



Appeal Decision

Site visit made on 2 December 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/T2215/X/20/3263871

Benlin Farm Cottage Green Street Green Road, Dartford DA2 6NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr B Ayres against Dartford Borough Council.
 - The application ref DA/20/00666/LDC is dated 9 June 2020.
 - 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 construction of a log cabin falling within the definition of a caravan.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has indicated that if it had been able to determine the application it would have refused it. In summary, its reasons are that the log cabin would be on land outside the residential curtilage of the dwelling and therefore the development would result in a material change of use; insufficient information has been provided to demonstrate that the log cabin falls within the definition of a caravan; and by virtue of the scale of the log cabin in combination with an existing annex, it would not be in a use that is incidental to the main dwelling.

Reasons

3. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. Its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the application, be lawful.
4. The certificate seeks to establish that a log cabin, which the appellant considers to fall within the definition of 'caravan', can lawfully be stationed on the land. The description of the proposal does not state the proposed use of the log cabin, but it is clear from the application details that the primary purpose of the log cabin would be for use by family members and guests as ancillary accommodation.

5. Having regard to the Council's putative reasons for refusal, the main issues in the appeal are:
- whether the siting of the log cabin falls within the residential curtilage of dwellinghouse,
 - whether the log cabin falls within the definition of a caravan,
 - whether it would be used for purposes incidental to the main dwelling.

Curtilage

6. The appellant states that when the property was purchased it was a single family dwellinghouse with associated outbuildings, did not include any agricultural land, and it should therefore be concluded that all the land and outbuildings were purely residential in nature. A photograph has been provided showing an area of mown grass with outbuildings behind which is part of the land that is currently used as garden.
7. It has been established through case law that whether something falls within a curtilage is a question of fact and degree and is primarily a matter for the decision-maker. The concept of curtilage should not be confused with the planning unit, as the latter relates to land use, and may or may not overlap with the curtilage. The Technical Guidance¹ states that the definition of curtilage is understood to be 'land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area'.
8. Case law indicates that the curtilage connotes a piece of land attached to a dwelling house and forming one enclosure with it. There are three primary tests to be considered, which are physical layout, ownership (past and present), and use or function (past and present).
9. The appeal site comprises an area of land that fronts onto Green Street Green Road. It contains a bungalow with a residential building stated to be in use as an annex adjacent to it. The two buildings are set slightly back from the edge of the road, with a small area of hardstanding to the front of them. To the south east of the bungalow and to the rear of the annex is a patio and an area of grass, with a number of outbuildings including a stable, play equipment, garden planting. To the north of the grassed area is a chicken coop with chicken housing within a metal covered building. To the east of this and with vehicular access from Green Street Green Road via double metal gates is an area of parking/hardstanding, containing further outbuildings to both sides of the access and hardstanding. The outbuildings face onto the hardstanding and are separated from the grassed area by a gate.
10. The siting of the log cabin is indicated to be in the approximate position of the chicken coop and some of the outbuildings, on the area of land between the existing annex and the hardstanding.
11. In terms of physical layout, the hardstanding, vehicular access and parking area are separated from the grassed garden area at the side and rear of the bungalow and annex by a gate. While the outdoor chicken run and small

¹ Permitted development rights for householders: Technical Guidance September 2019

outbuilding to which it is attached are accessible from the grassed garden, the other buildings do not appear to be. In terms of physical layout therefore, at least part of the site for the log cabin is physically separated from the main area of garden. The entirety of the siting for the log cabin does not therefore fall within one enclosure with the bungalow in terms of its physical layout.

12. With regard to the ownership of the land, the submitted Title Plan with the land registry application dated 2012 indicates that the Title excluded the area of land immediately to the rear of the bungalow and roughly reflects the current application site. However, the block and location plans² submitted with the application for the replacement bungalow³ in 2011 indicate that at that time the land was in the same ownership as the bungalow and was indicated as being a 'general amenity area' within the confines of the application site. It was shown as including a barn, tack room, garage and vehicular access to the west of the bungalow. It is not clear however whether this indicates a change of ownership or whether the land was simply registered in a separate title. In any event, I note that this land is not now indicated as being within either the application site or edged blue as other land owned or controlled by the appellant. It therefore appears that the land that was indicated to be in the same ownership and in one enclosure as the bungalow at the time of its replacement in 2011, is no longer within the same ownership.
13. Turning to its use or function, the chicken run is directly accessible from the main garden to the rear of the bungalow and annex and could be considered to be closely associated with the use of the bungalow as a dwellinghouse. However, the use of the other buildings where the log cabin would be sited has not been explained. I note that some of the buildings appear to open onto the hardstanding, where there was evidence of building materials, a skip, a storage container, roadworks equipment. It therefore seems more likely than not that the use of the buildings and the area of land on which they sit does not solely serve the purpose of the house in some necessary or reasonably useful way, but appear to serve some other purpose.
14. I have also had regard to the evidence of the past use and function of the land. The block and location plans submitted with the application for the replacement bungalow in 2011 indicate that the 'general amenity area' associated with the residential use of the bungalow was restricted to the land to the immediate rear of the bungalow, and did not include the land to the south east of the bungalow or the yard which is now claimed to be curtilage. It therefore appears that the land which is currently used as the garden to the bungalow and the annex did not have that function in the past. The historic aerial photographs submitted by the Council also indicate that the area now used as garden was not previously in one enclosure with the bungalow but was in a larger unfenced area that included a number of outbuildings. This casts doubt on the appellant's assertion that the site is wholly within the residential curtilage of the bungalow.
15. The appellant's evidence is neither precise nor unambiguous with regard to the extent of the curtilage, and falls short of discharging the burden of proof in this regard. While no single factor is determinative, as a matter of fact and degree and based on the evidence before me and my observations on site, I conclude that on the balance of probability the proposed log cabin would not be within the curtilage of the dwelling.

² Drawing no 11.512C

³ Ref 11/00958/FUL

Caravan

16. The appellant states that the log cabin falls within the definition of a caravan, it is not a building, it would be built in two sections that would be bolted together and would remain transportable.
17. Case law has established that it is necessary to consider whether a structure is a caravan by considering it in the light of the statutory definitions. Subsection 29 (1) of the CSCDA says that a '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 or adapted, but does not include (a) any railway rolling-stock, which is, for the time being, on rails forming part of a railway system or (b) any tent. Subsections 13 (1) and (2) of the CSA define twin-unit caravans as follows: (1) a structure designed or adapted for human habitation which (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the CSCDA by reason only that it cannot lawfully be so moved on a highway when assembled.
18. Subsection 13(2) sets out the following size limits of (a) 20 metres in length and (b) 6.8 metres in width. The overall height in (c) is measured internally at the lowest level to the ceiling at the highest level of 3.05 metres. In this case, the external dimensions fall within the limits set out in (a) and (b). Details of the internal height have not been provided, but I have seen no evidence that the limits in (c) would be breached by the structure.
19. It is a well-established principle that when considering whether or not a structure is deemed to be a caravan, the commonly applied 'construction' and 'mobility' tests should be considered. The following are relevant considerations; there has to be a structure, it has to be designed or adapted for human habitation and it must be capable of being moved as a single structure. A 'twin-unit' structure composed of not more than two separately constructed sections which are designed to be assembled on site, and, when assembled, is physically capable of being moved by road, is not excluded from the relevant legislative provisions.
20. The appellant has not provided any detailed information to demonstrate that the log cabin would meet the tests to be a caravan. The submitted drawings indicate a timber construction, with an annotation stating that it would be formed of two sections and bolted together on site and transportable. However, the drawing is insufficient to demonstrate that the building would be assembled as two separate units, with the final act of assembly being the bolting together of the two parts. Nor has it been demonstrated that the completed log cabin would be physically capable of being moved by road once constructed. The appellant has therefore not demonstrated that the log cabin would meet the construction and mobility tests. The appellant's evidence falls short of discharging the burden of proof in this regard and I cannot therefore conclude that it would meet the definition of a caravan.

Conclusion

21. As I have found that the log cabin would not be within the curtilage of the dwelling, and would not meet the definition of a caravan, the proposal is development that requires planning permission. In view of my findings, it is not necessary to go on to consider whether the use of the log cabin would be incidental or ancillary to the use of Benlin Farm Cottage as a dwellinghouse.
22. For the reasons given above, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the construction of a log cabin falling within the definition of a caravan was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

N Thomas

INSPECTOR