



Appeal Decision

Site visit made on 31 January 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2022

Appeal Ref: APP/A5270/X/21/3266891

1 Harrow View Road, Ealing W5 1NA

- 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 D and Mrs S Pedreschi against the decision of the Council of the London Borough of Ealing.
 - The application Ref 204908CPL, dated 30 November 2020, was refused by notice dated 5 January 2021.
 - The application was made under section 192(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 siting of a mobile home/caravan within the residential curtilage.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

2. The parties opted for the appeal to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me, as well as my site visit, and do not consider that injustice would arise.

Application for Costs

3. An application for costs was made by Mr D and Mrs S Pedreschi against the Council of the London Borough of Ealing. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the Council's decision to refuse a certificate of lawfulness is well founded.

Reasons

5. The site comprises a two-storey end of terrace dwelling with rear garden.
6. The appeal application relates to the siting of a mobile home (caravan) in the curtilage (rear garden) for an incidental residential use to the dwellinghouse, namely accommodation for an elderly relative. The submitted plans indicate the

caravan will comprise a living area, bedroom, shower room and WC and that it would be approximately 5.1 metres in length. In matters such as this the onus is therefore on the appellants to demonstrate their case on the balance of probabilities.

7. The appellants contend their proposal does not amount to development for the purposes of Section 55 of the 1990 Act (the Act), as it relates to a use of land, for the incidental siting of a caravan, that does not require planning permission.
8. The Council considers the proposal comprises operational development and so would be a building. This is because it contends there is nothing in the Caravan Acts¹ (the CSA) to prevent it from considering whether a structure, owing to its size, permanence, and physical attachment to the ground, constitutes development requiring planning permission. It highlights that the term building has a wide definition² despite the prospect of it being easily movable.
9. The Council also cites case law³ which explores the definition of a building. However, this concerned poultry units and there was also no need in that case to consider the separate statutory definition of a caravan. Given the appellants seek certification for a caravan, the matters for assessment concern its size, construction and mobility. If it were to fail any of those tests, it is then likely to be a building for planning purposes and therefore Section 55 of the Act would become engaged.
10. To this effect, whilst the Council considers the proposal to be large, there can be no dispute that its proposed size falls within the specified dimensions of a caravan in the CSA. The size test for a caravan is therefore met.
11. Whilst there is comparatively limited evidence before me concerning the construction of the proposal, the Council notes that it would be largely prefabricated and then assembled on-site over a very short period of time with the final act of assembly being the joining of the two-halves together. Whilst this would not be an operation usually carried-out by a householder, the proposal would not be composed of more than two sections separately constructed, and, would be designed to be assembled on site by means of bolts. It therefore follows that the construction test for a caravan is met.
12. The proposal's only physical attachment to the ground would be via services, which could be quickly disconnected. It then does not have to be moved around in the sense of being transportable on wheels, it is sufficient that each halve may then be picked up intact and put onto a lorry by means of crane or hoist, and so there would accordingly not be permanence. The practicality, need for specialist equipment or indeed legality of that from a public highway perspective is then irrelevant for the purposes of my assessment. As a matter of fact and degree I consider the proposal would be capable of being moved within the terms of the statutory definition within the CSA. The mobility test for a caravan is therefore met.
13. Whilst the submitted plans indicate the proposal would be for an 'L' shaped caravan, which in my view would be unusual and casts some doubt in my mind, there is nothing that has been brought to my attention in the CSA to prevent

¹ Caravan Sites and Control of Development Act 1960 / Caravan Sites Act 1968

² Section 336 (1) of the TCPA

³ R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)

the two halves of a caravan being a different length. I am also not certifying the specification or size/s of caravan to be sited, but merely an incidental use.

14. The Council has therefore misdirected itself. Moreover, it should not be going behind the evidence, perhaps in an effort to pre-empt a breach of planning control, or, in consideration of the planning merits of the proposal. The appellants have simply sought certification for a caravan in their garden. Should they subsequently differ and construct a building, that would be a separate matter.
15. There is then no dispute between the parties concerning the residential status of the site or that the proposal would result in the subdivision of the planning unit, and so accordingly no material change of use would be involved.
16. As a matter of fact and degree, based upon the evidence before me, the appellants have discharged the necessary burden of proof to demonstrate their case on the balance of probabilities for the siting of a caravan within their residential curtilage for purposes incidental to the use of their dwellinghouse.

Conclusion

17. For the reasons given above I conclude, on the evidence 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.

Formal Decision

18. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is considered to be lawful.

Paul T Hocking

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 30 November 2020, the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellants have discharged the necessary burden of proof to demonstrate their case on the balance of probabilities.

Signed

Paul T Hocking

Inspector

Date: 4 February 2022

Reference: APP/A5270/X/21/3266891

First Schedule

The siting of a mobile home (caravan) within the residential curtilage for purposes incidental to the use of the dwellinghouse.

Second Schedule

Land at 1 Harrow View Road, Ealing W5 1NA

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 /operations 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 /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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 my decision dated: 4 February 2022

by **Paul T Hocking BA MSc MRTPI**

Land at 1 Harrow View Road, Ealing W5 1NA

Reference: APP/A5270/X/21/3266891

Scale: DO NOT SCALE



1. Harrow View Road, Ealing, W5 1NA



Site Plan shows area bounded by: 516870.34, 182075.3 517011.76, 182216.72 (at a scale of 1:1250), OSGridRef: TQ16948214. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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