
Appeal Decision

Site visit made on 2 June 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2020

Appeal Ref: APP/C1570/X/19/3221569

The Bothy, Keeres Green, Aythorpe Roding CM6 1PQ

- 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 and Mrs G Twaddle against the decision of Uttlesford District Council.
 - The application Ref UTT/18/3018/CLE, dated 1 November 2018, was refused by notice dated 21 December 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 described as 'use of the mobile home in conjunction with the host dwelling The Bothy'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Application for costs

2. An application for costs was made by Mr and Mrs G Twaddle against Uttlesford District Council. This application is the subject of a separate Decision.

Procedural Matters

3. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended (the Act), which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issues

4. For the purposes of the Act, uses are lawful at any time if no enforcement action may then be taken of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason (s191(2)).
5. The Council has refused to grant a certificate because in its view the mobile home does not meet the criteria for permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted

Development) Order 2015 (GPDO). In their statement the appellants make it clear that they consider the development does not comprise either operational development in the form of a building nor change of use of the land on the basis that the mobile home fits the definition of a caravan.

6. Having regard to s195(3) of the Act, the main issue is whether the Council's decision to refuse the application for a LDC was well-founded, taking account of, but ultimately irrespective, of the reasons given by the Council for its decision. Therefore, it matters not that the Council's reasoning is based on a different premise to that set out by the appellants.

Reasons

7. In 2017 a Certificate of Lawful Use or Development (CLUPD) was granted for the stationing of a caravan for use as accommodation while The Bothy was being constructed (Council Ref UTT/17/1595/CLP) (the 2017 CLUPD). Whilst in the covering letter which supported this application there is reference to use of the caravan following completion of The Bothy, the 2017 CLUPD was granted on the basis that the development fell within Schedule 2, Part 4, Class A of the GPDO.
8. The appellants refer to the 2017 CLUPD having been granted under Schedule 2, Part 1, Class E of the GPDO. However, this is not correct, and the evidence makes it clear that the caravan for which a certificate was granted was permitted development only during the duration of the construction of The Bothy. There is no dispute between the parties that The Bothy is now completed and any caravan on the site does not benefit from the permitted development rights confirmed by the 2017 CLUPD.
9. The appellants have made two applications to the Council for a LDC. The second application is the subject of this appeal and the appellants say that in-depth information has been provided regarding the relationship of the extended family living in the mobile home to that of the occupiers of The Bothy.
10. The Council has been consistent in its approach to both applications for a LDC by assessing the development against Schedule 2, Part 1, Class E of the GPDO. Class E relates to buildings or enclosures within the curtilage of a dwellinghouse. In order for permitted development to apply in this case the mobile home would have to constitute a 'building' which is the point which is disputed by the appellant.
11. The Council has not provided a Statement and relies on its delegated report. This report does not address the appellant argument that the mobile home does not comprise operational development i.e. that it is not a building, which is central to the question of whether the development falls under Class E.

Is the mobile home a caravan or a building?

12. In this case the plans of the mobile home show a building 12 metres long and 6.2 metres wide. In response to a question from me the appellants have confirmed that the maximum internal height of the mobile home is 2.9 metres. Thus, the mobile home falls well within the limits imposed under Schedule 13(2) of the Caravan Sites Act 1968 definition of a caravan.
13. The plans show the mobile home on a concrete plinth and the appellant says that it is connected to electricity, gas and water services which are shared with

The Bothy. However, this degree of attachment does not provide a level of permanence normally associated with a building. Furthermore, the plans show the mobile home having wheels which suggest that it is physically capable of being moved by road from one place to another.

14. On the basis of the evidence and the lack of any contrary view from the Council in the light of the appellants statements, I consider that, applying the balance of probability, the mobile home falls within the definition of a caravan. Consequently, in this case it does not constitute a 'building' and cannot be considered as permitted development under Class E.
15. I conclude that the Council's decision to refuse the application for a LDC was not well founded. Nevertheless, it does not follow that it would be appropriate for me to grant a LDC without further examination of the evidence because the matter in question may or may not be lawful on the evidence taken as a whole. The purpose of the LDC procedure is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken

The use of the mobile home

16. The existing development for which the LDC is sought is use of a mobile home in conjunction with the host dwelling The Bothy. The block plan which was submitted shows the mobile home located close to the road forward of the front wall of the host dwelling and its attached garage block. There are no details of the internal layout of the mobile home, but it is annotated as having two bedrooms and described as also having an entrance lobby/utility area, a living room with kitchen area that contains a cooker and sink, a bathroom and an en-suite.
17. During my site visit I noted that in common with some of other dwellings in the area The Bothy occupies a large plot. The dwelling occupies one end of the plot and the mobile home is located between it and a large grassed area. The plot is not subdivided by any form of boundary treatment thus it is fully accessible to the residents as garden/amenity space. However, there is an extensive grassed mound between the lawn closest to the house and the mobile home.
18. The mobile home is orientated so that its main outlook is towards the large grassed area and the entrance to it is via steps on the far side of the structure relative to The Bothy. The access between the Bothy and the mobile home is via the gravel driveway serving the plot as a whole.
19. Whilst the layout of the site affords a degree of separation between the mobile home, the appellants explain that the occupants, who are the parents of one of them, are reliant on them for a number of issues related to their advanced years. Furthermore, there is evidence in the form of a letter from a consultant who is looking after one of the occupants of the mobile home to the effect that given her particular health issues she would benefit from such care. There is also reference to the occupiers of the mobile home regularly having meals in The Bothy, watching television and socialising with other family members and having all of their laundry done there.
20. The Council has not provided any evidence to counter the description of the functional relationship between the occupiers of The Bothy and the occupiers of the mobile home. The evidence points strongly to the use of the mobile home falling within section 55(2)(d) of the Act which states that the use of any

building or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not amount to development.

21. Whilst the mobile home contains all the necessary fixtures and fittings for independent living and its position relative to The Bothy provides for an element of physical segregation from it, it is established case law that even if a caravan or outbuilding contains the accommodation to enable independent living, provided that there is a clear functional link between the house and the outbuilding/caravan, then it is a matter of fact and degree to determine whether an additional planning unit is created.
22. In this case the evidence is clear that the mobile home is being used as a typical granny annex, and so, as a matter of fact and degree, it is incidental to the use of The Bothy.
23. If the caravan is used in the manner set out in the application, then such use would not be development under section 55(2)(d) of the Act. The application can only be assessed on the basis of the stated purpose. If some other use takes place or it is not used in association with the dwelling, then it would not benefit from the LDC.
24. For the reasons given above, and on the evidence available, the Council's refusal to grant a certificate of lawful development in respect of the use of the mobile home in conjunction with the host dwelling The Bothy, Keeres Green, Aythorpe Roding was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

Sarah Dyer

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 1 November 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red 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 use of the mobile home in conjunction with the host dwelling The Bothy, Keeres Green, Aythorpe Roding would not result in the formation of a separate planning unit or independent unit of occupation, and no material change of use would occur, provided that the property was used in the manner set out in the application. Consequently, the use of the outbuilding as an annex does not involve development within the meaning of the Act.

Signed

Sarah Dyer
Inspector

16 June 2020

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First Schedule

Use of mobile home in conjunction with the host dwelling The Bothy

Second Schedule

Land at The Bothy, Keeres Green, Aythorpe Roding CM6 1PQ

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 June 2020

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Land at: The Bothy, Keeres Green, Aythorpe Roding CM6 1PQ

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