
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2020

Appeal Ref: APP/B9506/X/19/3227611

Land at Burley Manor Hotel, Ringwood Road, Burley, Hampshire BH24 4BS

- 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 New Forest Hotels plc against the decision of New Forest National Park Authority.
 - The application, Ref 19/00039, dated 14 January 2019, was refused by notice dated 6 March 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 described as the siting of a shepherd's hut to be used for additional guest accommodation as part of the hotel.
-

Decision

1. The appeal is 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. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers. LDC applications under section 192 are not the equivalent in law of a planning permission and therefore there are no issues of planning merits to be considered.
3. The Procedural Guide - Certificate of lawful use or development appeals – England, dated 23 March 2016, states at paragraph A.9.4. "Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 13 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents. I sought the views of the main parties and no objections to this approach were received within the specified timescales.
4. The application form does not contain a description of the development but it is described within the applicant's Planning Statement, as I have set out above. The Council have modified this for their decision notice and describe the development as 'Proposed siting of 1no. Shepherds Hut for a purpose ancillary to the use of the hotel'. Notwithstanding that the plans show two shepherd's huts that are conjoined, the local planning authority do not have the power to modify the terms of an application made under section 192 without the prior

consent of the applicant, which I am not aware has been given. I will therefore proceed on the basis of the description set out in the applicant's Planning Statement.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well founded or not well founded.

Reasons

6. The appeal relates to a hotel that makes use of a grade II listed 19th century former manor house, which has been extended and is set within spacious grounds. Access is via a long drive from the main road and the appeal site and the settlement nearby lie within a conservation area. The appellant proposes to use part of the grounds to site two conjoined shepherd's huts to be used as 'something different', bespoke guest accommodation, comprising one en-suite bedroom.
7. The principle point at issue is whether the proposed use would amount to development within the meaning of section 55 of the Act. The Council accepts the proposal would not amount to operational development and that the twin unit shepherd's hut meets the definition of a caravan set out in the relevant legislation¹. I see no reason to take a different view and within this decision I will refer to the twin unit as one shepherd's hut.
8. However, the Council are of the opinion that the use of the shepherd's hut would amount to a material change of use. As such, it is necessary to ascertain the correct planning unit and the present and proposed primary uses of the site. The leading case on the subject is *Burdle*² and the tests within it start with the unit of occupation and turn on the concept of physical and functional separation.
9. The parties agree that the hotel and the grounds comprise one planning unit and I see no reason to take a different view. There are a number of activities that take place in the unit but essentially the primary use of the unit is as a hotel, which has a physical and functional connection with all the buildings and grounds within the site.
10. With regard to the physical relationship of the shepherd's hut, it would be sited within the grounds of the hotel, not far from the swimming pool and within sight of the main hotel building. The drawings show that it would not be separated from the hotel by fencing or any other form of division to create a separate private area. The hotel has been extended at the rear and this extension curves round to form an enclosed area. Parking and other hotel buildings are outside this enclosed area, which contains the swimming pool. The hut would be sited within 13m of the hotel extension. It would be connected to the hotel's water, sewage and power supplies. With regard to access, it would appear that this will be via the main hotel building.
11. With regard to how the shepherd's hut would function, it would be available to book as hotel accommodation in the same way as other rooms are booked in

¹ Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968

² *Burdle v SSE* [1972] 1 WLR 1207

- the hotel. It would be used in the same way as a hotel room with the occupiers relying on the hotel for food and drink provision.
12. The proposed plans show that the internal layout of the shepherd's hut would contain a sleeping area, a raised bath, WC, shower, a cloak's area, a sitting area and a log burner. This layout accords with the appellant's description of the proposed use, namely that it would be used as an en-suite bedroom.
 13. The Council state that the proposed use of the shepherd's hut would be as self-contained accommodation with minimal dependence on the main hotel building. This is because, in their view, shepherd's huts found on other sites usually contain cooking facilities but also due to the size of the twin unit. However, as there would be no cooking facilities within the shepherd's hut, the basis for the Council's stance is unfounded. There is no mention within the application form or the accompanying Planning Statement of cooking facilities and none are shown on the plans. The Council also submit that the use would not be an incidental use to the primary hotel use as the extra accommodation would generate additional business use and as such it would amount to a material change of use. This argument overlooks the fact that the purpose of the extra accommodation is to generate business but as the extra accommodation amounts to one more en-suite room, the primary purpose of the planning unit as a hotel would not change.
 14. Taking all this into account, I consider that the proposed use of the shepherd's hut would be functionally related to the host property and its use as a hotel. In effect, the siting of the shepherd's hut would amount to the provision of a hotel annexe or an extension. It would be akin to a hotel where there are bedrooms in detached outbuildings within the grounds. The Council are concerned that the detached nature of the shepherd's hut would mean the use would not be the same as a bedroom within the main hotel. However, in my view, distance would not change the use of the accommodation, it would still be used as a bedroom.
 15. The appellant cites case law and other appeal decisions to support his case and the Council takes issue with these and refers to a more recent appeal decision in Humberside. Neither party provides a reference for this appeal decision, however, from the available information, the current appeal can be distinguished from the latter in terms of scale. In the Humberside appeal, the Inspector was considering the use of nine extra bedrooms within three caravans for bed and breakfast accommodation compared to the six bed and breakfast rooms within the public house. The shepherd's hut though would provide one bedroom in addition to 40 that already exist at the hotel. This appeal decision and those referred to by the appellant do not direct my own conclusions. I take them into account but they rely on their own particular circumstances and the evidence before the Inspectors.
 16. To summarise, I am required to determine the appeal on the basis of the claimed use. This is that the land would be used to site a shepherd's hut which would be used as additional hotel accommodation. The shepherd's hut would not be separated from the main hotel and I am therefore satisfied that the development would not lead to the creation of a new planning unit. The status of the hotel as a listed building and its location within a conservation area has no bearing on my decision. Taking these factors into account, I conclude as a

matter of fact and agree that the siting and use of the shepherd's hut as proposed would not amount to development requiring planning permission.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of a shepherd's hut to be used for additional guest accommodation as part of the hotel was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR

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

IT IS HEREBY CERTIFIED that on 14 January 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 use of land proposed would not amount to a material change in the use of the land on which the shepherd's hut is to be sited. It would not therefore fall within the meaning of development set out in section 55(1) of the Town and Country Planning Act 1990, as amended and no planning permission is required.

Signed

D Fleming

Inspector

Date: 03 June 2020

Reference: APP/B9506/X/19/3227611

First Schedule

Second Schedule

Land at Burley Manor Hotel, Ringwood Road, Burley, Hampshire BH24 4BS

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 /operations 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 /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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 my decision dated: 03 June 2020

by D Fleming BA (Hons) MRTPI

Land at: Burley Manor Hotel, Ringwood Road, Burley, Hampshire BH24 4BS

Reference: APP/B9506/X/19/3227611

Scale: not to scale

