



Appeal Decision

No site visit

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/N4720/X/22/3311305

White Gate Cottage, Barnbow Lane, Austhorpe, Leeds LS15 4LZ

- 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 Brenda Proctor, Mrs Angela Proctor, Ms Marie Proctor and Mr Daniel Wilkinson against the decision of Leeds City Council.
 - The application ref 20/04302/CLP, dated 15 July 2020, was refused by notice dated 17 May 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 the stationing of a caravan (defined in accordance with the Caravan Sites and Control of Development Act 1960, as supplemented by the Caravan Sites Act 1968) within the curtilage of White Gate Cottage to be used for purposes incidental to the existing residential use.
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This decision is issued in accordance with section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 6 June 2023.

Decision

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

Preliminary Matters

2. The application form does not include a description of the proposed development. The Council described the proposal as *"use of a site for the stationing of a caravan for domestic purposes"*. There is nothing before me to show the appellants agreed the Council's wording. In fact, correspondence dated 8 January 2021, confirms the appellants are seeking an LDC for *"the stationing of a caravan (defined in accordance with the Caravan Sites and Control of Development Act 1960, as supplemented by the Caravan Sites Act 1968) within the curtilage of White Gate Cottage to be used for purposes incidental to the existing residential use"*. As this is the only confirmed description of what is proposed, I will proceed on this basis.
3. The appeal involves the consideration of relevant planning law and the facts of the case, which have not necessitated a site visit. Furthermore, Green Belt policy has no relevance to the appeal's determination.

Reasons

4. The **main issue** is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

5. In this type of appeal, the onus of proof is on the appellant and the relevant test is the balance of probability. The stationing of a caravan represents a use of land for the purpose to which the caravan will be put. In this case it is for the appellant to show that the caravan proposed to be stationed on the land is to be used for purposes incidental to the existing residential use of White Gate Cottage.
6. Where a use of land is proposed it is necessary to identify the planning unit, and the present and proposed primary uses of that unit. *Burdle*¹ held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. Bridge J suggested three broad categories of distinction:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in mixed use because the land is put to two or more activities, and it is not possible to say that one is incidental to another; and
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
7. While the appellant and Council have referred to curtilage, it is the planning unit that is determinative in this case.

The Planning Unit

8. The appeal site is edged red on the site location plan and other land in the appellants' ownership is edged blue (the blue land). The proposed use would take place on the land edged red. A single dwellinghouse and its associated garden and outbuildings will normally be taken to be a single planning unit. There is no dispute that the appeal site contains a dwelling or that land immediately to the north and south of the dwelling is used for incidental or ancillary residential purposes. The use of the land to the east of the dwelling for incidental or ancillary residential purposes is however disputed by the Council.
9. The Google Earth image dated 9 June 2006 shows the appeal site. This image shows the dwelling with lawn to the front and rear, and a large hard-surfaced area to the east, behind which is an unsurfaced area of mud and grass. No physical means of separation between the dwelling and the land to its eastern side is discernible in this image. There is one vehicle and what appears to be a trailer occupying the hard-surfaced area, which is the only off-street parking area available to the dwelling. While there is no physical means of separation between the appeal site and the blue land, this is not determinative in identifying the use of the appeal site. There is nothing in this image that would lead me to conclude that the land east of the dwelling is physically or functionally separate from the dwelling or that it is being put to a non-residential use.

¹ *Burdle v SSE* [1972] 1 WLR 1207 (Div Court)

10. In the Google Earth image dated 27 September 2008 what was the unsurfaced area of mud and grass is shown as lawn. Boundary treatment can be seen between the appeal site and the blue land, albeit tyre tracks in the grass suggest that a vehicular access has been retained. There is a vehicle parked on the hard-surfaced area and a vehicle parked on the lawn. There is nothing in this image that would lead me to conclude that the land to the east of the dwelling is physically separate from the dwelling or that it is being put to a non-residential use.
11. The appellants claim the appeal site has been in residential use continuously throughout this period and that all vehicles shown in the images belong to them. The images show a maximum of 2 vehicles parked on the appeal site at any one time, none of which are identifiable as commercial vehicles. There is no discernible difference in appearance between the grassed areas to the front and rear of the dwelling and that to the east of the dwelling.
12. In the absence of contrary evidence, the appellants' evidence does not need to be corroborated to be accepted. The Council has advanced no evidence of its own to support its claims that the land to the east of the dwelling is physically and functionally separate from the land to the west. Nor has it advanced any evidence to show the parking of commercial vehicles on the land, or other non-residential use or mixed use of the land to the east of the dwelling.
13. Based on the evidence before me and as a matter of fact and degree, the appeal site is a single unit of occupation, which has a single main purpose as a dwellinghouse. I therefore find that the appeal site is a single planning unit.

Existing use

14. For a use to be lawful it either needs to have the benefit of planning permission or be immune from enforcement action. No enforcement action could be taken after the end of a 10-year period beginning with the date of the breach. The date when the appeal site was first used as a dwellinghouse and whether it had the benefit of planning permission is not known. However, the Google Earth images show that its primary use as a dwellinghouse has occurred since at least 9 June 2006, which provides a period of more than 16 years. There is nothing before me to show that the use as a dwellinghouse has been significantly interrupted at any time or that the appeal site has been used for any purpose other than as a dwellinghouse.
15. For these reasons and on the balance of probability, the existing lawful use of the appeal site is as a dwellinghouse, which falls within Use Class C3: dwellinghouses.

Proposed use

16. Whether the stationing of a caravan for incidental residential purposes constitutes a material change of use of the land is a matter of fact and degree. This family is proposing that the grandson provides care and support for his grandmother, who occupies the dwelling. He would take his meals with his grandmother and use the dwelling's facilities, but to provide a degree of privacy and separation, he would sleep in the caravan.
17. While the caravan would be occupied for a primary residential activity, this would be ancillary to the facilities found in the dwellinghouse. The sharing of cooking, bathing, and living facilities within the dwellinghouse would cause no

change to the way in which the dwellinghouse is used. The limited number of people residing at the property would cause no significant increase in journeys to and from the property. The character of the residential use of the property would not therefore significantly change.

18. Given the residents familial connection and the way the caravan would be occupied, I find that the residents would form a single household. The caravan would serve an ancillary purpose to the primary residential use of the appeal site. The proposed stationing of a caravan for incidental residential purposes would not therefore materially change the residential use of the planning unit.

Other Matters

19. A caravan is defined in the Caravan Sites and Control of Development Act 1960 as '*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*'. The Caravan Sites Act 1968 provides dimensional restrictions to what would constitute a caravan. The definition of a caravan is an established planning principle, it is not therefore necessary to include reference to the caravan acts in the description of development. There is also no need for the address to be included in the description of the proposed development.
20. If an LDC was granted and the structure stationed by the appellants did not fall within the definition of a caravan, it would represent a breach of planning control that could be enforced against. Similarly, if the way in which the caravan were occupied changed, resulting in the creation of an independent unit of residential accommodation for example, then it would also represent a breach of planning control that could be enforced against.
21. The Council is correct that for domestic outbuildings to constitute permitted development, under Class E of Schedule 2 of the GPDO², their incidental use would not include the provision of primary accommodation, such as bedrooms. The appeal does not however relate to the erection of a building and permitted development rights are not being relied upon. To avoid confusion, I will substitute '*ancillary*' for '*incidental*' in the description of the proposed development. This substitution does not fundamentally alter what is being sought.

Conclusion

22. For the reasons given above, the appellants have shown, on the balance of probability, that the stationing of a caravan for ancillary residential purposes would not constitute a material change of use of the land. 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 stationing of a caravan to be used for purposes ancillary to the existing residential use (Class C3: Dwellinghouses) 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.

M Madge

INSPECTOR

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

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 15 July 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black and hatched on the plan attached to this certificate, would be lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The stationing of a caravan for purposes ancillary and incidental to the residential occupation of the dwellinghouse do not constitute a material change of use of the land.

Signed

M Madge
Inspector

Date: [12 October 2023]

Reference: APP/N4720/X/22/3311305

First Schedule

The stationing of a caravan to be used for purposes ancillary to the existing residential use (Class C3: Dwellinghouses).

Second Schedule

White Gate Cottage, Barnbow Lane, Austhorpe, Leeds LS15 4LZ

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: [12 October 2023]

by M Madge Dip TP MA MRTPI

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Scale: Not to Scale

