

Appeal Decisions

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 20 October 2020

Appeal A - Ref: APP/C1950/X/19/3246232

Howe Wood Farm, White Stubbs Lane, Bayford Hertford SG13 8QA

- 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 B (Winston) Wrangle against the decision of the Council of Welwyn and Hatfield.
 - The application Ref 6/2019/2886/LAWE, dated 14 November 2019, was refused by notice dated 9 January 2020.
 - 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: *'use of outbuilding as residential dwelling'*.
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Appeal B - Ref: APP/ C1950/X/19/3247983

Howe Wood Farm, White Stubbs Lane, Bayford Hertford SG13 8QA

- 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 B (Winston) Wrangle against the decision of the Council of Welwyn and Hatfield.
 - The application Ref 6/2019/3677 LAWE, dated 11 December 201, was refused by notice dated 13 February 2020.
 - 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: *'the retention of a caravan sited on parking space'*.
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Decisions

1. Appeal A is allowed and a lawful development certificate is attached below.
2. Appeal B is allowed and a lawful development certificate is attached below.

Matters of clarification

3. Further to the case officer's letters to the parties, I consider that these appeals can be determined without the need for a physical site visit. This is because I have been able to reach decisions based on the initial documents; the later submissions and all of the photographic records as submitted. Additional photographs were supplied following the LPA's and my own request in relation to Appeal B. The LPA was invited to submit its own photographs and to comment on the question of curtilage and the planning unit(s) with regard to Appeal B. However no further submissions have been received. The appellant and the Council agreed to the appeals proceeding without a site visit and I consider that in reaching my decisions on the basis of all of the submitted information, no injustice has been caused

Background information

4. As indicated above, there are two appeals at Howe Wood Farm which is located within the rural area of Welwyn Hatfield. Appeal A relates to the residential use of a single storey outbuilding (referred to as the Studio Flat), which is located to the south-west of the farmhouse and forms part of the other farm buildings. Its location is shown on the 1:1250 location plan numbered 13914-S002-1st. The plans indicate a one bedroom studio flat with kitchen, living room, bedroom and shower/wc.

5. Appeal B relates to the retention of a caravan which is sited close to the Farmhouse to the west. It is shown on drawing 13914-S003 and is stated to stand on metal supports within a grassed section of the garden, with paving slabs providing a pathway across the lawned area of grass from the house. The LDC application sought confirmation that the caravan was ancillary to the use of the farmhouse and that its use did not constitute a material change of use of the land. The Council accepts that the siting of the caravan does not constitute operational development.

Reasons

General points relating to LDC appeals

6. Appeals relating to a Certificate of Lawful Use or Development (LDC) are confined to the narrow remit of reviewing the Local Planning Authority's (LPA's) reason for refusal and then deciding whether the reasons are well-founded. The planning merits do not fall to be considered and the relevant test, relating to the submitted evidence, is '*the balance of probability*'.

7. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

Appeal A

8. In order for the outbuilding to be classed as being lawful as a dwellinghouse, it must be demonstrated that, on the balance of probabilities, it has been used as such for a continuous period of 4 years and that the use had begun on, or before, 18 November 2015.

The gist of the case for the appellant

9. It is stressed that the building benefits from all of the facilities required for independent living and that this is not disputed by the Council. It is also indicated that it places no reliance upon any other accommodation and that it is readily recognised as being located towards the road frontage.

10. The submitted evidence is considered sufficient to show that Mr Nicholas Oliver occupied the flat prior to 18 November 2015 as the appellant's tenant. The evidence includes BACS remittance advice and rental payment invoices sent from the Council's Benefit Section to the appellant. These were dated between 24 August 2015 and 22 February 2016.

11. The evidence also includes a copy of a letter dated 11 November 2019 from Phillip T Chave & Co, Chartered Accountants, confirming that they have archived file records showing that, for HMRC purposes, the appellant had received rent from the same tenant. It is stated that the Council indicated that the letter had not been

submitted at the time of the application. If this had been the case then it is stressed that one would have expected the Council to request further information.

12. Although not submitted with the application, a letter from the tenant has been submitted at this appeal stage. It confirms the tenant's occupancy and tenancy of the flat and that this use dates back to 2005. It is confirmed that the tenant has been on the electoral register since then; that rent has been paid to the appellant since then and that the Council had paid housing benefits to the appellant in relation to the tenancy of the flat.

13. It is contended that the evidence demonstrates that the physical segregated location of the outbuilding; the facilities it provides for self-contained independent occupation as a single dwelling house; the correspondence provided from the Council, the accountants and the tenant, all combine to indicate, on the balance of probability, that the outbuilding known as the Studio Flat, at Howe Wood Farm, has been continuously used as a separate dwellinghouse for more than 4 years beginning on 18 November 2015.

The gist of the case for the Council

14. In the delegated report for the application (6/2019/2886/LAWE) the Council refers to the onus of proof being firmly on the appellant to demonstrate, on the balance of probability, that the stated use had started on or before the date of the application and that it had had been continuous for the required 4 year period.

15. The report acknowledges the details of the application covering letter and the supporting evidence which, at that time, included rental invoices from the Council to the appellant as landlord. It is indicated that 4 years of continuous payments are not recorded and that it is not clear whether the payments made to the appellant relate to the application outbuilding. It is further stated that the letter from the accountants (referred to above) had not been received.

16. On the basis of the above evidence it was considered that it was not sufficiently precise or unambiguous to justify the granting of a LDC on the balance of probability. It was concluded, therefore, that the appellant had demonstrated that the Studio Flat (the outbuilding) had been in use as a separate dwellinghouse for the necessary 4 year period. The LDC application was refused.

My assessment

17. Turning to the submitted evidence at the time of the LDC application, it would appear that the accountant's letter had either not been included with the submissions or that the Council had failed to notice that it had been submitted. Nevertheless it is now before me as part of this appeal, as is the letter from the tenant, which was definitely not submitted at the time of the application.

18. It is sometimes argued that only the evidence which was placed before the LPA at the time of application for a LDC should be considered. However, section 195 refers only to the refusal being '*well-founded*' or '*not well-founded*'. The courts have held that the Secretary of State cannot be compelled to issue a certificate where he is of the opinion that one should not be granted.

19. However, conversely, it has also been held that, for a LPA to argue that the only evidence to be considered is what was placed before them at the time of the application, denies the purpose of the LDC procedure. In this case, therefore, in reaching my decision, I have taken into account all of the application and appeal submissions, including the additional information relating to the accountant's letter

and the letter from the obviously long-standing tenant. I am satisfied that in taking this course of action no injustice has been caused to the Council.

20. The Council has not provided any of its own evidence which contradicts that of the appellant which might indicate that the submissions, in support of the LDC application, are less than probable. I must, therefore, consider whether or not, on the balance of probability, the application submissions together with the appeal submissions, demonstrate that the Studio Flat at the farm has provided all of the facilities required to show that it has been in use as a separate dwellinghouse for the required 4 year period.

21. Turning to the Housing Benefit payments, although the remittance advice does not refer to the appeal outbuilding, it specifically names the tenant. This evidence ties in with that from the accountancy firm and the tenant's own confirmation of occupation. Although not a statutory declaration I have no reason to question the contents of the letter and in any case, as indicated above, the Council has not provided any evidence of its own to counter that provided on behalf of the appellant.

22. In summary, therefore, on the balance of probability, I conclude that the appellant has demonstrated that on the date of the LDC application, the outbuilding known as the Studio Flat was lawful for planning purposes in that it had been occupied independently as a dwelling house for the required continuous 4 year period. It follows that the appeal must succeed and a LDC is attached below.

Appeal B

23. In order for the siting of the caravan to be considered lawful, as being ancillary to the use of the farmhouse, it must be demonstrated that it does not constitute development as defined in Section 55(1) of the Act. It must be shown that there has not been a material change of use (MCU) of the land.

The gist of the case for the appellant

24. It is stated that the caravan was sited on this part of the appellant's land over 3 years ago and since then has been occupied by the appellant's nephew, following the death of his mother. It is indicated that the caravan provides the nephew with a place to live, close to his family and where he could be cared for and supported due to his increasing ill health. A GP has confirmed the health conditions.

25. Section 55(2)(d) of the Act is referred to and it is contended that the siting of the caravan constitutes a use of the garden land, as being within the curtilage of the farmhouse, for a purpose incidental to the enjoyment of the dwellinghouse. Reference is made to the Council's opinion that the siting constitutes a MCU. In particular reference was made to the case officer's conclusion that the submitted information did not contain any information on which to assess whether or not the caravan was in the same planning unit as the farmhouse.

26. However it is indicated that the report referred to the caravan being '*within the garden of Howe Wood Farmhouse*' and that it was accessed '*from the main yard to the rear of the dwelling and then via the rear garden of the dwelling*'. Reference is made to the use of a planning unit and that, if there is no change, as a result of any development proposed, then it is unlikely that MCU has occurred.

27. Reference is also made to the courts' findings as to what constitutes the curtilage of a dwellinghouse. In this case it is stressed that the Council accepts that the caravan is sited in the garden of the farmhouse and it is considered, therefore, that this suggests that there is only one planning unit with the caravan being within that unit which is in residential use.

28. It is stressed that although the caravan has all of the necessary facilities for independent living it does not automatically follow that its occupation constitutes a MCU. In this case it is stressed that the occupant is a family member and although he spends most of his time in the caravan, he remains close to and relies upon the members of the family. The caravan is considered to function as an annexe to the farmhouse, without it being separate from its curtilage.

29. With regard to the nephew's health, it is stated that a greater degree of day to day care and assistance will be required in the future. It is indicated that the appellant will become the primary carer, whilst still allowing the nephew to retain some independence. It is stressed that there will not be any physical or functional separation of the garden land and that there is no intention to make the caravan available as a separate dwelling.

30. The continued use of the caravan as an annexe would not result in a separate unit of occupation in planning terms. The house and its garden would remain in use as a single dwellinghouse and the character of usage would not change. Although not directly related to the LDC application, it is stressed that if the nephew could not remain living in the ancillary accommodation, he would have nowhere to live.

31. In summary it is argued that in applying the principles established by the courts to the evidence provided, it is contended that the siting of the caravan has not created a separate planning unit. The caravan is considered to be part and parcel of the residential use of the same planning unit. On that basis there has been no MCU.

The gist of the case for the Council

32. The Council's case is set out in the delegated report dated 13 February 2020. Initially it considers whether or not the caravan is a building. Reference is made to the Caravan Sites and Control of Development Act 1960; the case of *Measor v SSETR [1999] JPL 182, J1007* and the generally accepted case law tests relating to what constitutes a *building* for planning purposes. On the basis of the above the Council concludes that the siting of the caravan does not constitute operational development.

33. Turning to the question of whether a MCU of the garden land has occurred, it is accepted that it is sited within the garden of the farmhouse and that it has been occupied by the appellant's nephew. The Council refers to the submitted information for the LDC application but does not consider that it provides any information on the link or relationship between the caravan and the farmhouse.

34. In particular it is considered that the information is insufficient to ascertain whether or not the caravan is in the same planning unit as the dwellinghouse. On that basis it is contended that it has not been demonstrated that a MCU of the land has not occurred and that the use does not amount to development as defined in Section 55(1) of the Act.

My assessment

35. The delegated report is quite short and does nothing to indicate the Council's detailed view on what constitutes the curtilage of the farmhouse or the planning unit. I accept that in an LDC application the onus is on an applicant to precisely and unambiguously show why a LDC should be issued and that a Council must base its decision on the evidence submitted.

36. However, to simply say that '*the application fails to demonstrate that the use of the caravan would not represent a material change of use of the land and, therefore, not amount to development as defined in Section 55(1) of the Town and Country Planning Act*', does not assist in relation to what the LPA considers to be the curtilage

of the farmhouse and the planning unit with regard to the siting of the caravan. I now turn, therefore, to the question of both the curtilage and the planning unit in relation to the matters before me and the submitted information.

37. Parliament has not defined the word '*curtilage*' and decision makers have to rely on dictionary definitions and to the case law authorities set out over the years. The dictionary definition is that '*curtilage*' comprises '*a piece of ground attached to a dwellinghouse and forming one enclosure within it*'. Whether or not land falls within the '*curtilage of a dwellinghouse*' is '*a matter of fact and degree*'.

38. Relevant case law includes '*Sinclair-Lockhart's Trustees v Central Land Board (1950) 1 P&CR 195; Methuen-Campbell v Walters (1979) 1 All ER 606; Dyer v Dorset CC 1989QB 346; James v SOS environment (1991) JPL 550 and McAlpine v SOS Environment (1994) EGCS 189*.

39. In relation to what constitutes the Planning Unit, the case of *Burdle v SSE [1972] 1 WLR 1207* is relevant. In that case it was held, amongst other things, that '*it may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some similar unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally*'. In this case, therefore, the question is whether or not the siting of the caravan amounts in substance to a use that is both physically and functionally separate from the dwellinghouse.

40. I note from the photographic evidence and the submitted plans that the caravan is sited on a lawned area to the west of the farmhouse. The lawned and paved areas wrap around the south and west elevations of the house and, in my view as a matter of fact and degree, form part of the residential curtilage of the house. The washing lines and kennelled enclosure add to the sense of the residential character around this part of the house. The paving slabs across the lawn and the relationship of the kennel area to the house reinforce my view in this respect.

41. The lawned area on which the caravan is sited extends right up to the paved patio area of the house adjacent to the planted flower bed. French type doors from the house look out on to the patio, the flower bed and the lawn beyond. It is clear to me that the lawned areas shown on the photographs comprise '*a piece of ground attached to a dwellinghouse and forming one enclosure within it*'. It follows that the site of the caravan (the lawned and step paved area) is not physically separate from the house. Thus, as a matter of fact and degree, I consider that the caravan is located within the curtilage of the dwellinghouse at Howe Wood Farm.

42. Turning to the functionality of the sited caravan, it is evident from the submissions that it is occupied by the appellant's nephew and that he is living there as part of the extended family. There is no evidence of any formal tenancy and it is clear that the nephew is living on the site as part of the appellant's family. Despite the fact that the caravan possesses all of the necessary facilities for day to day living, it appears that the nephew relies upon the presence and care of the appellant and the rest of the family.

43. With regard to this specific relationship and use of the caravan, I consider that the facility is being used in a way akin to a '*Granny Annexe*'. Instead of being a separate dwelling, physically and functionally separate from the house, as a matter of fact and degree, I consider that the caravan functions as family accommodation which is '*incidental to the enjoyment of the dwellinghouse*'. It follows that I do not consider that the siting and use of the caravan constitute development under Section 55(1) of the Act.

44. I conclude, therefore that the Council's decision not to issue a LDC was not well-founded and that the appeal should succeed. A LDC is attached below

Other Matters

45. In reaching my conclusions in both appeals I have taken into account all of the submissions made by the parties. These include the initial documents; the Council's delegated reports; the appeal statements; all of the submitted photographs and the plans relating to each appeal. However, none of these alters my conclusions for both appeals and nor is any other factor of such significance so as to change either of my decisions.

Formal Decisions

Appeal A

46. The appeal is allowed and a lawful development certificate is attached.

Appeal B

47. The appeal is allowed and a lawful development certificate is attached.

Anthony J Wharton

Inspector



The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 14 November 2019 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development.

Signed

Anthony J Wharton
Inspector

Date: 20 October 2020

Appeal Reference: APPEAL A - APP/C1950/X/20/3246232

First Schedule

Use of outbuilding as residential dwelling

Second Schedule

The Studio Flat, Howe Wood Farm, White Stubbs Lane, Bayford, Hertford SG13 8QA

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was 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 development described in the First Schedule; to the property specified in the Second Schedule and to the plan submitted with the LDC application, reference: 13914-S002-1st.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.



The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 11 December 2019 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development.

Signed

Anthony J Wharton
Inspector

Date: 20 October 2020

Appeal Reference: APPEAL B: APP/C1950/X/20/3247983

First Schedule

Retention of caravan sited on parking space

Second Schedule

Howe Wood Farm, White Stubbs Lane, Bayford, Hertford SG13 8QA

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property and land.

It certifies that the development described in the First Schedule, at the property and land specified in the Second Schedule, was 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 development described in the First Schedule; to the property specified in the Second Schedule and to the plan submitted with the LDC application, reference: 13914 S003

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.