
Appeal Decision

Site visit made on 19 June 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities

Decision date 28th July 2023

Appeal Ref: APP/W3005/X/22/3302578

31 Stainsborough Road, Hucknall, Nottingham NG15 6TT

- 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 Mrs Sarah Smith against the decision of Ashfield District Council.
 - The application Ref V/2022/0324, dated 21 April 2022 was refused by a notice dated 27 June 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 use of land for siting a mobile home for use ancillary to the main dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issue

2. If the proposal involved the siting of a mobile home falling within the definition of a caravan, and that unit was used for a purpose incidental to the enjoyment of the dwellinghouse, it would be lawful on the basis that no building operations would have taken place and no material change of use of the land would have occurred. In other words, no development requiring planning permission would have taken place. However, in assessing the application before me and at appeal, it is necessary to examine whether the proposal in this particular instance would amount to a building operation that would require planning permission and whether a material change of use would be likely to occur. I have determined the appeal accordingly.
3. In terms of the specifics of the case, the appellant has presented two options of how the Annexa 745 garden annex (the structure) would reach the site. The first would be for the structure to be built in a factory, brought to the site on a lorry and then craned into position. Alternatively, the structure can be delivered in sectional form and assembled on-site. I utilise the word 'structure' as it is a neutral term for both a building and a caravan.
4. When determining an appeal in relation to s192 of the 1990 Act it is necessary to define precisely what the proposed development would be. A decision would confirm that the specific proposal would have been lawful or otherwise on the date that the application was made. Options 1 and 2 effectively represent alternate proposals and the implications of each may be different. Unlike an application for planning permission, it is not possible to impose conditions on a

decision, for example, to the effect that a development would be lawful subject to x. y. or z.

5. Furthermore, it is necessary for me to determine whether the use would be lawful having regard to the intended way in which the structure would be occupied, which in this case is to provide additional living accommodation at the home for the appellant's parents.
6. The application plans show that the structure would be sited within the rear garden of the appeal property. However, the supporting information does not specify whether it would be erected on site or delivered as a completed unit¹. It also does not specify exactly what it would be sited on, only that it would not be fixed to the ground. Whilst I have been provided with video links and photographs of how a structure could be lifted and transported, no specific analysis of how that would be achieved in this instance has been put forward. Craning the unit onto the site would clearly be a complex operation given the height of the dwelling, the presence of neighbouring dwellings and the distance from the adjacent highway to the proposed location of the structure. Therefore, it seems to me that the most likely way in which the structure would be brought to the site would be in sections and assembled on site. It is on that basis that I have made my decision.
7. The main issue is whether the Council's decision to refuse to grant a Lawful Development Certificate (LDC) was well founded. Planning merits are not a consideration in this appeal.

Reasons

8. The appeal property is a detached dwelling situated in a residential cul-de-sac. The property has a modest rear garden which backs onto woodland. The garden is accessed either through the house or via a narrow passage around the side of the attached garage. The proposal is for a structure which would be sited within the dwelling's rear garden and would contain a bedroom with ensuite WC/shower and an open plan living/kitchen area.

Material Change of Use

9. 31 Stainsborough Road is currently in use as a single dwellinghouse. It is the Council's view that the proposed structure contains facilities which would result in a new independent residential unit at the main property. However, whether a material change of use would occur will depend on the specifics of any given case and the physical and functional relationship between the existing and proposed accommodation. Essentially, if the accommodation would be used in such a way that it forms an extension to the existing household, as opposed to the creation of a new residential unit, then no material change of use would be involved.
10. Situated within the rear garden and with no physical barrier or fence between it and the dwelling, the structure would have a very close physical relationship to No 31. In addition, the supporting information confirms that it would be occupied by the appellant's parents as additional living space to the main dwelling. It would utilise the same post box, parking, garden area and share the same utility meters. Whilst I accept that the structure would contain all the facilities required for day to day living, and thus could theoretically be occupied

¹ Supporting Information and Statement, Caravan Hybrid Garden Annexes, GX Modular.

as a separate dwelling, on the balance of probability, the circumstances indicate that the occupation would be ancillary to No 31. The occupation of the structure by the appellant's parents would not result in a material change of use or the formation of an independent residential planning unit.

11. However, if an LDC was granted on the basis of a specific set of circumstances and a structure was occupied at a future date in a different manner, it would be open to the Council to consider whether a material change of use had occurred at that point in time.

Building Operation

12. The appellant maintains that the structure would amount to a caravan, having regard to the definitions within the Caravan Sites and Control of Development Act, 1960 (the 1960 Act) and the Caravan Site Act 1968, as amended (the 1968 Act). The Council consider that insufficient evidence has been provided to demonstrate that the proposal would not constitute operational development which requires planning permission.
13. Whether or not the structure is a caravan in law is relevant to the question of whether it is a building; the judgement in *Measor v SSETR [1999] JPL 182* suggests that a mobile caravan would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment. However, in the same judgement the deputy judge also stated that he would be wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a mobile home under s13(1) of the Caravan Sites Act 1968 could never be a building for the purpose of the Town and Country Planning Act 1990. Thus, while relevant to the overall assessment, a finding that this structure is a caravan would not, on its own, show that it is not a building.
14. The term "caravan" is defined in s29(1) of the 1960 Act as meaning "any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. It excludes (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent."
15. Section 13(2) of the 1968 Act confirms that, for the purposes of the 1960 Act, the expression "caravan" shall not include a structure designed or adapted for human habitation, where its dimensions, when assembled, exceed any of the following limits: 20 metres in length; 6.8m in width; maximum internal floor to ceiling height in relation to the living accommodation of 3.05 metres. This is usually cited as the 'size test' and there is no dispute that this test is met in this case.
16. Section 13(1) of the 1968 Act defines twin-unit caravans and the 2 prerequisites in that section are usually referred to as 'the construction test' and 'mobility test'. However, the appellant is not claiming that the structure is a twin-unit caravan and therefore they are not relevant to this case.
17. There is no suggestion that the structure proposed would not be designed/adapted for human habitation. In terms of moveability, it is not proposed that the structure would be on wheels, and it could not therefore be towed. However, the definition explains that this is not necessary. Nor are the

intentions of the owner/applicant relevant in considering the movability of the structure, or limitations on movement due to site constraints. The Supporting Information and Statement¹ seeks to address the issue of moveability. Option A indicates that the Annexxa 745, which is the proposed structure in this appeal case, could be moved by hoist. Notwithstanding the concerns I set out in Procedural Matters over the practicalities of moving the structure by a crane, the details included in this document suggest that this method would require removable transport beams. It is not known whether those beams provide a structural component which is required for moving purposes, and the plans submitted with the application do not show transport beams as part of the structure proposed in this case². Furthermore, the video evidence provided does not show the Annexxa 745 as illustrated in the proposed drawings being moved. The annex in the video appears to be smaller than the structure proposed in this case and does not have its finished cladding in place.

18. Based on the generic information submitted in support of the application, which does not demonstrate how the structure proposed for the rear garden of No 31 would be moveable once constructed on the site, I conclude that it has not been demonstrated, on the balance of probabilities, that the proposed structure is capable of being moved once constructed. Accordingly, the proposal in this case does not meet the definition of a caravan.
19. Pursuant to section 55 of the 1990 Act "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land. "Building operations" includes operations normally undertaken by a person carrying on business as a builder. It is therefore necessary to consider whether the proposed structure would result in 'operations normally undertaken by a person carrying on business as a builder'. Linked to this is the question of whether the structure would be a building. A "building" is defined within section 336(1) of the 1990 Act to include any structure or erection.
20. The proposal is clearly a 'structure'. However, the definition of a building has been considered further in the courts and it has been established that there are three factors which need to be considered in deciding whether something was a building – size, permanence and physical attachment.
21. The structure would be 8.144m long, 5.394m wide and 2.7m high. In its planning context it would have an impact that would be significantly noticeable in terms of its size and physical presence, considering its location within the garden of the property. In terms of '*permanence*' the structure would be occupied by the appellant's parents. No indication has been given that this is only for a temporary period, nor that once their occupation ceases it would not continue to be utilised for other ancillary or incidental purposes associated with the dwelling. Consequently, the prospects are that it would have a substantial degree of permanence. In terms of '*fixation*', I appreciate that the container may not be bolted or physically attached to the ground. However, the courts have held that such a unit can, simply by its own weight, be considered to be fixed to the ground.
22. With regard to the three tests, I consider because of its size, physical presence and degree of permanence, in this particular location, the structure may be regarded as a building.

² Plans and Elevations, Drawing No. 995564_03.

23. The supporting information does not provide specific details relating to how the building would be constructed on site. For example, how many sections it would come in, and what component parts would need to be installed once the structure has been erected. As to its construction, I understand that the structure would be manufactured from cross laminated timber (CLT) with a structural base rail frame which forms the base for a modular assembly of pre-manufacture component parts. The assembly on site is said to take a few days. In my view, constructing the chassis and floor from CLT, as shown in Appendix 1 of the supporting information, and the fitting together of numerous sections, including stud walls, and the other work necessary to install the kitchen and bathroom on site, can be regarded as 'operations normally undertaken by a person carrying on business as a builder'. Indeed, this would be no different than constructing other prefabricated and panelled structures such as sheds, garages or summerhouses. The fact that such structures can be designed in panelled form does not exclude them from the definition of a building and they will commonly be erected by a builder or similar tradesman. There is no suggestion that the building could be assembled by the homeowner. Thus, it appears that building operations would take place on site.
24. Having regard to the evidence before me, the proposed structure is a building and building operations as set out in s55(1A)(d) of the 1990 Act would occur. It has not been demonstrated that the building proposed in this case would be moveable once constructed and thus it is not a caravan. I have had regard to the appeal decisions presented. Some of these related to the construction test, as they were for twin-unit structures. The construction test is not relevant to this appeal case which is for a single unit. I have considered the appeal in this case based on the information before me, and my decision largely rests on the details of how the structure would be erected in the present case. That judgement can only be made on the basis of the details presented in any given proposal.
25. I conclude for the reasons set out above that the Annexxa 745 garden annex proposed would be a building and that building operations would take place on the site. Consequently, the appeal proposal would result in development taking place on the site. There is no suggestion that there are any permitted development provisions that are relevant to the garden annex, and it therefore follows that planning permission would be needed to erect it on the site.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposal described as use of land for siting a mobile home for use ancillary to the main dwelling, 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 and dismiss the appeal.

Elizabeth Pleasant

INSPECTOR