



Appeal Decisions

Inquiry held on 8 February and 15 March 2022

Site visit made on 9 July 2021

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 5 May 2022

Appeal A Ref: APP/X0360/X/21/3271863

Loddon Court, Lambs Lane, Swallowfield, Wokingham, RG7 1JE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Barry Kingsbury against the decision of Wokingham Borough Council.
- The application ref 202926, dated 27 October 2020, was refused by notice dated 23 December 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 existing caravan ancillary to host dwelling".

Summary Decision: The appeal is allowed and a LDC is issued, in the terms set out below in the Formal Decision

Appeal B Ref: APP/X0360/C/21/3271861

Loddon Court, Lambs Lane, Swallowfield, RG7 1JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Barry Kingsbury against an enforcement notice issued by Wokingham Borough Council.
- The notice was issued on 11 February 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a mixed use of dwellinghouse and the siting of a caravan (in the approximately [sic] position outlined in blue on the attached plan) for independent human habitation.
- The requirements of the notice are to:
 - (i) cease the use of the Land for the siting of a caravan (in the approximate location edged in blue on the plan) for independent human habitation
 - (ii) disconnect all services and permanently remove the caravan and all associated residential paraphernalia from the Land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is allowed and the enforcement notice is quashed

Procedural matters

1. It was initially agreed that these two linked appeals should be determined via the written representations procedure. However, since the parties provided conflicting evidence on matters of fact, I considered it important (in the interests of fairness) to provide an opportunity for that conflicting evidence to

be given, and tested, on oath. The Planning Inspectorate determined that a blended procedure would therefore be appropriate, with Appeal A (the LDC appeal) and grounds (b) and (c) of Appeal B (the Enforcement Notice Appeal) to be addressed at an inquiry, and grounds (a), (f) and (g) of the Enforcement Notice Appeal to proceed by the written representations procedure.

2. The inquiry took place on 8 February and 15 March 2022, as a “virtual” online event. It was hosted by the Council, using the Microsoft Teams digital platform, and I am grateful to all those involved for their cooperation in ensuring the smooth running of the event. All oral evidence was given under affirmation.
3. As agreed at the inquiry, having made an accompanied visit to Loddon Court and seen the setting and the interior of the caravan in July, it was unnecessary for me to make a further site visit after the inquiry closed.
4. Both appeals are concerned with the siting and use of a caravan within the grounds of Loddon Court, and whether or not this constitutes a breach of planning control. I shall determine the LDC Appeal first, because if it succeeds, a Certificate of Lawfulness for the use of the caravan ancillary to the host dwelling should be issued, and it follows that the Appeal against the Enforcement Notice must also succeed. If the LDC Appeal fails, it follows that grounds (b) and (c) of the Enforcement Notice Appeal must also fail, and I will then go on to consider the remaining grounds of that Appeal.

Appeal A: The LDC Appeal

Main issue

5. It is common ground that the caravan in question stands within the residential curtilage of the house at Loddon Court: the house is occupied by Mr Kingsbury and his family, and the caravan is occupied by Mr Johnstone. The dispute between the parties, and the main issue for this appeal, is whether at the date of the LDC application the caravan was being used for purposes ancillary to the residential use of the main house at Loddon Court – in which case there would have been no material change in the use of the land, and so no development requiring planning permission - or whether the caravan was instead being used as a self-contained dwelling, which would amount to a material change of use of the land, and so would require planning permission.
6. The Appellant contends that Mr Johnstone is part of his household, and that is the basis on which he occupies this caravan; he formerly lived (in a caravan) at the family’s previous residence in Billingbear. He is employed by Mr Kingsbury as a groundskeeper, at Loddon Court and at another site in Bracknell, for which he receives a weekly wage. Mr Johnstone does not have a tenancy agreement for the caravan, or pay any rent, or any share of the bills. The Council’s view is that rather than being part of the Appellant’s household Mr Johnstone is an employee, who receives accommodation in the caravan as part of the payment for his work, and occupies it as a self-contained dwelling.

Summary of the evidence

7. Ms Maynard, a Principal Planner for the Council, visited the appeal site on 22 July and 8 September 2020. She gave evidence that at her first visit, Mr Johnstone told her the caravan had been brought on to the land for a vet to use in an emergency, and was not currently in use. Mrs Kingsbury, who arrived some ten minutes later, then stated that Mr Johnstone was living in the

caravan, having previously lived next to it in a touring caravan. At her second visit, Ms Maynard met the Appellant and asked to look inside the caravan. Her evidence was that Mr Kingsbury told her Mr Johnstone was away, and that he himself did not have a key. He also stated that the caravan had a full kitchen, that Mr Johnstone was an independent person who kept himself to himself and did not eat meals in the main house, and that he wished to move the caravan to the more private 'kitchen garden' area and provide separate access to the rear driveway.

8. Mr Kingsbury and Mr Johnstone, when cross examined, stated that they were unable to remember what they had said to Ms Maynard at her visits.
9. Mr Kingsbury's evidence to the inquiry was that Mr Johnstone has his own life, and living in the caravan affords him a degree of privacy. He and Mr Johnstone regularly watch sport together in the living room of the main house, as Mr Johnstone does not have Sky TV in the caravan. Mr Johnstone has a key to the swimming pool area, where he uses the shower and other facilities, and also has the key code for the front and back doors of the main house so that he can come and go as he pleases. Mr Kingsbury often has a cup of tea with Mr Johnstone in his caravan. Mrs Kingsbury does the food shopping for the household, including the majority of Mr Johnstone's shopping (for which he is not charged), and washes Mr Johnstone's work clothes. He eats meals with them in the main house often, but not always; Mr Kingsbury drew comparisons with his adult son Edward and his partner, who live in the main house but lead their own lives.
10. Mr Johnstone's evidence to the inquiry was that he would eat with Mr and Mrs Kingsbury in the main house most nights, unless he was going to visit his daughter in Maidenhead. Sometimes he would go to the main house to watch TV on his own (for example on Mondays, when Mr Kingsbury is out playing cards). He confirmed that the caravan is connected to water and electricity, with a functional kitchen that he can use to prepare food, but although it has a shower and a lavatory these are not plumbed in; he uses the facilities in the pool area of the main house. Mr Johnstone has four grandchildren who visit regularly, and play together with Mr Kingsbury's three grandchildren. Mr Johnstone locks the caravan if he is away overnight (nobody else has a key for it), but leaves it open during the day. His driving licence is registered at Loddon Court, his post is delivered to the main house, and he has no other address. He has not registered for the electoral roll because he does not wish to vote.
11. Mr Johnstone explained that he would not wish to live in the main house; he values the degree of independence, and privacy, provided by having his own personal space. It is not necessary, or appropriate, to detail here the matters disclosed in Mr Johnstone's oral evidence which relate to his past, and its bearing on his current circumstances. It is sufficient to note that those who provide him with support have checked that his accommodation is suitable, and continue to make regular visits. He prefers to conduct these meetings in private.

Assessment

12. I found Ms Maynard a credible and convincing witness, and I have no doubt that her contemporaneous site notes provide an accurate record of what was said at her visits. The Appellant has not provided any real explanation for the

differences between the information originally provided at those visits, and the evidence now presented in these appeals.

13. However, the answers to questions put on behalf of the Council at the inquiry (in contrast with the answers to questions put by Ms Maynard at her site visits) were given under affirmation, after Mr Kingsbury and Mr Johnstone had been made aware of the consequences of failing to tell the truth. Their oral evidence was consistent with the answers given to the Council's Planning Contravention Notice (PCN) dated 2 September 2020. I appreciate that the PCN response was completed with the assistance of the professional planning consultancy who had by that time been engaged, but it is relevant to note that it pre-dates the LDC application, and that knowingly or recklessly providing false or misleading information in response to a PCN is an offence which carries serious penalties.
14. The Council pointed out that the Statutory Declarations signed by Mr Kingsbury and Mr Johnstone on 7 January 2022 were practically identical, which would suggest the words used were somebody else's rather than their own. In her evidence to the inquiry, Ms Walker (the Appellant's planning consultant) explained that she had drafted both declarations following discussions with Mr Kingsbury and Mr Johnstone about the use they made of the caravan and the main dwelling. She sent the drafts to them for comments and corrections, including of dates and spellings; fair copies of the corrected drafts were then typed up, and returned for the witnesses to sign in front of a solicitor. I see nothing unusual, or untoward, in this approach.
15. In my judgment, the discrepancies between the information originally provided at Ms Maynard's visits, and that which has subsequently been provided following the engagement of a professional planning consultant, must reduce the weight that can be attached to this later evidence. However, I am not persuaded that they are so significant as to undermine the credibility of that evidence entirely. It is not unreasonable to suppose that during a brief and unannounced visit by a Council Official, Mr Johnstone did not choose to engage with the same level of openness as he did at the inquiry. Similarly, it is not unreasonable to suppose that before the relevance of such matters was explained to him, Mr Kingsbury saw no need to detail the extent to which Mr Johnstone took meals with the family, or used facilities in the main house.
16. Mr Kingsbury has consistently contended that Mr Johnstone is an independent person who values his privacy, and I do not regard this as being necessarily at odds with his contention that Mr Johnstone is part of his household; in the same manner as are his adult children who live in the main dwelling. In my experience most people, even the most sociable and gregarious, need time and space to themselves. For the purposes of ascertaining whether or not an individual is part of a single household, it makes little difference whether their private space consists of a lockable room within the main dwelling, or a lockable caravan in its grounds.
17. Importantly, there is no other evidence – from the Council, or others – to contradict or otherwise make the Appellant's version of events less than probable. The details provided in the PCN response, the LDC application and the written and oral evidence of Mr Kingsbury and Mr Johnstone paint a clear picture of an individual who is regarded, and treated, as part of the household at Loddon Court. Mr Johnstone's situation is analogous with circumstances where a family member or employee (such as a grandparent, teenage child,

gardener, nanny etc) has the use of a separate caravan or outbuilding so as to retain a degree of privacy and independence, but also has the use of the main house.

18. It is clear that if its (currently unusable) shower and lavatory were to be connected to the plumbing, the caravan would then have all the facilities necessary for day to day living. However, the fact that a caravan may be capable of use as a self-contained dwelling does not mean, in and of itself, that it must therefore be a self-contained dwelling. What is important is how a caravan is used. In each case, it is necessary to assess the circumstances of its occupation and the use to which it is put.
19. In this case, the entirety of the land at Loddon Court remains in single ownership and control. There is no separate access to the caravan, and it does not have its own curtilage. It is not registered separately for Council tax, and its utility bills are not separated from those of the main house.
20. The caravan is being occupied as the sole and main residence of Mr Johnstone, who is employed by Mr Kingsbury. There is evidence that Mr Johnstone has a close and mutually supportive relationship with Mr Kingsbury and his family, and is treated as part of the household; his washing and his shopping is done by Mrs Kingsbury, and he regularly eats meals and watches TV in the main house. This indicates that while the caravan provides Mr Johnstone with his own private space and a degree of independence, it functions as part of the overall living accommodation used by the Loddon Court household, rather than amounting to a separate and distinct dwelling in its own right.

Conclusions

21. I consider that when the totality of the evidence now before me is assessed (as it must be) on the balance of probabilities, it is sufficient to justify the grant of a LDC.
22. There are two important points to make here. The first is that the statement in a LDC of what is lawful relates only to the state of affairs on the land at the date of the certificate application. The second is that my finding of lawfulness does not turn on any one specific aspect of the circumstances here set out: my conclusion that the caravan is, as a matter of fact and degree, being used for purposes ancillary to the main dwelling is based on a holistic view of the state of affairs now attested to by the Appellant. What this means is that should it subsequently transpire that the caravan is being used in a different way to that described, the LDC will be of no benefit to the Appellant. Similarly, if any aspect of the described use should change, the LDC would no longer apply. It would be necessary in each case to carry out a fresh assessment of the circumstances, in order to establish whether the use made of the caravan amounted to a material change from the permitted use of the land.
23. In summary, for the reasons set out above I have found that on the LDC application date the caravan was used for purposes ancillary to the residential use of the main dwelling, rather than as a separate dwelling in its own right. I conclude, on the evidence now available, that the Council's refusal to grant a Certificate of Lawful Use in respect of the use of the existing caravan ancillary to the host dwelling 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.

Appeal B: The Enforcement Notice Appeal

24. The appeal on ground (b) is that the matters alleged by the notice have not occurred. The evidence relied on by both parties is the same as that relied upon in Appeal A. In my determination of Appeal A I reached the conclusion that the totality of this evidence sufficed to demonstrate that, on the balance of probabilities, the caravan was used as part of the overall living accommodation occupied by the Loddon Court household, rather than as a separate dwelling in its own right. Having established that this was the lawful use on the date of the LDC application (27 October 2020), there is no indication that the use was in any way different when the notice was issued 4 months later.
25. I therefore conclude that on the balance of probabilities, the alleged use of the caravan for independent human habitation has not occurred. The appeal succeeds on ground (b), and the enforcement notice will be quashed.
26. In these circumstances, the appeals on grounds (c), (a), (f) and (g), and the application for planning permission deemed to have been made under section 177(5) of the Act, do not fall to be considered.

FORMAL DECISIONS

Appeal A is allowed, and attached to this decision is a Certificate of Lawful Use or Development describing the existing use which is found to be lawful.

Appeal B is allowed and the enforcement notice is quashed.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ben Du Feu, of Counsel

Instructed by ET Planning

Called:

Barry Kingsbury

Appellant

Ian Johnstone

Occupier of the caravan

Katie Walker BA(Hons) Msc MRTPI

Associate Planner, ET Planning

FOR THE LOCAL PLANNING AUTHORITY:

Anjoli Foster, of Counsel

Instructed by the Council's Solicitor

Called:

Natalie Jarman BA(Hons) DipTP RTPI

Planning Specialist, WBC

Helen Maynard BA MSc RTPI

Principal Planner, WBC

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Copy of opening submissions made on behalf of the Appellant
2. Copy of opening submissions made on behalf of the Council
3. Copy of closing submissions made on behalf of the Council
4. Copy of closing submissions made on behalf of the Appellant

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 27 October 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The particularities of the circumstances and manner in which the caravan is used, as attested to in the evidence provided by the Appellant and his witnesses in the course of the appeal, demonstrate that it functions as additional living accommodation associated with the main dwellinghouse and not as a separate self-contained dwellinghouse in its own right. This use does not amount to a material change of use from the permitted residential use of the planning unit, and so does not constitute development requiring planning permission.

Signed

Jessica Graham
Inspector

Date: 5 May 2022

Reference: APP/X0360/X/21/3271863

First Schedule

Use of existing caravan ancillary to host dwelling

Second Schedule

Land at Loddon Court, Lambs Lane, Swallowfield, Wokingham, RG7 1JE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 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 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 5 May 2022

by Jessica Graham BA (Hons) PgDipL

Land at: Loddon Court, Lambs Lane, Swallowfield, Wokingham, RG7 1JE

Reference: APP/X0360/X/21/3271863

NOT TO SCALE

