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# Appeal Decisions

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> January 2020

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## **Glenville, Rayleigh Downs Road, Rayleigh, SS6 7LR**

### **Appeal A: APP/B1550/X/19/3232209**

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by Miss Kerry Walsh against Rochford District Council.
  - The application (Ref. 19/00343) is dated 7 April 2019.
  - 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 stationing a caravan within the curtilage of the dwellinghouse.
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### **Appeal B: APP/B1550/X/19/3236867**

- 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 Kerry Walsh against the decision of Rochford District Council.
  - The application Ref. 19/00636/LDC, dated 11 July 2019, was refused by notice dated 3 September 2019.
  - 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 stationing a caravan within the curtilage of the dwellinghouse.
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## **Decisions**

### **Appeals A and B**

1. The appeals are 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. Both appeals relate to the same proposal and so I shall deal with them together. When the Council failed to determine the first application within the prescribed period Appeal A was lodged and a further application made. The Council refused the second application and Appeal B is against that decision. For the purposes of Appeal A it shall be assumed that the authority decided to refuse the application in question as provided by section 195(5).
3. In both Appeal Forms the box has been ticked to indicate that the applications were made under section 191 of the 1990 Act which is for existing

development. The applications were made for a proposed use and the Council has confirmed it determined Appeal B on that basis. Therefore, I shall treat the appeals as relating to applications made under section 192.

4. The Council's decision notice describes the proposal as being for the 'siting of a mobile home'. This differs from the wording in the application forms which refer to the 'stationing of a caravan within the curtilage of the dwellinghouse'. There is no indication that a change of wording was agreed between the parties. Neither description involves a use of land. It is the use to which the caravan/mobile home is put which is relevant. Whilst details were not submitted originally, the Appeal Form makes clear that the caravan/mobile home would be used for residential purposes in conjunction with the main house. Having consulted the parties and with the agreement of the appellant, I have changed the description to the stationing of a caravan within the curtilage of the dwellinghouse at 'Glenville' for ancillary residential use.
5. The appeals involve the consideration of relevant planning law and the facts which have not necessitated a site visit.
6. In an LDC appeal the planning merits of the proposal are not relevant. My decision must rest on the facts of the case and the application of relevant planning law and judicial authority.

### **Main Issue**

7. The main issue is whether the proposed use described in the applications would have been lawful if instituted or begun at the time of each application.

### **Reasons**

8. The appellant seeks a LDC to site a caravan in the garden of her home for residential use. 'Glenville' is a bungalow occupying a large plot and the caravan is proposed to be sited in one corner of the rear garden beside the shared boundary with the neighbouring property.
9. In order for an LDC to be granted under section 192 of the 1990 Act, the onus is firmly on the appellant to show that the development would be lawful.
10. In law, a caravan is only a caravan if it meets the criteria laid down in the Caravan Sites and Control of Development Act 1960 ('CSCDA') and the Caravan Sites Act 1968 ('CSA') as amended which give rise to considerations of construction, mobility and size.
11. In *Measor v SSETR* [1999] JPL 182, the Court was wary of holding, as a matter of law, that a structure which satisfies the definition of a mobile home under section 13 of the CSA 1968 could never be a building for the purpose of the 1990 Act, but it would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment.
12. Subject to certain exceptions, section 29(1) of the CSCDA defines a caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.
13. The Council argues that it cannot identify on the information provided whether

the structure proposed would be of a specification to meet the definition of a twin-unit caravan within section 13 of the CSA. There has been some confusion over the proposed measurements, but the appellant has confirmed that the intention is for a caravan measuring a maximum of 45ft by 22ft as shown in the submitted drawings. There is no dispute that the dimensions fall within the specified size limits for a "caravan" for the purposes of the CSCDA. It is the details in terms of its mobility and construction which the Council consider are lacking.

14. As the appeals concern applications made under section 192 of the Act for a proposal which is yet to be implemented, the appellant's description of the proposal must be taken at face value unless it is infeasible or patently wrong.
15. A LDC can only certify the use applied for. In this case it is the use of land for the stationing of a caravan. The appellant states that it would be a caravan within the size limits which would be built off site and transported via a trailer in two sections then bolted together. It would be moveable. The details of how that would be achieved are not provided, but so long as it is a caravan within the statutory definition that is stationed on the land then that is what matters. As the Council acknowledges, based on the appearance and dimensions, the proposal would appear to be a twin unit caravan.
16. Concerns are raised by the Council over a 'slight skirt' around the elevations which it says could be interpreted as foundations or as a structure fixed to the ground. The appellant has clarified that the skirting is for cosmetic purposes. It is plastic and would not be strong enough to support a structure and it would not form any foundations.
17. The appellant further states that the plans intend to show the type of base the caravan would sit on rather than it being fixed to the ground and a permanent structure. The covering letter with the first application also confirms that the caravan would be placed on the ground without fixation. It would sit on top of raised blocks. A hard base is unlikely to affect the mobility of the unit.
18. By the same token, the application has been made for the 'use' of land for the stationing of a caravan and not for operational development. This is clear from the description and the boxes selected in the application form. Any certificate granted would be for a use of the land only. If the appellant sought to do anything amounting to operational development, then the LDC would be of no benefit. Likewise, if the use differed from that certified as lawful.
19. The Council refers to section 55(2)(d) of the 1990 Act which provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development of the land. The Council concludes that it is unable to ascertain if the structure will be incidental to the main dwellinghouse.
20. A distinction is to be drawn between an incidental use and one which is part and parcel of an existing lawful use. The first consideration is whether the proposed use amounts to a material change of use of land within the meaning of section 55(1) of the 1990 Act. It is well established in law that a caravan can be stationed within the curtilage of a dwellinghouse without constituting a material change of use of land for planning purposes. Thus, a caravan used to provide additional primary residential accommodation would be part of the residential use provided it is comprised within a single residential planning unit.

21. In neither case, would development be involved, either by virtue of s55(2)(d) or because there had not, as a matter of fact and degree, been a material change of use of the relevant planning unit from use as a single dwellinghouse.
22. The floor plan shows two bedrooms, a bathroom, a small utility space and open plan living/dining room and kitchen area. Even though the accommodation would provide facilities for independent day-to-day living they are typical of those found within a caravan. It would not necessarily become a separate planning unit from the main dwelling. That is a matter of fact and degree.
23. The appellant explains in the grounds of appeal that the caravan would be used by her elderly mother as additional accommodation as the main house is already fully occupied. There will be direct access from the caravan to the side/rear of the property and she would share the laundry room, kitchen and 'full' bathroom with occupants of the main dwelling. All bills will remain the sole responsibility of the main dwelling to which all utilities will be connected.
24. In this case it is clear there would be a close family and functional link between the uses. The land would remain in single ownership and control.
25. The Council fears that the large plot occupied by the caravan is capable of being severed from the main dwelling particularly as access could be gained without going through the house. There may be opportunity for the caravan to become independent from the main dwelling, but that is not what is proposed. Use of the caravan in the manner described with a shared access would not involve physical or functional separation of the land from the remainder of the property. The character of the use would be unchanged. Moreover, a LDC would be for a caravan that remains within the curtilage of 'Glenville'.
26. Thus, the use described would form part and parcel of the residential use within the same planning unit. Only if operational development which is not permitted development is carried out or if a new residential planning unit is created, will there be development. If the caravan is not used in association with the dwelling, as described, and the physical or functional link is severed, then the LDC will be of no use to the appellant.
27. Based on the application and clarification provided since, neither scenario is proposed. Accordingly, the proposal would not have required separate planning permission. In the circumstances of this case, I find that the stationing of a caravan in the garden of 'Glenville' for the provision of additional living accommodation as described by the appellant would, as a matter of fact and degree, have been lawful at the time of each application.

## **Conclusion**

28. For the reasons given above I conclude, on the evidence now available, that if the Council had refused the application in Appeal A their refusal would not have been well-founded nor was the refusal well-founded in Appeal B, to grant a certificate of lawful use or development in respect of the stationing of a caravan within the curtilage of the dwellinghouse at 'Glenville' for ancillary residential use. Both appeals should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*KR Seward*  
INSPECTOR

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## 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

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**IT IS HEREBY CERTIFIED** that on 7 April 2019 and 11 July 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in a bold black line 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 proposed stationing of the caravan within the residential curtilage and its use to provide additional residential accommodation associated with the main dwellinghouse at 'Glenville' for the applicant's family would have been part and parcel of the residential use within the same planning unit. Therefore, it would not have constituted a material change of use requiring planning permission.

Signed

*KR Seward*

INSPECTOR

Date: 24<sup>th</sup> January 2020

References: APP/B1550/X/19/3232209 & APP/B1550/X/19/3236867

### **First Schedule**

The stationing of a caravan within the curtilage of the dwellinghouse at 'Glenville' for ancillary residential use.

### **Second Schedule**

Land at Glenville, Rayleigh Downs Road, Rayleigh, SS6 7LR

## 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 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 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.

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: 24<sup>th</sup> January 2020

by **K R Seward Solicitor**

**Land at: Glenville, Rayleigh Downs Road, Rayleigh, SS6 7LR**

**References: APP/B1550/X/19/3232209; APP/B1550/X/19/3236867**

Scale: NOT TO SCALE

