



Appeal Decision

Site visit made on 26 April 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal Ref: APP/N5090/X/22/3309075

23 Doggetts Close, East Barnet, Barnet EN4 8SJ

- 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 Denis Murphy against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/4036/192, dated 5 August 2022, was refused by notice dated 30 September 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 described as: Use of the land for siting a mobile home for use ancillary to the main dwelling.
-

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. Based on the appeal form and questionnaire, neither main party has indicated that I need to enter the site to determine the appeal. I am satisfied this is the case and so I have not done so.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. Section 192(1) of the 1990 Act provides for the making of an application to ascertain whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land would be lawful. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
5. In an LDC application the question is whether the proposed use or operation would be lawful if 'instituted or begun' on the date of the application. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

6. In summary, section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
7. The stationing of a caravan is normally taken as constituting a use of land, rather than operational development. In this case, the Council has stated that the proposed mobile home would satisfy the necessary requirements to be considered a caravan and that it would not amount to operational development. I have no reason to disagree with the Council's assessment in this regard, taking into account the statutory definition of a caravan, set out in section 29 of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended.
8. So the dispute between the parties in this case is whether the siting of the mobile home on the land would constitute a material change in the use of the land. There is no statutory definition of what constitutes a material change of use. It depends on whether there would be a significant difference in the character of the activities on the land from what has gone on previously, as a matter of fact and degree.
9. The appeal site contains a dwellinghouse. I have no reason to believe this is not the lawful use of the land. I also have no reason to believe that the whole appeal site, on which the dwellinghouse is situated, is not the planning unit for the purposes of this appeal. In other words, the whole appeal site is the appropriate physical area against which to assess the materiality of any change of use brought about by the siting of the mobile home.
10. The drawings provided indicate that the proposed mobile home would be sited within the back garden of the dwellinghouse. It has been indicated that the proposed mobile home would accommodate the appellant's mother-in-law, who would be "*living as a closely family in a single household*" (*sic*). It is clear that the Council understands that the mother-in-law will use and share facilities within the main house to include cooking, dining, laundry, storage, waste disposal and social/leisure purposes.
11. This strongly indicates to me that there would be a functional connection between the dwellinghouse and the use of the mobile home. Moreover, there is no evidence of any physical separation proposed between the dwellinghouse and the mobile home. So I am satisfied that the proposal would not result in the planning unit being split or a material change of use occurring.
12. The Council is concerned that the mobile home could be used as "a self sufficient home". Be this as it may, this is not the use proposed in the application and there is no evidence that the mobile home would be used as an independent/self-contained dwelling, notwithstanding that it may be fitted out with facilities usually required for day-to-day private domestic existence, including a kitchen.
13. Should circumstances change and the mobile home become used as a separate dwelling, this may constitute a material change in the use of the land and a breach of planning control which could be liable to enforcement action by the local planning authority.

14. The Council has referred to Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) Order 2015 as amended. But this concerns the provision of buildings within the curtilage of a dwellinghouse. So it is not relevant to a structure which satisfies the statutory definition of a caravan and which is not operational development, as is the case here. The same is true of the associated case law that the Council has alluded to.
15. I appreciate that the mobile home would occupy a considerable proportion of the rear garden of the dwellinghouse. But this makes no difference to my assessment above as to whether a material change of use would occur.
16. Taking all of the above into account, based on the information provided, I am satisfied on the balance of probability that there would be a physical and functional connection between the proposed mobile home and the main dwelling and that there would be no significant difference in the character of the activities on the land as a result of the proposal. There is no evidence before me which contradicts the appellant's case or makes it less than probable.

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: 'Use of the land for siting a mobile home for use ancillary to the main dwelling', 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.

L Perkins

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 5 August 2022 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:

Use of the land for siting a mobile home, as described on drawing numbers 995576_01, 995576_02 and 995561_03, for use ancillary to the main dwelling, is not operational development or a material change of use of the land for the purposes of section 55 of the 1990 Act and so planning permission is not required.

Signed

L Perkins
INSPECTOR

Date: 16 May 2023

Reference: APP/N5090/X/22/3309075

First Schedule

Use of the land for siting a mobile home for use ancillary to the main dwelling.

Second Schedule

Land at 23 Doggetts Close, East Barnet, Barnet EN4 8SJ

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: 16 May 2023

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: 23 Doggetts Close, East Barnet, Barnet EN4 8SJ

Reference: APP/N5090/X/22/3309075

Scale: Not to scale

