



Appeal Decision

by Richard S Jones BA(Hons) BTP MRTPI

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

Decision date: 23 April 2020

Appeal Ref: APP/R1845/X/19/3227384

Hodge Hill Farm Barns, The Granary, Birmingham Road, Kidderminster, DY10 3NS

- 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 Giles and Mrs Michelle Smith against the decision of Wyre Forest District Council.
 - The application ref: 19/0056/CERTE, dated 29 January 2019, was refused by notice dated 19 February 2019.
 - 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 lawful use of caravan for human habitation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the appellants' names from the appeal form. The application for an LDC was made in the name of Mr and Mrs Roy Smith, but it appears that Mr Roy Smith is the appellants' agent. Earlier proceedings described further below indicate that Mr Giles and Mrs Michelle Smith live at the appeal property.
3. I was scheduled to visit the appeal site on 24 March 2019 but could not do so given advice then in place to avoid non-essential travel in order to combat the spread of coronavirus and Covid-19. I wrote to the parties to advise that, since the appeal only concerns matters of lawfulness, I did not need to see the site in order to reach a decision. The parties did not object, and I am satisfied that neither has been prejudiced in my making a decision on the papers.

Planning History

4. On 15 November 2016, the Council issued an enforcement notice alleging the erection of a single storey orangery/garden room and decking within the curtilage of the dwellinghouse at The Granary, Barn 3, Hodge Hill Farm Barns. This appeal concerns the same property, as shown by the plans attached to the enforcement notice and submitted with the LDC application.
5. Appeals made by the appellants against the notice were dismissed on 19 June 2017¹; I shall refer to the 'enforcement appeals [decision]'. The notice required the demolition of the orangery/garden room, and the removal of all materials resulting from the demolition, plus the removal of the decking from the land

¹ APP/R1845/C/16/3165263 and APP/R1845/C/16/3165264

within three months. That period for compliance would have commenced with the date of the enforcement appeals decision.

6. I understand that the Council sought to prosecute for non-compliance with the notice, and so the alleged orangery was then removed from the site. Any matters relating to the court proceeding are outside of my remit.

The LDC Application/Appeal

7. The enforcement appeals were made under s174(2)(c) of the 1990 Act, meaning that the matter for the then appointed Inspector to determine was whether the erection of a single storey orangery/garden room and decking was in breach of planning control. The appellants' case was that the structure described by the Council as an orangery was not a building but a caravan². The Inspector disagreed, finding that a building had been constructed and it required planning permission.
8. The appellants have since not only moved the structure from the site, but also modified it, such that they now consider it to be a caravan which could be returned to the property and lawfully stationed for domestic use.
9. I have seen correspondence between the parties and the Planning Inspectorate as to whether this appeal was properly made under s191 for an LDC for an existing use – or whether it should have been made under s192, for an LDC for a proposed use and, if so, whether it can be determined as if it had been made under s192 in the first place. In this case, as set out below, the discussion is academic because I could not grant an LDC for an existing or proposed use.

Main Issue

10. In an LDC appeal, the onus is on the appellants to make their case on the balance of probabilities. The main issue is whether the use of land for stationing a "caravan designed for human habitation" would be lawful.

Reasons

11. As indicated above, the appellant's case is that the structure subject to the Enforcement notice appeals has been modified such that it now has axles and wheels, and it has been fitted with cooking, washing and bathroom facilities, plus areas for sleeping and rest. They say that the structure is thus designed or adapted for human habitation and capable of being moved from one place to another, so that it meets the legal definition of a caravan.
12. The Council refused to grant an LDC firstly on the basis that the structure had already been found to be a building. It is unsurprising that the Council referred back to the enforcement appeals decision, since this LDC application was expressly made with regard to the same structure. I also note that, under s191(2)(b) of the 1990 Act, uses and operations are lawful only if they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
13. However, the enforcement notice could not on its own lead to this appeal being dismissed, because it was directed at building operations – the erection of an orangery – whereas an LDC is sought in respect of a use of land. A use cannot

² The previous Inspector described the alleged orangery as an 'object', to use a neutral term, before finding that it was a building. Similarly I shall use the term 'structure', since that could equally mean a building or caravan.

lawfully take place in any structure which is not itself lawful, but the appellants' case is that the use would take place within something that should be considered as a caravan in law – and the stationing of a caravan is normally undertaken to facilitate a change of use of land. It is therefore necessary for me to address whether the structure is or would be a caravan and whether the existing or proposed use would be lawful.

Is the Structure a Caravan?

14. I shall deal firstly with whether the structure is or would be a "caravan" as defined under s29 of the Caravan Sites and Control of Development Act 1960 or a "twin unit caravan" as defined under s13 of the Caravan Sites Act 1968. For the latter, it must be composed of not more than two sections separately constructed and designed to be assembled on a site. However, the Inspector who made the enforcement appeals decision observed that the structure was assembled on site with far more than two sections. That finding of fact is not changed, and the structure is not made into a caravan, through the addition of more parts, that is, wheels and axles.
15. A structure does not need to be a "caravan" in law in order to not be a building. In the enforcement appeals decision, the Inspector considered the structure in the light of well-established legal tests: size, permanence and physical attachment. She found that the structure was a building on the basis that it had not been moved since its construction, was not likely to be moved, and appeared to be held in place to a degree by the alleged decking.
16. Since the structure has been removed, it is not presently a building on the site. However, the previous Inspector also noted that a structure does not have to be on land for 365 days per year in order to have consequences for the character of the land and thus be considered permanent. The appellants' evidence suggests that, if it is brought back to the site, the structure might then be moved *within* the site, but not that it would be moved on and off the land again.
17. It thus appears to me that, on the balance of probabilities, the structure is not a caravan as a matter of fact and degree.

Is the Existing or Proposed Use Lawful?

18. The appellants have focussed their evidence on whether the structure is a caravan, and in doing so have not made clear what the existing (or proposed) use of the land and structure is or would be. Caravans can be sited, for example, for the permanent residential use of land; or residential use by holiday-makers or farm workers or other prescribed occupiers; or to store things in; or for purposes incidental to some other primary use. Land can also be in use for the storage of caravans.
19. The appellants have described the existing or proposed use as 'domestic' or 'human habitation' but those terms suggest three possibilities in respect of the claimed caravan:
 - Use as additional residential space that could be considered, as a matter of fact and degree, as part and parcel of the existing dwellinghouse³; or

³ Such that there is no material change of use which requires planning permission.

- Use for purposes incidental to the use of the existing dwellinghouse⁴; or
 - Use as a self-contained residential unit that is separate from the existing use of the dwellinghouse.
20. Without clarity on the nature of the existing or proposed use, I cannot reasonably conclude that the case for an LDC has been made. That is enough for the appeal to fail, but I would also say that such evidence as has been given by the appellants indicates that the use would not be lawful on the balance of probabilities; they have stressed that the structure is fitted out so that *'it is not dependant on the adjacent house for its use for human habitation'*. They may have made that statement merely to show that the structure is capable of being a caravan, but it could also be reasonably taken as suggesting that the structure would be stationed for residential use that is wholly separate to the residential use of the dwellinghouse.
21. For the avoidance of doubt, the subdivision of an existing residential planning unit to create two residential properties is normally a material change of use. The appellants have not therefore shown that the stationing of the claimed caravan for domestic use did not or would not represent a material change of use of the land which requires planning permission. They have also not shown that the existing or proposed use subject to this appeal might be lawful because planning permission has already been granted.

Conclusion

22. I conclude that the appellants have not demonstrated that the structure to be stationed on the land would be a caravan, or that the use for which an LDC is sought, that is, domestic use or human habitation of a caravan, was or would have been lawful on the date of the LDC application on the balance of probabilities. It follows that the Council's refusal to grant a certificate of lawful use or development in respect of 'caravan for human habitation' was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.
23. For completeness, I will add that it would have made no difference to the outcome of this appeal if the structure had very obviously been a caravan. The central question would still have been the lawfulness of the use for which the caravan is or would be stationed.

Richard S Jones

INSPECTOR

⁴ An incidental use is one that is not part and parcel of but is functionally related in some normal way to the primary use of a planning unit. Under s55(2)(d) of the 1990 Act, 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 is exempted from the definition of development. Article 3 and Schedule 2, Part 1, Class E of the *Town and Country Planning (General Permitted Development) (England) Order 2015* grants planning permission, subject to conditions and limitations, for the provision within the curtilage of the dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such – although local authorities can withdraw 'permitted development' rights by various means.