
Appeal Decision

Site visit made on 30 September 2019

by Mr Keri Williams BA, MA, MRTPI

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

Decision date: 16 October 2019

Appeal Ref: APP/V2635/X/18/3208572

Tollbar Cottage, Lynn Road, Middleton, PE32 1RQ

- 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 Miss Sarah Smith against the decision the Borough Council of Kings Lynn and West Norfolk.
 - The application, ref:18/00417/LDE and dated 9 March 2018, was refused by notice dated 13 July 2018.
 - The application was made under section 191(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 caravan incidental to the residential use of Tollbar Cottage.
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Preliminary Matter

1. The Council's decision notice refers to the appeal property as The Toll House. I have referred to it in this decision as Tollbar Cottage. That is the name used in the Lawful Development Certificate application.

Decision

2. The appeal is allowed and attached to this decision is a Lawful Development Certificate describing the use which is considered to be lawful.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a Lawful Development Certificate (LDC) was well-founded.

Reasons

4. Planning merits are not relevant in this case. They are not an issue for consideration in an appeal under section 195 of the Act, which relates to an application for an LDC. The burden of proof in this appeal rests with the appellant and the appropriate test of the evidence is the balance of probability. It is consistent with *Planning Practice Guidance (PPG)* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that an appellant's evidence is sufficiently precise and unambiguous.
5. The appeal site is a narrow, tapering piece of land located between the A47 and a side road. Tollbar Cottage is a small house sited towards the eastern end of the site. The caravan to which the LDC application refers is stationed towards

the western end of the site. Within the site there is also a double garage, a kennel block, a summerhouse and several sheds. There is a gated access near the garage and another near the caravan.

6. The Council refused to issue an LDC because it considers that the use of the caravan is not incidental to the enjoyment of Tollbar Cottage as a dwellinghouse. It considers that the caravan was sited to be used as a primary residence by family members. The distance separating the caravan from the cottage, the presence of a fence between them, the facilities available to those occupying the caravan and the existence of a separate access are considered to support that position. The caravan is considered capable of being a primary residence and the Council considers it to constitute a separate planning unit, so that a material change of use has occurred.
7. Like many caravans, this one is capable of providing for sleeping, washing and cooking. Nevertheless, it is necessary to consider the character of its use. Miss Smith explains that the cottage is occupied by herself, her mother and her daughter. The caravan provides sleeping and private space for Miss Smith's brother and sister-in-law. They provide care in the cottage for Miss Smith's elderly mother, who is frail and requires extensive care and support. They also provide care for Miss Smith's daughter. The outside living space is shared by those sleeping in the caravan and those living in the cottage. The living accommodation within Tollbar Cottage itself is limited and is insufficient to provide for all those living on the site, particularly in respect of sleeping accommodation.
8. Miss Smith's evidence on the character of the use of the caravan is sufficiently precise and unambiguous. The submitted evidence suggests that the site as a whole is occupied by family members, the residents providing mutual care and support and living as an extended family. The sharing of electricity supply and provision for foul sewage disposal between the cottage and the caravan is consistent with the appellant's position. It suggests that those occupying the caravan depend on facilities provided for the cottage. The distance between the caravan and the cottage would not prevent the caravan being used in a manner incidental to the enjoyment of the cottage in the manner described by Miss Smith. Nor would the fence to which the Council refers have that effect. That fence has since been removed. Fencing is said to be required to control family dogs and there is other fencing within the plot. Nevertheless, the caravan is sited within the curtilage of Tollbar Cottage. Miss Smith also explains that there were two accesses when the property was acquired, so that the stationing of the caravan has not led to the creation of a new access.

Conclusion

9. Having regard to the above and to all other matters raised, it is concluded on the balance of probabilities that the stationing of the mobile home has not resulted in the creation of a separate planning unit. It has not led to a material change of use of the land. The Council's decision not to issue a Lawful Development Certificate was therefore not well-founded. The appeal should succeed.

K Williams

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 9 March 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown 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 stationing of the caravan has not resulted in a material change of use of the land.

Signed

K Williams

INSPECTOR

Date 16 October 2019

Reference: APP/V2635/X/18/3208572

First Schedule

The stationing of a caravan incidental to the residential use of Tollbar Cottage.

Second Schedule

Land at Tollbar Cottage, Lynn Road, Middleton, PE32 1RQ.

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: 16 October 2019

by **Mr Keri Williams BA, MA, MRTPI**

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