



Appeal Decision

Site visit made on 9 January 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/U2235/X/22/3308797

Warren Lands, Lenham Heath Road, Sandway, Kent ME17 2PD

- 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 F King against the decision of Maidstone Borough Council.
 - The application Ref 22/504647/LAWPRO, dated 25 September 2022, was refused by notice dated 10 October 2022.
 - 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 for proposed use of existing dwelling as a dwelling.
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Decision

1. The appeal is dismissed.

Preamble

2. The application was made under section 192 of the 1990 Act. The completed application form is headed "Application for a lawful development certificate for a *proposed* (my emphasis) use or development. Applications made under s192 seek to ascertain whether *future* development would be lawful. The notional question posed in a s192 application is whether *future* development would be lawful if begun on the date of the application.
3. The basis of the appellant's case is that the mobile home on site ceased being a structure and was used as a dwellinghouse. The notional question is therefore whether a future residential use of what has become a dwellinghouse would be lawful. This however is not stated on the application form.
4. The application form asks, "Has the proposal been started?" to which the appellant answers "Yes" and in response to "Select the use class that relates to the existing or last use" he states "C3-dwelling houses." Nothing has been added under the heading "Information about the proposed use(s)" other than ticking the box to say that the proposed operation or use is permanent. In addition, the appellant considers a lawful development certificate should be granted "to enable the use of the structure (and curtilage) to be considered as a dwelling."
5. The application was accompanied by a supporting statement which provides more information to explain the notional question. It is submitted in order to establish whether the use would be lawful it is necessary to consider whether the mobile home remains as a caravan or whether it has become a dwelling.

The Council framed the description of the proposed development on the decision notice as "Lawful development certificate for proposed use of existing dwelling as a dwelling."

6. Following on from this the appeal form states the application was made under s192, that the proposal had started, that the actual use of the site was residential and that the description of the development was "Existing dwelling wrongly identified as a caravan by Maidstone council."
7. As such, in the absence of any other precise description, it is considered that the Council's wording in the decision notice, set out above in the last bullet point, best describes the appellant's proposal and I shall proceed on that basis.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development for the proposal was well-founded.

Reasons

9. The appeal site comprises a large field with a long frontage to Lenham Heath Road. The planning history of the site is that the previous occupier was served with an enforcement notice in 1991 alleging a material change of use to a mixed use for the purposes of agriculture and for the purposes of a caravan site, without the necessary grant or planning permission. This was corrected on appeal¹ to include the stationing of a mobile home for residential purposes.
10. The appeal was dismissed and the notice was upheld on 11 June 1992. The Inspector also varied the requirements of the notice to state "To cease the use of the land as a caravan site and for the purposes of stationing a mobile home for residential purposes. To remove the mobile home and the caravans from the land."
11. It is the Council's case that the notice was not wholly complied with in that it appears a letter of comfort was given to the occupier to allow them to live out their final years on the site and then the land would be cleared. The Council's evidence shows that the occupier vacated the mobile home in 2016 for medical care but was unable to return as the Environmental Enforcement Team deemed the mobile home to be uninhabitable due to its filthy and verminous state.
12. The appellant submits that the existing structure on site is not the mobile home the subject of the enforcement notice. He relies on the previous Inspector's size description of the mobile home to differentiate between the two but I find that the previous Inspector only referred to size in approximate terms. In terms of location, the Inspector described it as being partially screened by the hedge along Lenham Heath Road and that it effectively extends the built-up area of Sandway along Lenham Heath Road. In my view this lends support to the existing mobile home on site, especially as there is no other information about the location of the mobile home other than the hand drawn block on the plan accompanying the enforcement notice. This hand drawn location broadly reflects the most recent more accurate Ordnance Survey plan drawing of the current structure.

¹ Ref: APP/C/91/02235/614819

13. The appellant's aerial photograph of the site dated 1990 does not appear to show a mobile home on the land but the clarity of the image is poor. The next photograph in the series is dated 2003 and this clearly shows a structure with two extensions² reflective of what is there today, as do the subsequent images dated 2011, 2015 and 2020.
14. Furthermore, the appellant has not produced any evidence to demonstrate when the first mobile home was removed from the site and when the current structure was installed. The lack of a caravan site licence does not support the appellant's case as the Council explain one would not have been granted given the previous Inspector upheld the enforcement notice requiring the residential use to cease. Providing an address for the site is no different from other caravan sites in the borough and the requirement to pay Council Tax from 1993 just ties in with national requirements to pay the tax from that time. Neither demonstrate that the mobile home was replaced with a new structure on site.
15. For all these reasons I am satisfied that the structure I inspected is more likely than not to be the mobile home inhabited by the previous occupier of the site. The next question to consider is whether the structure is a building. Key points to consider as to whether any structure is a building are size, physical attachment and permanence; no single factor is decisive.
16. The parties agree that I am to have regard to the definition of a caravan and a twin unit (mobile home) set out in s29 of the Caravan Sites and Control of Development Act 1960 and s13 of the Caravan Sites Act 1968. Each party has presented different dimensions of the structure with and without the extension. To my mind, setting aside the extension, the length and width of the structure do not exceed the maximum specified in s13 whether, having regard to either the Council's measurements or the appellant's.
17. Neither party provided a dimension for the height but as I saw at the site visit, given the dilapidated state of the structure and the partial collapse of the floor when the agent entered the structure, it was undoubtedly unsafe to attempt to measure it. Furthermore, I saw at one gable end that the two halves of the structure had split at roof level leaving a sizeable gap; any bolts or clamps that previously joined the apex were long gone.
18. Looking underneath the structure, I was able to see that the chassis (with wheels) remains in place together with several support jacks. The appellant submits that these are cemented into the ground and included photographs of them in his submissions. However, on closer inspection on the ground it was not clear to me that this was the case due to the considerable amount of rubble and debris surrounding each support jack. I also saw that the structure was connected to a waste disposal unit.
19. I find that the appearance of the structure is consistent with a caravan (twin unit mobile home). It is attached to services but they could easily be detached. The small (appellant's dimensions 2.4m x 5.8m) plywood extension sits on its own wooden framework support which simply rests on the ground. Roofing felt appeared to be directly laid on the plywood and even with some fenestration, it appears to be an extremely lightweight structure. I was unable to see internally how it is attached to the structure but externally, where the

² The appellant states he removed the porch extension as it was unsafe.

plywood abuts the structure, the gap was simply infilled with what appeared to be expanding foam filler. As a matter of fact and degree, it would not appear difficult to detach the structure from the extension; it has not been shown that the extension renders the structure immobile. In addition, I find that the structure rests by gravity and I was not shown anything else which would indicate otherwise.

20. Finally, although the structure has been on site for several years, and has been extended, which may indicate a degree of permanence, in my view it is unlikely to affect the mobility of the structure. Due to its size and design, the structure could still in theory be hoisted off the site and removed on a lorry following the detachment of the extension and services. Its current dilapidated state though may prevent this in practical terms. The dilapidated state does not however mean that the structure has become a building through, in effect, neglect.
21. Drawing these threads together, I find it has not been demonstrated, as a matter of fact and degree, that the structure is now a building. It remains a twin unit mobile home, namely the same mobile home occupied by the previous resident. The effect of the extant enforcement notice means that any residential use of the mobile home would be in breach of the notice. It follows therefore that any proposed residential use of the mobile home would be unlawful by virtue of s191(2)(b) of the 1990 Act. This states that for the purposes of the 1990 Act, uses and operations are lawful at any time if they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Conclusion

22. As such, I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

D Fleming

INSPECTOR