



Appeal Decision

Site visit made on 18 May 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal Ref: APP/X4725/X/21/3289115

53 Prince Drive, Fitzwilliam, Pontefract WF9 5FD

- 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 William Younger against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 21/02371/CPL, dated 11 September 2021, was refused by the Council by notice dated 3 December 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is 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.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Preliminary Matters

3. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The onus of proof is on the appellant to demonstrate that the proposed development would be lawful, and the standard of proof is on the balance of probabilities. The planning merits are not relevant in deciding an LDC application or appeal.

Reasons

4. The appeal site is in the rear garden of No 53, a semi-detached dwelling. The proposal comprises a single storey unit of accommodation that would provide a living/sleeping area and a shower room. It is intended that an elderly relative should have the use of the development, whilst using the main house for cooking, dining and other residential activities. In terms of this proposed use, the Council are satisfied that it would be ancillary to the use of the main dwelling, and so would not amount to a material change of use of the land.

5. The gist of the appellant's case is that the new structure would be a caravan or mobile home and so its siting in the rear garden would not amount to operational development requiring planning permission.
6. The appellant states, and the Council does not dispute, that the structure would not be a twin unit caravan. For that reason, I have not considered it against Section 13 of The Caravan Sites Act 1968 (as amended) insofar as it sets out size limitations for twin-unit caravans. I have been referred to appeal decision ref: APP/C1570/X/21/3269440, but as that clearly relates to a twin unit caravan, it is not relevant to the case before me.
7. The Council's case is that the development would comprise a building amounting to operational development for which planning permission would be needed. This is primarily on the basis of the method of construction that would be required for the annex. In this context, the Council refer to the construction test that is applied to two-unit caravans, which is that they should be composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices'. However, as the Council accept that the proposal is not within the definition of a twin unit caravan, this test is not relevant.
8. There is no statutory definition of 'mobile home' or 'caravan' in the 1990 Act. Section 29(1) of The Caravan Sites and Control of Development Act 1960 (as amended) provides that the term "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.
9. The Annexa 445 is known as a Hybrid Garden Annex and is described as 'single unit'. It may be delivered to the site where it is to be located either in one piece by crane, or it may be assembled on site. In this case, it has been established in correspondence with the Council that the structure would be assembled on site from pre-manufactured components, and so would not arrive on site as a single unit.
10. There is no dispute that the proposal is designed for human habitation. The external dimensions of the Annexa 445 structure would be approximately 5.42m by 4.87m, and a maximum external height of 2.72m. The Council raise no objection to the proposal in terms of its size. They are also satisfied that the annex would be physically capable of being moved from one place to another, and so in their opinion the movability test is met.
11. However, in *Measor v SSETR*¹, the court was wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a mobile home under s13(1) of the 1968 Caravan Sites Act could never be a building for the purpose of the 1990 Act.
12. Section 336 of the Town and Country Planning Act 1990 defines a 'building' as including 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' There is not an exhaustive test of what amounts to a 'building', but the courts have held that there are three primary tests for assessing whether a structure may be

¹ [1999] JPL 182

defined as a building, which are: size, permanence, and the degree of physical attachment to the land. No one of these three factors will be decisive.

13. The definition of a 'building operation' in section 55(1A) of the Act may also be useful to consider, as it includes (d) other operations normally undertaken by a person carrying on a business as a builder. Whether or not the assembly of an annex of this kind would normally be undertaken by a builder is a matter of fact and degree. It is unclear from the evidence how complex or otherwise the construction would be, and whether it could be done by a layperson, or would need the more specialist skills of a builder.
14. Ultimately, as noted above, the burden of proof lies on the appellant in an LDC appeal. It is therefore for the appellant to be specific about the method and means of construction of the proposal, and whether it would be so complex as to require the services of a builder. His evidence falls short of establishing these facts. Also, with reference to the tests above, there is no evidence that the structure would not remain in place permanently, even after its use by the appellant's relative had ceased.
15. Drawing these threads together, it has been established that there would be no material change of use of the land amounting to development. However, I am satisfied that the appellant has failed to demonstrate, on balance of probability, that the proposed development could be defined as a caravan, with the effect that its siting on the land would not amount to operational development requiring planning permission.
16. I have had regard to the appellant's list of approved cases, but the absence of detail about these cases makes it difficult to make any meaningful comparison to the appeal proposal.

Conclusion

17. As set out in the National Planning Policy Guidance, the refusal of an LDC does not preclude another application being submitted at a later date, if more information can be produced.
18. Nonetheless, on this occasion, I conclude that the Council's decision not to issue an LDC was well-founded, and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elaine Gray

INSPECTOR