



Appeal Decision

Site visit made on 1 September 2020

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal Ref: APP/J0540/X/20/3253501

88 Kirkmeadow, Peterborough, Cambridgeshire, PE3 8JJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Mrs Sarah Garghan-Watson against the decision of Peterborough City Council.
 - The application Ref20/00125/CLP, dated 31 January 2020, was refused by notice dated 27 April 2020.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use or development for which a certificate of lawful use or development is sought is the placing of a temporary structure (pod) in the garden to be used as an addition to the house.
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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 proposed use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mrs Sarah Garghan-Watson against Peterborough City Council. This application is the subject of a separate Decision.

Procedural matters

3. The application included no short description of the proposal but, drawing the various statements in that application together, it related to the placing in the garden of a 'pod', as a complete, temporary, removable structure, to be used as an addition to the house, as and when required. The description in the banner heading of this decision summarises that information without altering the essence of it. I use that description in preference to the wording in the Council's decision notice and the appeal form, namely "Proposed temporary structure (pod) in the garden", as that does not make clear that the pod was to be sited, rather than constructed on the land.
4. After the LDC application was submitted, the 'pod' was brought onto the site. Nevertheless, any LDC would relate back to the date of the application, when the pod was still a 'proposed' structure and I can consider the matter under s192, though I have had the benefit of actually seeing the structure in place.

Main Issue

5. The main issue is whether the refusal of an LDC is well-founded.
6. It is agreed by the parties that the pod was to be used and is used as primary living accommodation; namely as sleeping and relaxing accommodation for the appellant's mother, who uses the facilities in the main house and eats her meals there. The appellant describes its use as an annex to the main dwelling. As such, the use of the pod is part and parcel of the primary residential use of the planning unit. Whether the refusal of an LDC is well-founded will therefore turn on: whether the proposal would amount to operational development; and, if so whether it would be permitted development (PD) by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015.
7. The burden falls on the appellant to prove her case on the balance of probability.

Reasons

8. The Council contends that the siting of the pod amounts to a building operation, whereas the appellant argues that it is just the stationing of a caravan and therefore a use of land, involving no material change.
9. By s29(1) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act):
 - " "caravan" means 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed and adapted, but does not include –
 - a) any railway stock which is for the time being on rails forming part of a railway system, or
 - b) any tent."
10. That definition is imported into the 1990 Act because s336(1) defines "caravan site" as having the same meaning as in s1(4) of the 1960 Act, which in turn adopts the definition in s29(1) of that Act. Neither of the exclusions in s29(1)(a) or (b) applies and whilst size limitations are also imposed by s13(2) of the Caravan Sites Act 1968, it is common ground that the pod does not exceed any of these.
11. The Council accepts that the pod is a structure. However, it says it is "debatable" whether it has been designed for human habitation, or designed to be fitted out, should the purchaser require, to meet a number of purposes. These might include use as home office, summerhouse, storage, or human habitation. The pod may have a range of potential uses, but s29(1) only requires the structure to be "designed *or* (my emphasis) adapted for human habitation"; not "designed *and* adapted for human habitation", as suggested in the Council's statement. So, the pod can still fall within the s29 definition if it has been merely adapted.
12. The specification submitted with the application included reference to the shower unit, toilet and sink. I saw these during the site visit, even though it is accepted that the pod has not been connected to water and sewage and only

receives electricity via an armoured cable from the house, similar to a caravan hook up. I also saw a bed, sofa, table and chairs and a fridge inside and the pod has double glazed windows and doors. Even if it could be said that it was not specifically designed for human habitation, there is no doubt that the structure itself has been adapted for that purpose.

13. Early in its statement, the Council says the pod is “considered to be incapable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer).” However, this is contradicted later, when the Council says it is not disputed that the pod “can be moved easily on the back of a flat back lorry without the need for it to be dismantled”. The Council nevertheless contends that the pod has a high degree of permanence and its size means “actually moving it from its current location will certainly not be easy.”
14. However, submitted photographs confirm the appellant’s evidence that the pod was delivered, as a completed structure, on the back of a flatbed lorry and was hoisted by crane over the rear garden fence. It simply rests on slabs; there are no foundations or utilities installed and the Council accepts it is not otherwise attached to the land. The appellant says the company that supplied it transports these pods several times every day and it is a one-person operation. I have no reason to doubt that the pod can be removed as easily as it was delivered. This contrasts with the marquee in *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions & Harrow LBC* (No.2) [2000] 2 PLR 102; [2000] JPL 1025; [2000] ECGS 43, to which the Council refers. That structure was 40m long by 17m wide, with a ridge height of 5m and took a number of people several days to erect.
15. This timber pod is larger than some structures which are obviously buildings and, compared, for example to a conventional touring caravan, it has some solidity and substance. Nevertheless, it clearly falls within the statutory definition of a caravan and it is not attached to the land. Nor is the pod of such a size that it had to be constructed on site; indeed, it was delivered to the site as a completed structure and simply placed on slabs. Caravans can be significantly larger than this pod.
16. A structure which starts as a caravan might undergo changes which prevent it being mobile, or which otherwise deprive it of the essential characteristics of a caravan. Such changes could transform it into a building, having regard to the factors of size, permanence and degree of physical attachment, as summarised in *Skerritts*. However, that does not alter my conclusion that this pod, as proposed and actually provided, is a caravan and its siting amounts to part of the lawful use of land, rather than operational development. The question of whether it would be PD does not therefore arise.

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 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.

J A Murray

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 31 January 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched 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 temporary structure (pod) would fall within the definition of a caravan in s29(1) of the Caravan Sites and Control of Development Act 1960 and s13(2) of the Caravan Sites Act 1968. Its siting would therefore be a use of land, rather than operational development. The proposed use of the pod was as additional living accommodation/an annex to the main dwelling and so its siting in the garden would not involve a material change of use of the land.

Signed

J A Murray

Inspector

Date: 09 September 2020

Reference: APP/J0540/X/20/3253501

First Schedule

The placing of a temporary structure (pod) in the garden to be used as an addition to the house (as shown in the attached photographs).

Second Schedule

Land at 88 Kirkmeadow, Peterborough, Cambridgeshire, PE3 8JJ.

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

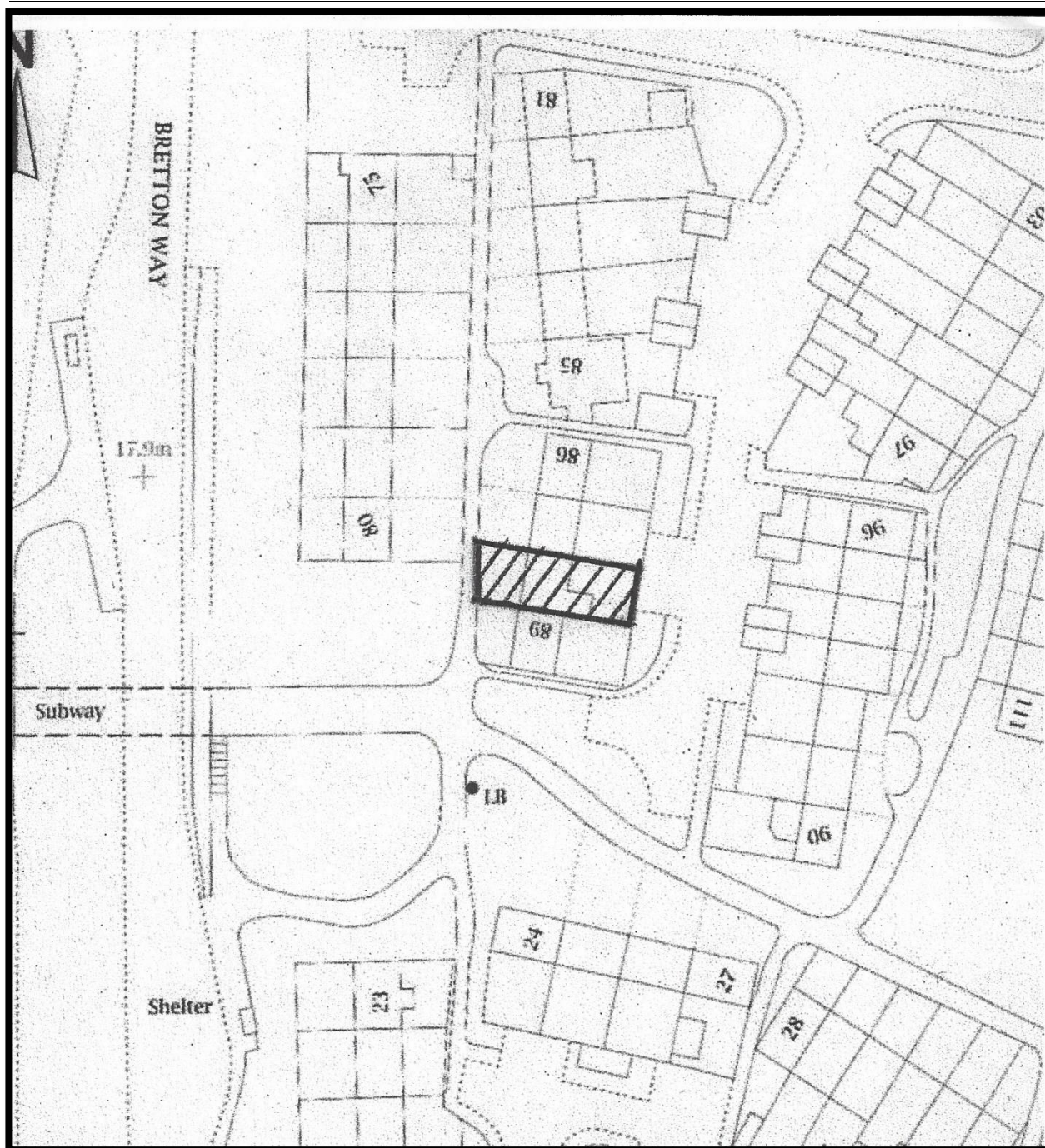
This is the plan referred to in the Lawful Development Certificate dated: 09 September 2020

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

Land at: 88 Kirkmeadow, Peterborough, Cambridgeshire, PE3 8JJ

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Scale: DO NOT SCALE





Photographs

These are the photographs referred to in the Lawful Development Certificate dated: 09 September 2020

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