The Planning Inspectorate

Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 31 January 2022

Appeal Ref: APP/D3640/X/21/3280990

Wellfield, Philpot Lane, Chobham, Woking GU24 8HE

- 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 T Robinson against the decision of Surrey Heath Borough Council.
- The application Ref 21/0103/CES, dated 27 January 2021, was refused by notice dated 24 March 2021.
- The application was made under section 192 of the Town and Country Planning Act 1990 as amended (the Act).
- The use for which an LDC is sought is the stationing of a shepherd's hut in a residential garden.

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed use which is considered to be lawful.

Reasons

2. Section 55(1) of the Act indicates that "development" is the carrying out of building operations or the making of a material change in the use of land. Section 57(1) of the Act states that planning permission is required for the carrying out of any development of land.

3. It is stated in the Officer's Delegated Report that the hut "…would fall within the definition of a caravan", that "…the proposed shepherd hut would not amount to operational development", and that "It is not…considered that the siting and use of the unit…would constitute a material change of use, nor the creation of a separate planning unit". The Council therefore accepts that the stationing of the shepherd's hut would not be development. Consequently, it must be concluded that planning permission is not required for the proposed use of the land.

4. The application was refused because 'The provision of a mobile unit is restricted by an Article 4 Direction, which precludes the use of land for the stationing of caravans for a period in excess of 28 days in total in any calendar year'. The Direction was made in 1958 and prevents the use of land for the stationing of caravans on not more than 28 days in total in any calendar year for development falling within Class IV of the First Schedule to The Town and Country Planning General Development Order 1950, which was in force at that time.

5. The Council has misapplied the Article 4 Direction. Class IV relates to 'Temporary buildings and uses' and it is accepted in the Delegated Report that "…the proposal would be of a permanent nature and the application has therefore

been assessed on this basis". For this reason the Article 4 Direction is not relevant. Furthermore, permitted development rights afforded previously by the Town and Country Planning General Development Order 1950 and now by The Town and Country Planning (General Permitted Development)(England) Order 2015, permit development that would otherwise require a grant of planning permission. The Council accepts that the stationing of the shepherd's hut would not be development and must therefore accept that planning permission is not required for the proposed use. For this reason also the Article 4 Direction is not relevant.

6. For the reasons given the Council's refusal to grant an LDC for the stationing of a shepherd's hut in a residential garden at Wellfield, Philpot Lane, Chobham, Woking was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

The Planning Inspectorate

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 27 January 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-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 proposed use of the land is not development for which planning permission is required.

Signed

John Braithwaite

Inspector

Date: **31 January 2022**

Reference: APP/D3640/X/21/3280990

First Schedule

The stationing of a shepherd's hut in a residential garden

Second Schedule

Land at Wellfield, Philpot Lane, Chobham, Woking GU24 8HE

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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: **31 January 2022**

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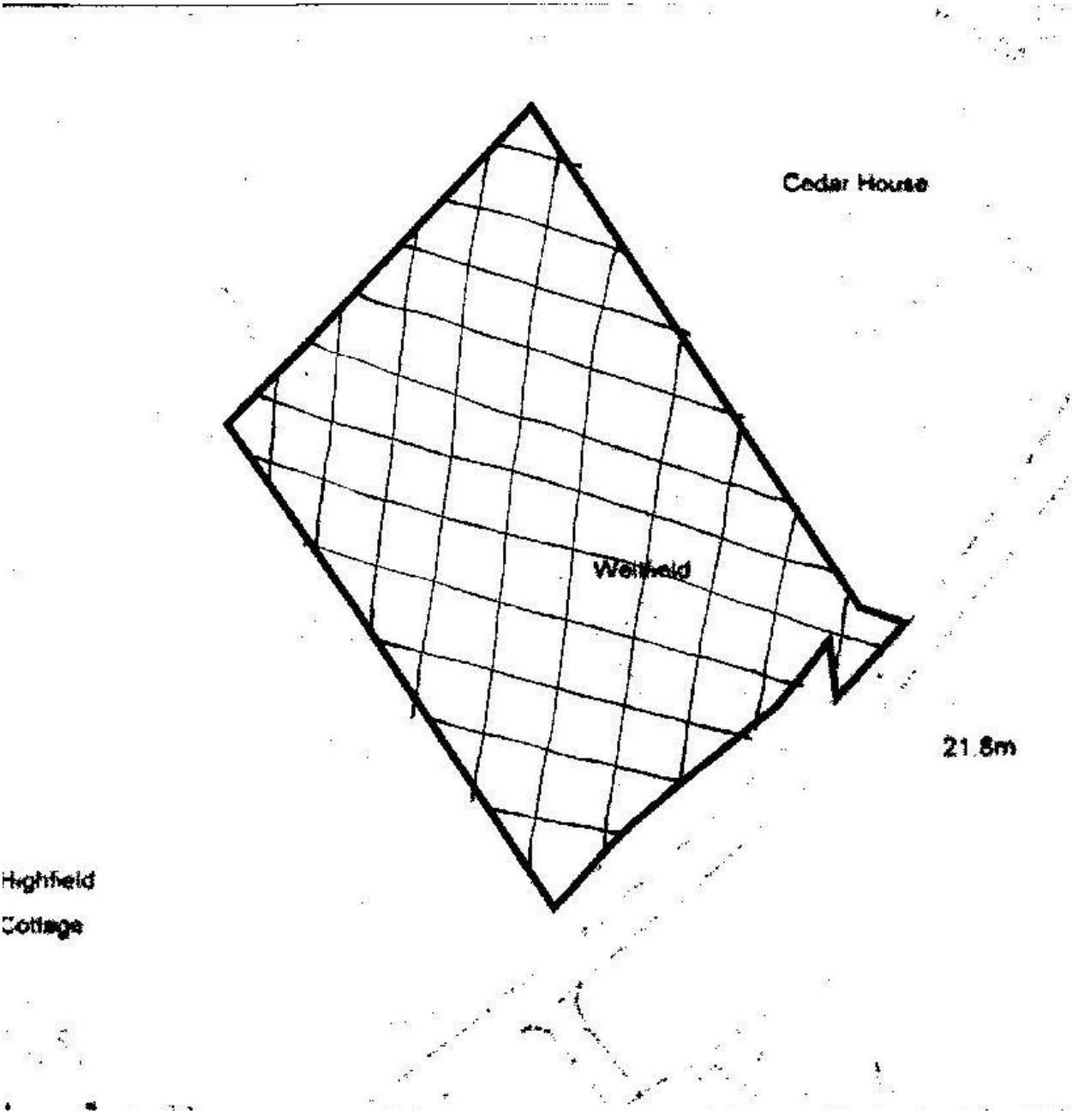
Land at Wellfield, Philpot Lane, Chobham, Woking

Reference: APP/D3640/X/21/3280990

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