



Appeal Decision

Site visit made on 26 June 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2020

Appeal Ref: APP/Q3305/X/19/3244040

Land at Easton Lane, Pylle BA4 6SY

- 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 Ms Catherine Owen against the decision of Mendip District Council.
 - The application Ref 2018/2871/CLE, dated 6 May 2017, was refused by notice dated 5 August 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is: the siting of a portable building on land at Easton Lane, Pylle.
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Decision

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

Procedural Matters

2. As noted above, the application was originally made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act) on forms for an LDC for a **proposed** use or development. The above heading states the date of that original application. On the matter of the description of the proposal, the answers given in part 8 of the original application form advise that the proposal subject of the application consists of neither 'the carrying out of building or other operations' nor 'a change of use of the land or building(s)'. Furthermore, this original form does not provide any other clear description of the development for which the certificate was sought. Accordingly, the description of the development given in the above header has been taken from the title of the supporting documentary evidence provided in part 7 of the form. This description is replicated on the Council's decision notice.
3. Notwithstanding the above, at some point the portable building was placed on the land and a further application form was submitted for an LDC for an **existing** use or development. The appeal has, therefore, been determined on the basis of the second application dated 14 May 2019 and the existing use or development.
4. In part 7 of the second application form the appellant confirms that the LDC is sought for an existing use, rather than existing building works. In part 8 of the form a description of the use is provided as follows: 'portacabin sited on

smallholding as ancillary to the smallholding activities, also to provide the disabled owner with a welfare unit¹. Despite the second application being made for an existing use, the Council's decision notice refers only to the portable building. The first schedule of the decision notice refers to an 'application for a certificate of lawful existing development for the siting of a portable building' on the land. There is no reference in the decision notice to an existing use for which the LDC was sought.

5. In view of the above, my decision has, in the first instance, considered the matter referred to in the Council's decision notice; that is whether any operations which have been carried out in, on, over or under land are lawful, as referred to in section 191(1)(b) of the Act. This has been drawn to the parties' attention and both were asked for their comments on whether or not the portable building in question constitutes a building operation as defined in section 55 (1) of the Act. I have had regard to the responses received in my determination of the appeal.
6. I have then turned my attention to the matter for which the application was made, that is use of the land as referred to section 191(1)(a) of the Act. I note that much of the parties' evidence deals with this matter.
7. Finally, the appeal site address referred to above has been taken from the original application form and the Council's decision notice. Notwithstanding this, I acknowledge that the appellant has also referred to the site as 'Greendayz', Easton Lane on her second application form and on the appeal form.

Main Issues

8. Section 191(4) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development referred to in the application was lawful on the date on which the application was made
9. Having regard to the above, the main considerations in this case are as follows:
 - Whether or not the portable building in question constitutes a building or other operation as set out in section 55(1) of the Act.
 - Whether or not the use of the land and portable building as described in the application constitutes a material change of use of the land under section 55(1) of the Act.

¹ Reference is also made in this description to a supporting document entitled '3. Proposal to site a portable building on land at Easton Lane, Pylle'.

Reasons

Whether the portable building sited on the land is lawful

10. Whilst the definition of a building provided in section 336 of the Act² is of some assistance in this case, it is settled caselaw that three primary factors are decisive when determining what is a building. These are size; physical attachment; and permanence. No one factor is decisive.
11. The portable building is described by the appellant as a portacabin. Having viewed it on site it certainly has the appearance of such a portable unit.
12. The unit in question is of a modest size. The Council suggest that it has been brought onto the site 'ready-made' and the evidence submitted does not indicate that it required any construction on site. Having viewed the unit, it is reasonable to conclude that it was bought onto the site whole, rather than constructed on site from a number of parts. Indeed, an external metal frame supports the unit, which is likely to have assisted in the lifting and placing of the unit in its current location.
13. I saw that the metal frame is resting on concrete blocks which in turn are resting on the ground. The ground did not appear to have been prepared in any way to receive the unit, save for the placing of the concrete blocks. I could not see any means of physical attachment to the land. There may have been utility pipes and wires under the unit but these were not outwardly visible on my inspection and have not been referred to by the Council.
14. Whilst the appellant intends to remove the unit in the future, this would only be when she is no longer able to undertake her current activities on the site. On this basis it is reasonable to conclude that the unit will be *in situ* for longer than just a season. On this point I note that the Council suggest that the unit has a degree of permanence.
15. Whilst the above is acknowledged, the duration of the unit's presence on site is not necessarily decisive when determining its degree of permanence. The lack of any need for on-site construction or means of physical attachment renders the unit temporary in its character. Furthermore, there are no obvious signs of on-site modification that would mean it is unlikely that the unit could not be moved in the future. I also note that its siting has not resulted in a significant degree of physical change to the land. For instance, there were no obvious building works associated with the unit that might make it appear less transient in its appearance.
16. Having regard to all matters above, I am satisfied that on the balance of probability the portable building sited on the land does not constitute a building or other operation as defined under section 55(1) of the Act.
17. I acknowledge the Council's reference to permitted development rights³ for the erection, extension or alteration of a building. However, as I have concluded that the unit subject of this appeal is not a building or other operation it does not fall to be considered against these permitted development rights.

² Section 336 of the Act defines a 'building' as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.

³ Permitted development rights granted under section Class A of Part 6, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Furthermore, that the unit has only been on site since January 2018 is also of no consequence to the determination of this appeal.

Whether the use of the land and portable building is lawful

18. There is no dispute between the parties that the use of the wider appeal site is for agriculture. The description of the use subject of the LDC application provided by the appellant includes some processing of produce from the land; storage of processing equipment and other items used on the land; storage of produce; storage of some items associated with the Somerset Smallholders Association; an office associated with the agricultural use of the land; and a facility to prepare a meal and a hot drink, rest, take shelter and stay overnight on occasion.
19. In the officer's report the Council refer to the above mentioned details of activities undertaken on the site and state that these relate to the operation of a smallholding. The Council have not made the case that these activities are not consistent with ancillary uses one would expect on this parcel of agricultural land.
20. Instead the Council have made the case that the unit 'is in fact being used as a self-contained dwelling unit' and that this constitutes a material change of use of the land. The Council acknowledge that the appellant has provided details of an address elsewhere, but point to the lack of any Council Tax records for the appellant at that property to support their case. It suggests that, having regard to the accommodation provided within the unit, even if the appellant has a residence elsewhere, the unit operates as residential accommodation at least part of the time.
21. The appellant's application does not seek a LDC for a residential use and she has referred in her evidence to her residential accommodation elsewhere, which is described as a bedsit in a house. There is a lack of evidence from the Council demonstrating a consistent residential use of the unit. For example, the Council do not take issue with overnight stays at the unit on occasions (as referred to in the information provided by the appellant to support the application), but have not provided any substantiated evidence of a greater number of overnight stays to demonstrate a full, or even part time residential use of the unit. The absence of any record of the payment of Council Tax is not, in itself, generally taken as definitively showing whether a property is being used for residential purposes.
22. I acknowledge that the unit contains fixtures and fittings that might be considered consistent with a residential unit of accommodation. However, at the time of my visit many of these facilities were being used for the storage and processing of produce. Indeed, the kitchen area was being used for processing of some produce and the second room only contained a makeshift bed (which had the appearance of a fold out massage bed) and a cupboard used for storing further produce and processing equipment. Functionally the use of the unit appeared to be consistent with that described by the appellant in her application form, which is regarded ordinarily as an ancillary function to the agricultural use of the wider appeal site. I saw no physical or functional distinction between the character of the use of the unit and that of the land. Accordingly, I find that on the balance of probability a material change of use, as defined under section 55(1) of the Act, has not occurred in this case.

Conclusion

23. 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 portable building on land at Easton Lane, Pylle was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

J Moss

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE: APP/Q3305/X/19/3244040

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 14 May 2019 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red (to confirm that is the largest parcel of land edged in 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 portable building sited on the land does not constitute a building or other operation as defined under section 55(1) of the Town and Country Planning Act 1990 as amended. Furthermore, the use of the land and portable building for uses ancillary to the agricultural activities on the land does not constitute a material change of use of the land under section 55(1) of the Act.

Signed

J Moss

INSPECTOR

First Schedule

The siting of a portable building for uses ancillary to the agricultural activities on the land specified in the Second Schedule, including storage of produce and agricultural equipment, processing of produce from the land, and for rest facilities.

For the avoidance of doubt, this does not include a residential use.

Second Schedule

Land at Easton Lane, Pylle BA4 6SY

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the matter described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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:

by J Moss BSc (Hons) DipTP MRTPI

Land at: Easton Lane, Pylle BA4 6SY

Appeal ref: APP/Q3305/X/19/3244040

Scale: Not to scale

