



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal Ref: APP/F9498/X/22/3299260

Ashbear House, Elworthy, Lydeard St. Lawrence, TAUNTON, TA4 3PY

- 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 Gill Hicks and Ms Elizabeth Hicks against the decision of Exmoor National Park Authority.
 - The application ref 6/31/21/102, dated 21 September 2021, was refused by notice dated 25 February 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 the stationing of a mobile home within a residential garden to provide ancillary accommodation.
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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 extent of the proposed operation which is found to be lawful.

Applications for costs

2. An application for costs has been made by the appellants against the Authority. This is the subject of a separate decision.

Preliminary Matters

3. As this appeal is determined on the basis the interpretation of legal matters relating to planning and case law, it was not necessary to carry out a site inspection.
4. For the avoidance of doubt, I should explain that the planning merits of any use or operations 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, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
5. The onus of proof rests with the appellants and the level of proof is on the balance of probabilities.

Main Issue

6. The main issue is whether the Authority's decision to refuse an LDC was well-founded. This centres on whether the proposed domestic use of the mobile home would be ancillary to the main dwelling on the site.

The site and relevant planning history

7. The site is located in open countryside and comprises Ashbear House and its garden within which it is proposed to station a twin unit mobile home towards its southern end about 30m distant from the host dwelling and without any boundary separation between the two.
8. Permission 6/31/19/001 was for the proposed change of use of land to equestrian together with demolition of existing buildings and erection of stable block and storage outbuildings.

Reasons

9. The appellants, who are mother and daughter, live together as a family unit in Ashbear House, which because of its age and design does not provide for an accessible downstairs bedroom and bathroom to be created. The appellants want to provide a mobile home for Mrs Gill Hicks who has restrictions on her mobility, as set out in her statement of personal need. The mobile home would comply with the legal definition of a caravan, as set out in the Caravan Sites and Control of Development Act 1960, as amended, which is not disputed by the authority. It would provide two bedrooms, bathroom, sitting area and kitchenette. Mrs Hicks would sleep and bathe in the mobile home but spend most of her time in the main house with her daughter as she does now. Meals will be cooked in the main house and eaten together at least once a day. Laundry facilities would be in the main house. All services would be provided via connections to the host property, there would be no separate Council Tax, refuse/recycling would be shared, there would be a single postal address and letterbox, there will remain a single parking area, and outside amenity space would be shared. There will be a line of sight between the house and mobile home and no sub-division of external areas.
10. Reliance is placed in the officer's report on extensive quotes in the withdrawn Circular 10/97 relating to the identification of what may or may not be regarded as a dwellinghouse and conclude that the proposed mobile home would not be ancillary to the host dwelling.
11. The Authority considers that the mobile home is capable of being occupied independently, which no doubt it has the potential to so do, and that it would constitute a new dwelling in the countryside. However, this is not conclusive as it is necessary to understand how the property would be occupied. The appellants clearly state that it would be occupied ancillary to the main dwellinghouse. The Authority provide no evidence to support their conclusion other than to suggest that the appellants would be able to lead largely independent lives and they do not have the same degree of dependency upon each other to the levels of the Epping Forest and Barnet¹ appeals they say are referred to by the appellants.
12. The Authority also considers that the proposed structure would be physically and functionally separate from the main dwelling. In reaching this view, reliance has been placed on there being sheds/outbuildings between the dwelling and the application site (sic), an off-road parking and vehicular access to the site would be shared, and, there would be a separate pedestrian access from the main dwelling on site (presumably to the proposed mobile home

¹ The appellant referred to three appeals in Blewbury, Dartford and Brighton and to one at para 10.10 which appears to be incorrectly referenced.

although this is not clear from the report). The appellants point out that the former unauthorised structures have been removed and that the small garden shed and summer house are on the western boundary would not create any physical or visual barrier between the mobile home and house.

13. Section 55 (2) (d) states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, shall not be taken as development. It is well established in case law that ancillary accommodation is an extension of the residential accommodation of the main dwelling. Uttlesford² related to an application for a change of use of a building detached from the main house to private living accommodation to be used in conjunction with existing dwelling, where it was held that the basic question to be answered was whether there was a material change of use that created a separate planning unit. In the current appeal, there would be no physical and functional separate areas created which would amount to two separate planning units. On the basis of the facts before me, the appeal site represents a single planning unit and would remain so following introduction of a mobile home to be used in the manner indicated.
14. I am satisfied that the additional living accommodation proposed in this case can be incidental to the dwellinghouse even if it is capable of semi-independent occupation. As found in APP/Q1455/X/16/3162334 (Brighton), the test of independence is how it is used, which in that case there would be a strong functional relationship between the main dwelling and the mobile home, which I consider applies to the current appeal.
15. The appellants have provided precise and unambiguous information and no evidence has been submitted by the authority to contradict or otherwise make the appellants' version of events less than probable.
16. The appellants have suggested that a condition or conditions could be imposed to ensure that the mobile home remains ancillary to the main dwelling, that it only be occupied by Mrs Hicks, and that it should not be used as holiday accommodation. However, conditions cannot be applied to LDCs. The Appellant and any prospective occupier must be clear in their understanding that the use of the mobile home in circumstances where they are not dependent on the main dwellinghouse would be in breach of the requirements of the LDC, and make the siting of the mobile unlawful and liable to enforcement action.

Conclusion

17. 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 stationing of a mobile home within a residential garden to provide ancillary accommodation 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.

P N Jarratt

INSPECTOR

² Uttlesford DC v SSE & White [1992] JPL 171

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 21 September 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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:

It has been shown on the balance of probabilities that the stationing of a mobile home for occupation by Mrs Gill Hicks would not be development by virtue of section 55 (2) (d) of the Act.

Signed

P N Jarratt

Inspector

Date: 2 March 2023

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First Schedule

The stationing of a mobile home within a residential garden to provide ancillary accommodation.

Second Schedule

Land at Ashbear House, Elworthy, Lydeard St. Lawrence, TAUNTON, TA4 3PY

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 2 March 2023

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Scale: Not to Scale

