



Appeal Decision

Site visit made on 17 May 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 30th May 2022

Appeal Ref: APP/Y2620/X/21/3278207

1 Harmers Lane, Thurgarton, Norwich, NR11 7PF

- 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 Mrs Victoria Connolly against the decision of North Norfolk District Council.
 - The application ref EF/21/0972, dated 1 April 2021, was refused by notice dated 21 June 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 described as 'Use of the land for siting a mobile home for use ancillary to the main dwelling and the proposed mobile home meets the definition of a caravan as set out in the Caravan Sites Act 1968, and as amended in October 2006 (CSA)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended (the Act), which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Description of use/development

3. An LDC issued under s192 of the Act must be worded with precision but there is no equivalent power to that set out under s191(4) of the Act for the Council, Secretary of State or Inspector to modify the terms of an LDC application. It is for the appellant to propose the use or operation that they wish to ascertain the lawfulness of. However, the terms may in practice be modified by the appellant or where they agree.
4. The Council provided a copy of correspondence it had with the appellant during the course of consideration of the application regarding a change to the description. However, there is no evidence to show that the revised description was agreed by the appellant. The appellant refers to the proposal as 'Proposed use of land was for siting a mobile home for use ancillary to the main dwelling in the curtilage of the garden of the applicant' in her appeal form. Also, she

notes in her appeal statement that her application related to proposed use and not development. Consequently, I shall determine the appeal on the basis of the description of the use of land for which the LDC was sought and not the revised description in the Council's decision notice.

Main Issue

5. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

6. 1 Harmers Lane (No. 1) is a semi-detached house within a group of similar properties facing the road. I observed during my site visit that a sizeable rear extension is in the course of construction but there is nothing to suggest that it is anything other than a single dwellinghouse. No.1 has a long and comparatively wide rear garden bounded by fences, accessed via a gap between the house and the edge of the site which is partially occupied by a shed.
7. The group of houses lies within Aldborough and Thurgarton Conservation Area (the CA). The mature tree at the far end of the garden is protected by virtue of its location within the CA.
8. The proposed development is a rectangular structure positioned close to the rear boundary and containing two rooms and a shower room/wc accessed by sliding doors. The appellant describes the purpose of the structure as providing dormitory and day accommodation for her parents to enable her to provide them with additional eldercare. She says that the main house will provide cooking, dining, and laundry facilities and that all of the accommodation will be accessible to the whole family.
9. The Council considers the use of the building to be incidental to the use of the dwelling. Although, ancillary use is a more accurate description of accommodation which is part and parcel of the main use, essentially there is no dispute between the parties that a change of use would not occur if the accommodation was used in the way described by the appellant.
10. The term caravan is defined in the Caravan Sites and Control of Development Act 1960 (CSCDA60) and in law a caravan is only a caravan if it meets the description laid down in the CSCDA60 and the Caravans Sites Act 1968 (CSA68) (as amended). The tests which are to be applied in determining whether a structure falls within the definition are derived from the CSCDA60 and the CSA68 and are commonly referred to as the construction test, the mobility test, and the size test.

The Construction Test

11. There is limited information regarding the construction of the mobile home and the information which has been provided includes options in relation to the base for the structure and the method of construction.
12. In relation to the base, three options are provided but there is no certainty as to which will be selected for this particular project. Whilst there is reference to the structure not being fixed down and resting solely on its own weight there is no detail of the relationship, if any, between the base and the structure. There

is also no clarity regarding whether the base will be part and parcel of the project or laid separately, potentially as permitted development.

13. With regard to construction on or off the site, again there is a lack of precision regarding, how the structure will be completed. One option is to install the unit as a whole by crane, which has the potential to meet the construction test. However, the alternative is described as 'rapid assembly on site'.
14. There is reference to on-site assembly 'normally' being carried out in just a few days. However, not only is this option not determined as the appropriate one for this site, but nor is the duration of any on-site assembly provided for this particular project.
15. There is also very limited evidence to show how the structure would be constructed on-site in terms of its composition of not more than two sections joined together by means of clamps, bolts, and other devices to address the CSA68 definition. The appellant cites an appeal decision relating to a structure which was delivered to a site in many pieces where the Inspector concluded that the structure amounted to a caravan (the Victoria Avenue appeal)¹. However, in that case the Inspector refers to evidence that 'during the process of assembly two sections, split at the base and ridge each with a separate ridge beam, were constructed separately' and that 'it is necessary only that the act of joining the 2 sections together should be the final act of assembly'.
16. The appellant has also provided a copy of an appeal decision relating to an enforcement notice which concerned the erection of an outbuilding (the Lodge Lane appeal)². The Inspector sets out that the Council's case concerned the assembly of the two sections of the structure on the site, as opposed to being brought to the site in two sections. In his view the Council had not appreciated that the assembly can take place on site and in common with the Victoria Avenue appeal the Inspector accepted the appellant's explanation of how the two sections were joined together in the final act of assembly.
17. In relation to the proposed mobile home at No. 1 there are no construction plans or installation method details before me which provide a definitive description of how the particular mobile home will be constructed. On the basis of the comments of the Inspectors who considered the Victoria Avenue and Lodge Lane appeals, such detailed information was before them, and it was on that basis that they were able to satisfy themselves that the construction test was met. To that extent the appeal decisions referred to by the appellant are not directly comparable with the proposals for No.1 and I am not bound to reach the same decision as those Inspectors in relation to the construction test.
18. This lack of clarity makes it difficult to conclude whether the structure meets the construction test for caravans or if in fact it is a building constructed from multiple sections on the site over a significant period of time. The latter appears to me to conflict with a reasonable contention that a caravan is a structure which is quickly and efficiently provided on a site, and which can just as rapidly be removed.

¹ Appeal Ref. APP/N1025/C/01/1074589

² Appeal Ref. APP/B5480/C/17/3174314

The Mobility Test

19. By cross-referencing the project code on the drawings with the supporting information it can be established that there are two options for the structure to be moved once constructed. Either it can be moved using a hoist using removable transport beams or it can be moved by a removable wheeled skid.
20. In practice given the site constraints of limited access to the rear garden and the narrowness of Harmers Lane moving the unit would not be straightforward. However, the test is whether when assembled it is physically capable of being moved by road from one place to another, including being transported on a motor vehicle or trailer.
21. Whilst in its complete state the evidence indicates that the structure will be capable of being moved there is also reference to the structure being readily disassembled and rapidly moved as an alternative. There is no certainty regarding which option would be pursued when the building is removed from the site. This undermines the potential for the structure to meet the mobility test since that test does not include the disassembly and reconstruction of the structure in a different location.
22. The appellant refers to an appeal decision relating to another mobile home (the Waterworks Cottage appeal)³ in which the Inspector determined that the Council was misguided in applying the mobility test because it regarded the determining issue as being whether the caravan would be readily moveable around the site. This is not the basis of the mobility test and I agree with the Inspector's views in this regard.
23. However, that is not the issue in this case, and in one scenario the mobile home could meet the mobility test through being capable of being transported on a motor vehicle. Therefore, the conclusion reached by the Inspector in the Waterworks Cottage appeal is consistent with one of the options for moving the mobile home in this appeal.
24. My conclusion in respect of the mobility test is that it has been shown that one option for moving the mobile home could meet the mobility test. However, the lack of clarity about whether this option or one entailing an undetermined degree of disassembly and reconstruction would be adopted opens up the possibility that the mobile home, when assembled, would not be capable of being moved by road from one place to another.
25. As I have said above, an application for an LDC must be worded with precision. In this case the lack of clarity about how the mobile home would or could be moved from one place to another is an example of a lack of precision which leads me to conclude that evidence of compliance with the mobility test has not been demonstrated.

The Size Test

26. In terms of its length and width the proposed mobile home is well within the limits set out by the CSA68. The appellant says that the type of structure proposed has a maximum internal height within the limit. Although the plans do not show the internal height of the structure given that the external height

³ Appeal Ref. APP/J1915/X/11/2159970

is well under the maximum internal height allowed it is reasonable to assume that the mobile home meets the size test.

Compliance with the construction, mobility, and size tests

27. I find that in this case whilst the proposed mobile home meets the size test, it has not been demonstrated on the balance of probability that it would meet the construction and mobility tests.
28. The appellant also refers to an appeal decision relating to a mobile home at 11 Bannister Green Villas, Felsted (the Felsted appeal)⁴. In that case the Inspector concluded that the mobile home, which the appellant describes as similar to the appeal scheme, met the construction, mobility, and size tests. However, it is not clear from the Felsted appeal decision what information the Inspector had before him including whether there were options in terms of both construction and mobility as is the case in this appeal. For that reason, I do not find that the Felsted appeal is directly comparable with the appeal proposals nor does the Felsted appeal decision dissuade me from my conclusion that the mobile home proposed at 1 Harmers Lane would not meet the relevant tests.

Other matters

Impact on tree in a Conservation Area

29. The Council refers to a tree which is on the site, which is protected by virtue of it being located in the CA. The Council says that it has not been demonstrated that the tree would not be harmed as a result of the development.
30. Had the application been for planning permission and the applicant clearly stated that it included specified tree works, then the Council could have regarded a planning consent as addressing the need for a tree works application under section 211 of the Act. However, there is no evidence before me to show that this applies to an application for an LDC. Therefore, I find that if I were to issue an LDC, and works were required to be carried out to the tree then a separate tree works application under section 211 would be required. This would be a matter between the appellant and the Council, and it is not necessary for me to consider the effect of the development on the tree as part of my determination of this appeal.

Whether the proposal is operational development/a building

31. Both the parties have submitted information in relation to whether or not the mobile home is operational development in the form of a building. However, I have found that the proposed mobile home, by virtue of lack of compliance with the construction and mobility tests, would not meet the definition of a caravan. Therefore, it is unnecessary for me to go on to consider the issue of whether or not the mobile home is a building to establish that a Lawful Development Certificate should not be granted.

⁴ Appeal Ref: APP/C1570/X/21/3269440

Conclusion

32. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land for siting a mobile home for use ancillary to the main dwelling and the proposed mobile home meets the definition of a caravan as set out in the Caravan Sites Act 1968, and as amended in October 2006 (CSA)' at 1 Harmers Lane, Thurgarton, Norwich, NR11 7PF 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.

Sarah Dyer

Inspector