that it would be disconnected and removed when no longer needed.

18. In my view, all of those factors point to a close association between the dwelling and the structure and a high degree of inter-dependence or, more specifically, the dependence of the elderly relative on the family in the main dwelling. It is the case that the structure would contain all of the facilities required for day to day living such that it could, in theory, be occupied independently of the main house. However, it appears to me that the Council's concerns have been founded on the basis of what may occur theoretically, as opposed to what is actually proposed.
19. As set out above, the appellant has clearly stated that would not be the case and, on the balance of probability, the circumstances before me indicate that the occupation would be ancillary to the dwelling such that no material change of use would occur. On that basis, I find that occupation by the elderly father of the appellant would not result in a material change of use or the formation of a new and independent residential planning unit. Clearly, if an LDC was granted on the basis of a specific set of circumstances and a structure was occupied at a future point in a different manner it would be open to the Council to consider whether a material change of use had occurred at that point in time.

Whether the Structure Would Amount to a Building

20. The Council contends that the structure would amount to a building operation for which planning permission would be required, largely on account of the intended degree of permanence and the fact that its size, or specifically its weight, would be sufficient to form a physical attachment to the ground. The appellant maintains that the structure would amount to a caravan, having regard to the definitions within the Caravan Sites and Control of Development Act (1960) (the 1960 Act) and the Caravan Sites Act 1968 (as amended) (the 1968 Act).
21. Established case law has set down three primary tests for assessing whether a structure amounts to a building; size, permanency and the degree of physical attachment⁴. No one factor will be decisive and any assessment will be a matter of fact and degree in the given circumstances. The question of whether a caravan would amount to a building has also been the subject of case law. In *Measor v SSETR & Tunbridge Wells BC* [1999] JPL 182 it was said that generally a mobile caravan would not satisfy the definition of a building due to its lack of permanence and attachment to the ground. It was also found that a conclusion that all caravans are buildings would offend against the provisions of Parts II and VII of the Town and Country Planning Act 1990 (the 1990 Act) and be contrary to common sense. That is not to say that a caravan could never become a building but having regard to *Measor*, that would not be the case in most instances unless, for example, there was a substantial degree of affixation to the land.
22. In that context, I shall address the issue of whether the structure would amount to a caravan in the first instance and, if that is the case, examine whether there is anything about the circumstances of the present case to

⁴ *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385 and *Skerritts of Nottingham Ltd v SSETR* (No 2) [2000] 2 PLR 102

- dictate that caravan should be construed as a building for the purposes of the 1990 Act.
23. Of particular relevance in this instance is the definition of a twin-unit caravan within sections 13(1) and (2) of the 1968 Act. That is because the appellant maintains that the structure would be a twin bay unit falling within that definition. The content of those sections will be familiar to the parties so I shall not reproduce the text in full. In effect, the 1968 Act establishes a three-part test in relation to dimensions, construction and mobility.
24. The dimension test relates to limits on length, width and the height of the living accommodation as set out in s13(2). The construction test relates to s13(1)(a) which requires that it is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices. The mobility test derives from s13(1)(b) which requires that the structure, when assembled, is physically capable of being moved by road from one place to another, whether towed or transported on a motor vehicle or trailer.
25. The structure would be 3.9m wide, 7.6m long and would be less than 3.05m in height such that it would fall well within the dimensions stipulated at s13(2). The appellant has confirmed that, once constructed, the structure would be physically capable of being moved by road on a trailer in accordance with s13(1)(b). A letter from a structural engineer from the company that would manufacture the structure has been provided to that effect and no evidence that would lead me to doubt that point has been provided.
26. The Council contend that the structure would not be mobile on account of the fact that there is no intention to move it regularly and on the basis that it would have a high degree of permanence. However, those points do not get to the heart of whether the structure would meet the definition of a caravan. In order to meet the terms of s13(1)(b) it is only necessary that it is *capable* of being moved by road, not that it would actually be moved regularly. For example many static holiday units on parks around the country fall within the definition of a caravan but do not move on a regular basis. The definition also Whilst the practicality of moving the structure may not be straightforward, the information presented suggests that it would be capable of being moved in one piece and, on that basis, I am satisfied that it would meet the mobility test.
27. The construction test requires that the structure is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices. The appellant has referred to an appeal decision relating to a site in West Devon⁵ where the Inspector concludes that there is no requirement that the process of creating the two sections should take place away from the site but that it is sufficient for the structure to be constructed in two separate parts on site and then joined together. In other words, it is suggested that it is necessary only that the act of joining the two sections together should be the final act of assembly.
28. Whilst I am mindful of the need for consistency in decision making I have strong reservations about that conclusion. The two sections should be "separately constructed" and designed to be "assembled on site". In other words, there is an element of pre-fabrication built into the definition whereby

⁵ APP/Q1153/C/08/2064995 and 6

the two separate sections should be constructed and then “assembled” on site by being bolted, clamped or joined together. The act of joining the two parts together is the element of work that is envisaged on the site and vice-versa, it appears to me that the implication in s13(1)(a) is that the structure should be brought to site in not more than two sections.

29. In that respect it appears to me that the definition differentiates between a caravan which should be separately designed and constructed before being assembled on site and more complex building operations that would take place on site. In my view it is significant that the structure would be brought to the site in more than two sections because that increases the complexity of the work required on site and, thereby, increases the likelihood that building operations would be involved.
30. There are significant uncertainties as to what works would be required on site to construct the unit. It is not clear how many sections would be brought to the site; whether the roof would be added separately; at what point internal walls would be erected; or whether the external and internal finishes would need to be added after the sections have been joined together. The information provided does not explain how the various sections would be joined together, other than to state that the final act of assembly would be to bolt the two sections together, after those sections had been constructed.
31. The sectional drawing provided shows dimensions for the stud walls with a notation of “cladding to be added” to internal and external walls. Whether that would be done after the two sections were joined is uncertain. Similarly, it is not clear if services would be pre-fitted or whether kitchen or bathroom units would be added after the structure had been joined together. The “Bay Plan” provided indicates that the two bays would join roughly half way through the bathroom and the line depicting each bay cuts through the bathroom sink. That is perhaps an indication that the bathroom would be fitted after the sections had been put together.
32. Consequently, there is significant uncertainty as to what would be involved in erecting or putting together the structure on site. What is clear is that it would not simply be a case of “assembling” or bolting together two pre-formed sections, as envisaged by the s13(1)(a). There would be a need to construct multiple elements and, thereafter, it seems likely that internal and external finishes would need to be added.
33. I find it difficult to appreciate the difference between that arrangement and the method of constructing other pre-fabricated and panelled structures such as sheds, garages, greenhouses or summerhouses. Complete houses are often manufactured off site and pieced together using modern construction techniques. The fact that such structures can be designed in panelled form does not exclude them from the definition of buildings and they will commonly be erected by a builder or similar tradesman.
34. Moreover, it appears to me that the only reason for constructing the structure as two sections on site before being joined together is in an attempt to meet the definition at s13(1)(a). I can see no other obvious practical reason why a sectional building would be constructed in that manner. For the reasons given above, I am of the view that the definition goes further than is suggested by the appellant. In other words, it is not enough to put together a structure which contains many parts into two parts *on site* and then join them together.

The erection of the structure in that way would be likely to involve building operations on site in that the construction of the structure would, in all likelihood, need to be undertaken by a builder or skilled tradesman. It is not the sort of activity that would be taken on by an average homeowner.

35. Having regard to the evidence before me the proposed method of construction would fail the construction test. In order to meet the statutory definition, there has to be compliance with all three parts of the test and that has not been demonstrated to be the case. As such, on the balance of probability, I conclude that the proposal would not amount to a twin unit caravan, as defined by the 1968 Act, as amended.
36. Given that the structure would not amount to a caravan due to the likely method of construction it is appropriate to apply the three tests of permanence, size and affixation to the ground in assessing whether it would amount to a building. As noted above, the proposed method of construction would not appear to be a straightforward matter of joining together two sections but of erecting multiple elements, after which internal and external fit out may be necessary. That is likely to be undertaken by a builder or similar tradesman with specific skills, having regard to the definition of building operations at s55(1A)(d) of the 1990 Act.
37. In terms of permanence, the indication is that the structure would remain in place for the lifetime of the appellant's father which, without further details, could be any number of years. There is no guarantee that it would be moved after that point and could be utilised for other ancillary or incidental purposes associated with the dwelling. Whilst I note the stated intention of removing the structure when it was no longer needed for the currently intended purpose it would be an expensive item to purchase and the reality is that most homeowners would not simply discard it but would put it to some other use. Consequently, the prospects are that it would have a substantial degree of permanence. Its size is not insignificant, being large enough to accommodate all of the facilities for day to day existence. It is larger than the existing garage on site which, I have no doubt, would amount to a building.
38. There would be no physical attachment to the ground, other than by the weight of the structure which would sit on pad-stones. Nonetheless, that factor alone is not decisive. Taking account of all three factors, in addition to the method of construction, I am of the view that the structure would amount to a building for the purposes of the 1990 Act. I appreciate that the inter-relationship between the definitions of a caravan and a building within the respective acts may result in what could seem to be an anomalous situation whereby a structure falling within the definition of a caravan may not be considered as a building, and therefore not require planning permission, whereas a similar sized or even smaller structure intended for the same purpose may be construed as a building for which planning permission is required.
39. However, that is the way in which the statutory definitions are set out and have been interpreted according to established case law. It is necessary to assess any given proposal on the information presented and that is how I have approached the matter in this instance. I have had regard to the other appeal decisions referred to by the appellant but my decision rests largely on the specific details as to how the structure would be erected in the present case. That judgement can only be made on the basis of the details presented in any

given proposal. Whilst drawings and appeal decisions have been presented, I cannot be sure of the precise level of detail that was before the respective Inspectors when they made their decisions and, as such, those decisions do not lead me to alter my approach to the current case.

40. The arguments put forward concentrated on whether the structure would be a caravan or a building and have not specifically addressed the issue of whether planning permission would be required if I was to find it would be the latter. There is no suggestion that it would amount to 'permitted development' under the terms of Class E, Part 1 of Schedule 2 of the GPDO. As noted above, the accommodation would essentially be an extension to the primary living space of the dwelling, rather than being incidental to it and, accordingly, planning permission would not be granted through the GPDO.

Conclusion

41. For the reasons given I find that the use of the structure would represent an extension of the primary living accommodation of the dwelling at No. 28 Ringwood Road. Whilst that would not be incidental to the existing use, it would not amount to the creation of a separate planning unit and no material change of use would result.
42. However, on the information before me, the structure would not fall within the definition of a caravan but would amount to a building operation. Planning permission would be required for such a building and no such permission has been granted.
43. Accordingly, the proposal would not be lawful and I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposal was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Chris Preston

INSPECTOR