
Appeal Decision

Site visit made on 10 August 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 1 September 2022

Appeal Ref: APP/L3815/X/21/3286009

Land at 1 Stone Pit Cottages, Marley Combe Road, Camelsdale, Linchmere, GU27 3SP

- 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 Karl Stevens against the decision of the South Downs National Park Authority.
- The application reference SDNP/21/04110/LDE dated 6 August 2021 was refused by notice dated 7 October 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 rear garden cabin.

Summary of Decision: the appeal is dismissed

Preliminary Matters

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is the balance of probability.
2. The application the subject of this appeal was made under section 191 of the 1990 Act as amended. It describes the proposal for a rear garden cabin in an existing garden of a C3 dwellinghouse. There is no dispute that the proposal is for the erection of a timber cabin as shown in the application plans and I saw at my site visit that the cabin does not exist. The application therefore concerns a proposed cabin and should be considered under section 192 of the Act. There is no misunderstanding about this between the parties and therefore I shall determine it accordingly as this will not cause injustice to either party.
3. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The main issue turns on whether the proposed development would have been lawful at the time of the application.

5. The reason for refusal is that the rear garden cabin would not fall within Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as it would be located outside the domestic curtilage of the dwellinghouse. There is no dispute that in all other respects the conditions and limitation of Class E would be met and I have no reason to disagree. If the proposed cabin sits within the curtilage of 1 Stone Pit Cottages it would benefit from Class E permitted development rights and no planning permission would be required. If it sits outside the curtilage it would not benefit from permitted development rights and would not be lawful.
6. The appeal site comprises a semi-detached two storey dwellinghouse located outside the settlement boundary and within the South Downs National Park. The proposed location for the timber cabin is to the rear of the dwellinghouse.
7. The Appellant claims that the development lies within the domestic curtilage of 1 Stone Pit Cottages and that the land on which he proposes to site the timber cabin is used as part of the rear garden. He says that the cabin has been designed to meet permitted development criteria. He also makes reference to the minimal visual impact of the proposal but the planning merits are not relevant to this appeal.
8. 'Curtilage' is not a term of land use nor does it necessarily equate to the planning unit. It is not defined in planning legislation but caselaw has established relevant criteria to be applied on a case by case basis. Relevant criteria include the physical layout of the building and structure, ownership past and present and use or function, past and present. Essentially, the curtilage of a building is confined to an area around a building, having an intimate association with that building, serving that building in some necessary or useful way and usually (though not necessarily) forming one enclosure with the building. It is a matter of fact and degree.
9. The land to the rear of the dwellinghouse is steep. The lower ground level is clad in timber decking. Terraces are cut into the slope and accessed by steps. The first and second terraces are partly grassed with paved outdoor seating and recreation areas. Steps lead to a further area where the proposed cabin is proposed to be located. This area is characterised by Scots Pine trees and evidence shows that holly and rhododendron have been cleared. The site is surrounded by Ancient Woodland to the east and south. The north east and south boundaries are demarcated with posts and wire fencing. A gate in the eastern fencing provides access to the wider area of woodland.
10. There is a material difference in the character of the land where it is proposed to site the cabin compared to the well defined and terraced domestic garden land nearer the dwellinghouse. The cut terraces physically and visually enclose the rear garden area on its eastern side and they are used for purposes incidental to the enjoyment of the dwellinghouse. In contrast the site of the proposed cabin is characterised by a woodland setting. The dwellinghouse is not visible from this parcel of land due to the distance and sloping topography. I recognise that the Appellant may have used the land for recreational use but the evidence suggests this use has been limited and for a period of no more than 2 years. The evidence before me does not demonstrate that the function of the land has changed from woodland to recreation. Whilst I recognise that the dwellinghouse and parcel of land on which the cabin would sit is within the same ownership this is not a determining factor. Taking all of the evidence into

account the parcel of land on which it is proposed to erect a cabin does not as a matter of fact and degree have the kind of intimate association with the dwellinghouse that is required for it to be reasonably interpreted as within its curtilage.

11. I conclude for the reasons given above, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a rear garden cabin at 1 Stone Pit Cottages, Marley Combe Road, Camelsdale, Linchmere 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.

Formal Decision

12. The appeal is dismissed.

S. Prail

Inspector