



Appeal Decision

Site visit made on 23 July 2019

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 5 August 2019

Appeal Ref: APP/T3725/X/18/3218332

Holly Tree Cottage, Tapster Lane, Copt Green, Lapworth, Solihull B94 5PQ

- 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 Luke Withers against the decision of Warwick District Council.
 - The application Ref W/18/1510, dated 7 August 2018, was refused by notice dated 9 November 2018.
 - 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 stationing of a mobile home within the residential curtilage of a dwelling house for purposes ancillary to the main use of the host dwellinghouse.
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Decision

1. The appeal is dismissed.

Background information

2. The appeal property is located within the open countryside on Tapster Lane, which links Bushwood Lane to the south with Yew Tree Lane to the north. Further to the north the M40 cuts across the landscape. To the south-east there are two other cottages; Yew Tree Cottage and Keepers Cottage both of which are on the other side of Tapster Lane. Access to Keepers Cottage is via a private driveway to the north of Yew Tree Cottage.
3. The LDC application was for the proposed siting and use of a mobile home which would be sited to the south of the main house in the garden. It is stated that the use would be ancillary or incidental to the enjoyment of the dwelling house known as Holly Tree Cottage. The plans indicate that the mobile home would measure 10m in length and 6m in width and it is shown to consist of a kitchen, a living area, a shower room and two bedrooms. Thus it would provide all the means necessary for the separate day-to-day living needs of a dwellinghouse.
4. However, it is stressed that it would not be used as such and that it is needed and required for the occupation of the appellant's parents, in particular because the appellant's mother has a degenerative spinal condition. It is explained that the appellant is the main carer for his mother and that she may need to use a wheelchair and will need additional care if her condition deteriorates. The appellant's father, would also live in the mobile home and it is indicated that 2 bedrooms are required due to the mother's illness.
5. It is acknowledged that the mobile home would be fully self-contained but it is stressed that it would not constitute a separate postal address; that there would be no independent access or parking; that there would be no separate garden or curtilage; that the services would be provided directly from the main house; that it

would not be connected to the ground; that it would use the same septic tank; that there would not be separate utility bills and no separate Laundry facilities. It is also stressed and that there will be a link to the host dwelling, in the sense that the occupants (parents of the appellant) will be spending time socialising, cooking and eating and using other household facilities of the main house.

6. Due to the fact that the mobile home would not be fixed to the ground and that any services from the main house could easily be disconnected it is argued that it would not have any degree of permanence and would be capable of being moved by road in one or two sections on the back of a trailer. The LPA accepts therefore that the mobile home would fall within the definition of a caravan and would not constitute operational development.

LDC Appeals

7. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the LPA's decision and Section 195(2) of the Act requires an assessment to be made as to whether the refusal of the application is, or is not, well founded. The assessment is based on whether or not the proposed development, for which the certificate is sought, was considered to be lawful at the time of the application (20 July 2018). The planning merits of the proposed use are not relevant and there is no planning application before me. What needs to be assessed in this case is whether or not the siting of the mobile home would have been lawful for planning purposes on the date of the application.

8. The burden of proof lies with the applicant and the relevant test is '*the balance of probabilities*'. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient or precise information, a LPA may be justified in refusing to grant a certificate.

Development within the curtilage of a dwelling house

9. Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended 2016 (the GPDO) permits, within the curtilage of a dwelling house, any building which is incidental to the enjoyment of the dwelling house. There are various constraints and conditions but it is specifically indicated that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom (or bedrooms), bathroom or kitchen.

My Assessment

10. As indicated by the Council the basic expectation for annexe accommodation is that in order to constitute permitted development it must be ancillary or incidental to the enjoyment of the main residential dwelling of the site. In this case there is no dispute that the mobile home would be self-contained and it would be capable of covering a normal residential use by the provision of primary living accommodation in the form of a living room, a kitchen, two bedrooms and a shower room. Therefore, on its face the face, it contradicts the guidance in the GPDO relating to Class E requirements.

11. However, it is agreed by the parties and is a matter of law, that the fact that a unit is self-contained is not sufficient in itself to say that it is not ancillary. In the case of '*Uttlesford DC v Secretary of State 1992*' it was held that a self-contained annexe can still be ancillary to the main house. Each case must be assessed on its merits and it is a matter of fact and degree as to whether or not an annexe (in this case the mobile home) has a functional relationship to the main house.

12. I have referred above to the facts that access, utility bills, services, the postal address and indeed the curtilage of the main house would all be shared. These are all factors which are symptomatic of an ancillary use. But, in addition to these factors, in the '*Uttlesford*' case it was also held that it was necessary to consider how the annexe was to be used when assessing the separation between the main house and the annexe. In that case the occupant of the annexe was living alone and needed specific care at that time. There was no question about the level of dependency of the occupant of the annexe on the occupants of the main house and this tipped the balance in reaching a conclusion that its use was indeed truly ancillary.

13. In this case, whilst acknowledging and sympathising with the fact that the appellant's mother is suffering from the degenerative spinal disease, there is no submitted medical evidence that she is currently in need of full-time care. The appellant's father is stated by the Council to be still working and there is no evidence that he is suffering from any major health issues. It seems to me that at present, and in the absence of the appellant's mother requiring full-time medical care, the couple would be capable of generally looking after each other and living separate lives functionally from the appellant and his family.

14. In the *Uttlesford* case, the occupant of the annex was totally reliant on the occupants of the main house at the time of the LDC application and the evidence clearly showed this to be the case. That was why, on balance, the use of the annex was considered to be ancillary and/or incidental to the enjoyment of the dwelling house. There was a clear functional, ancillary and immediate need demonstrated for the care of the person occupying the annex in that case.

15. Whereas in this instance, I do not consider that the evidence is sufficiently precise or unambiguous to indicate that there is an immediate need for the appellant's mother to be fully cared for by the appellant in the mobile home. It has not been fully demonstrated why the appellant's parents would not be fully capable of cooking and looking after themselves and thereby using the mobile home as a separate dwelling. Thus the functional link that was obvious in the *Uttlesford* case has not been fully demonstrated in this instance.

16. I have referred above to the fact that the appellant is stated to be his mother's main carer but I have also referred to the lack of any clear medical evidence to indicate that she currently needs full-time care. Nor is there any evidence of where the appellant's currently live and why they are unable to live with and care for each other without relying on the functionality of the appellant's main dwelling.

17. It is perfectly understandable for children to wish to care for their elderly parents but, as referred to above, there are no specific details of the appellant's parents current residential circumstances or indeed, why an extension to the existing house could not either now, or in the future, provide the necessary accommodation for any future care of the appellant's mother.

18. With regard to the appellant's parents socialising with and taking meals in the main house, as indicated by the Council this could be the same as for any other family. There is nothing to indicate that most meals would have to be taken in the main house and there is no reason to believe that the appellant's parents would not be able to fully cater for themselves in the mobile home.

19. In conclusion, therefore, at this stage and on the basis of the evidence provided I agree with the Council. On the balance of probabilities and as a matter of fact and degree, I do not consider that it has been precisely and unambiguously demonstrated that the relationship between the use of the mobile home (by the parents) and the use of main house (by the appellant and the rest of the family) would currently

amount to an ancillary use or one that would be incidental to the enjoyment of the main dwelling house.

20. The appellant would not be precluded from making another future application if there was sufficient evidence to show that, on the balance of probabilities, the use of a mobile home on the site would be truly ancillary or incidental to the enjoyment of the main house. However, at this stage and in these particular circumstances, I consider that the Council's decision not to issue a LDC was sound. The appeal, therefore, must fail.

Other Matters

21. In reaching my decision I have taken into account all of the other matters submitted in favour of the appellant's case. These include the detailed statement and the Statutory Declarations made by the appellant, his wife and his parents. With regard to the declarations I do not question the matters set out and accept all the points relating to the particular family circumstances and their declarations that the mobile home would not be sold separately.

22. But any LDC would relate to the land. It would have to state that on the date of the application the stationing of the mobile home was lawful for planning purposes. Unlike a personal planning permission a LDC cannot be conditioned or related to a use by a specific person.

Formal Decision

23. The appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector