



Appeal Decision

Site visit made on 24 January 2023

by Elizabeth Pleasant BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal Ref: APP/J3720/X/21/3282578

**Christmas Hill Farm, Gaydon Road, Bishops Itchington, SOUTHAM
CV47 2QY**

- 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 Ms Sarah Robinson Smith against the decision of Stratford-on-Avon District Council.
 - The application ref 21/01768/LDP, dated 24 May 2021, was refused by a notice dated 29 July 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 the occasional letting of two bedrooms in 6 bedroom house to overnight paying guests.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Preliminary Matter

2. The application the subject of this appeal is for a certificate of lawfulness of proposed use. Although the appellant has previously used part of the property for short term accommodation for paying guests, he confirmed that at the time of the application that use had ceased and he wished the application to be determined for a proposed use, the details and extent of which have been set out in a cover letter. I have determined the appeal on that basis.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

Reasons

4. Christmas Hill Farm is a six-bedroom, former L-shaped farmhouse including attached barn now converted entirely to residential use. Attached to the eastern side of the former barn is a neighbouring residential property known as

The Cottage. Christmas Hill Farm has a large gravel driveway and parking area to the southwest of the property and a smaller parking area and garage to the north. It has a substantial private garden area. The property is situated in an area of open countryside and takes access from the B451 via a long, single track.

5. The use described in the application and supporting information is to let out two of the bedrooms at Christmas Hill Farm to paying guests. The bedrooms would be available for letting Monday-Thursdays during school term time only. The rooms are double bedrooms, ensuite and have tea and coffee making facilities, a drinks fridge, microwave and toaster. Meals would not be provided but guests would have access to the farmhouse kitchen, a family room and access to the terrace area outside of the kitchen. Two parking spaces are available adjacent to the back door of the property for use by guests.
6. It is the appellant's view that the rooms are spare ensuite rooms. Having visitors is a normal use of a home and paying guests are indistinguishable from other non-paying guests coming to stay. The rooms are ancillary to the main house and used as such.
7. There is no dispute between the main parties that the lawful use of the property is a Class C3 dwellinghouse. The issue is whether, on the balance of probability, the use of the two bedrooms as short-term visitor accommodation for paying guests would be lawful. It is the local planning authority's view that the proposed use would be a material change of use of the property.
8. It is therefore necessary, on the particular facts, to consider whether what is proposed would result in a material change of use of Christmas Hill Farm. Consideration must be given to whether on-site or off-site effects of the proposed change indicate that there would be a change in the definable character of the site's planning land use.
9. Christmas Hill Farm is occupied by the appellant and her family, including teenage and older children. The appellant states that they often have friends and non-paying guests staying at the property who access the property by private car. The residential use of the property will continue and when the rooms are not let out, or at the weekend and during school holidays, they will continue to be used by the appellant's family and friends. The use of those rooms would not therefore be exclusively for paying guests.
10. From the evidence before me, and observations on my site visit, there would be no physical and functional separation of the proposed activity that would result in a new planning unit being formed, and land identified as Christmas Hill Farm would remain a single planning unit. However, the inclusion of tea and coffee making facilities, a drinks fridge, microwave and toaster distinguishes the accommodation from other bedrooms in the dwelling. In addition, the numbers and frequency of unknown people coming to stay at the property would be different from the one normally characteristic of visits by friends and family to the home. Although the occupation by paying guests would not be continuous, the frequency and level of use proposed would still be significant and not integral or incidental to the primary use as a dwellinghouse. Therefore, I conclude that there would be a change to a mixed use of the planning unit. However, it is generally recognised that the larger the unit of ownership or occupation the less likely is a change in the use of part of it liable to constitute a material change in the whole.

11. There is no dispute that the residential use of Christmas Hill Farm as a family dwelling with a large garden area will continue. The probability is that activities and the type of use of the bedrooms and shared accommodation used by paying guests would be similar to and consistent with a residential use and use by the appellant and her family. Views of vehicles parked at the property and guests using the garden would be no different to seeing residents. In these respects, there would be no fundamental change to the character of the use of the Land.
12. The mixed use would result in less flexibility and the ability to use the two letting bedrooms for ancillary or incidental use. However, those rooms would still be available at the weekends and in the school holidays for the family's use. In addition, the size of the property, garden and parking areas available provide more than adequate scope for enjoyment of the home even when the bedrooms are let out.
13. The main concerns of the Council and third parties relate to off-site impacts. In particular, they state that when the rooms are fully occupied there could be an additional four adults at the property. This would increase the intensity of occupation and there would be an increase in the comings and goings of users of the accommodation. The associated traffic movements would thus increase, and the access is unsuitable for additional traffic. Given that meals are not provided it is suggested that trips out for food or take-away deliveries are more likely, in addition to the existing vehicular movements of the household occupying the dwelling. Furthermore, the access to the accommodation and visitor parking area is close to the adjoining property and visitors would need to pass The Cottage's windows which would compromise their privacy.
14. The proposed use will result in a significant number of people visiting the property who would not otherwise be doing so. However, this would not be every day of the week, nor every week in the year. No weekend bookings are proposed, nor during school holidays. The size of the accommodation also limits the number of guests to 1 or 2 per room and thus the additional vehicle numbers visiting the property daily would not be significant.
15. Given the relatively isolated location of the property, short stay visitors would be noticeable to the neighbours. However, there is ample car parking space within the site to accommodate additional vehicles, and existing family members, their friends and deliveries currently utilise the front and back door of the property depending on the purpose of their visit. Given the position of The Cottage, all vehicles visiting Christmas Hill Farm must pass this property's windows. I understand that when the rooms have been rented out previously, there have been occasions when take-aways may have been ordered by paying guests and the occupiers of the Cottage have been inconvenienced by paying guests and delivery drivers trying to locate the accommodation. However, the evidence and proposed usage is such that this would not be a daily or even a regular occurrence.
16. The land, the physical area against which the materiality of change is assessed, is a relatively large site, notable for six bedrooms, the majority of which are ensuite, its big garden and large parking and turning areas. A property of this size with a family of teenage and grown-up children gives rise to a number of comings and goings related to family, social and work activities.

17. The short-term visitor accommodation is generally confined to two bedrooms. As a matter of fact, the use of those rooms by paying guests would result in more people visiting Christmas Hill Farm and traveling up and down the access track than would occur in the absence of the use. Additional parking will also occur. However, regular comings and goings to Christmas Hill Farm are an existing characteristic of the property, even without the paying guests. The activity of paying guests is limited in scale as would be their off-site impacts.
18. I conclude that on the balance of probability the use of two letting bedrooms as short-term visitor accommodation for paying guests would not result in a sufficiently significant change in the character to result in a material change in the use of the Land and development would not occur.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the occasional letting of two bedrooms in 6 bedroom house to overnight paying guests 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.

Elizabeth Pleasant

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 26 May 2021 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The letting of two bedrooms, Monday-Thursdays during school term time only in 6 bedroom house to overnight paying guests would not result in a sufficiently significant change in the character to result in a material change in the use of the Land and development would not occur

Signed

Elizabeth Pleasant
Inspector

Date: 20 February 2023
Reference: APP/J3720/X/21/3282578

First Schedule

The letting of two bedrooms, Monday-Thursdays during school term time only in 6 bedroom house to overnight paying guests.

Second Schedule

Land at Christmas Hill Farm, Gaydon Road, Bishops Itchington, SOUTHAM CV47 2QY

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 February 2023

by Elizabeth Pleasant BSc(Hons), DipTP, MRTPI

**Land at: Christmas Hill Farm, Gaydon Road, Bishops Itchington, SOUTHAM
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Scale: Not to Scale

