



Appeal Decision

Site visit made on 3 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 27 October 2023

Appeal Ref: APP/P1615/X/22/3313719

Hulks Cottage, Allaston Road, Lydney, Gloucestershire GL15 4EX

- 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.
 - The appeal is made by Mrs Tracy James against the decision of Forest of Dean District Council.
 - The application ref P0705/22/LD2, dated 19 May 2022, was refused by notice dated 16 August 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is the use of the land for siting a mobile home for use ancillary to the main dwelling and the proposed mobile home meets the definition of a caravan as set out in the Caravan Sites Act 1968, and as amended in October 2006 (CSA).
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Decision

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

Preliminary matters

2. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it 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 onus is on the applicant (or in this case the appellant) to provide sufficient information to support an LDC application.
3. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.
4. Section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA60) defines a caravan 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 adapted¹.
5. Where appropriate, the definition in CSCDA60 must be read alongside the definition of twin-unit caravans set out in the Caravan Sites 1968 Act (CSA68)

¹ But not including (a) any railway rolling stock which is for the time being on rails forming part of a railway system; or (b) a tent

as amended. Section 13(1) of the CSA68 defines a twin-unit caravan as any structure designed or adapted for human habitation which:

a) is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices; and b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) shall not be treated as not being (or as not having been) a caravan within the meaning of Part 1 of the CSCDA60 by reason only that it cannot lawfully be so moved on a road when assembled.

6. Section 13(2) of the CSA68 sets out the maximum dimensions that a structure cannot exceed if it is to qualify as a twin-unit caravan for the purposes of Section 13(1)(a) and (b) of the CSA68. The relevant measurements are a length of 20 metres; a width of 6.8 metres and an overall height of living accommodation (measured internally from the lowest level of the floor to the highest level of the ceiling) of 3.05 metres. There is no de minimis allowance, the requirements are absolute.
7. The Council's submissions consider that provided the mobile home remains a moveable structure and satisfies the definition of a caravan within the CSCDA60, as amended by the CSA68, it would not constitute a building. I have been given no reason to disagree with this position and therefore the main issue with this appeal is as follows.

Main Issue

8. This is whether the Council's decision to refuse to grant an LDC was well-founded. This will turn on whether the proposal represents development in respect of which planning permission would be required.

Reasons

9. The issue requiring consideration here is the matter of whether the proposal would involve a material change of use of the land and thus amount to "development" within the meaning of section 55(1) of the 1990 Act². While the meaning of 'use' is provided in s336(1) of the 1990 Act, the concept of a material change of use is not defined in statute or any statutory instrument. The basic approach is that, for a material change of use to occur, there must be some definable change in the character of the activities from what has gone on previously to what is proposed, as a matter of fact and degree.
10. The appellant provides that the proposed unit would share utility services and bills with the main dwelling and would not have a separate access or postal address or be registered as a separate unit of accommodation for the purpose of Council Tax. Some confusion occurred regarding who would occupy the unit. This was confirmed by the appellant that it would be herself and her husband while younger members of the family would reside in the main dwellinghouse.
11. The Council has taken the view that, due to the facilities and level of accommodation with a functioning kitchen, a generous amount of living space, two bedrooms and a bathroom, the mobile home would not be incidental to the main dwellinghouse and would likely be a self-contained unit providing

² Development requiring planning permission means the carrying out of building, engineering, mining or other operations in, on, over or under land; or the making of a material change in the use of any buildings or other land.

separate living accommodation. While I note the mobile home could be equipped with all the facilities required for independent day-to-day living, it does not follow automatically that once occupied there would be a material change of use simply because primary living accommodation is involved. Much depends on how the unit would actually be used and its stated purpose, not what might potentially occur.

12. The appellant brought to my attention established caselaw, *Uttlesford DC v SSE & White* [1992] JPL 171 where the judge considered that, even if accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. The occupant of the annexe in the Uttlesford case was living alone and was in need of care at the time the application was being considered. While the annexe was fully self-contained and gave the occupant some independent space, the level of dependency on the occupiers of the main dwelling for the care received was sufficient to tip the balance in favour of the annexe being ancillary to the main dwelling. The situation is akin to a 'granny annexe' in a separate building in the curtilage of the main dwellinghouse, which would normally be regarded as part and parcel of the main dwellinghouse use.
13. In my judgement and from my site observations, the location for the unit falls within the existing residential planning unit, close to the main dwellinghouse, and its use as proposed would be part and parcel of the primary use of the site. It would provide additional primary living accommodation for use by close family members to those who occupy the main dwellinghouse. The land would remain in single ownership and control, and the use of the unit, in the manner described, would not involve physical or functional separation of the land from Hulks Cottage. No new planning unit would be created, and the character of the residential use of the existing single planning unit would not change. There would not be a material change in the use of the land and therefore, the proposal would not amount to development as defined in s55(1) of the 1990 Act, for which planning permission is required.
14. An LDC can only certify the use applied for. If the mobile home is not used in association with the main dwelling, as described, and the functional or physical link is severed, then it would not benefit from the LDC. In the circumstances of this case, I find that the siting of the unit in the domestic garden of Hulks Cottage for the provision of additional living accommodation, as described in the application, would, as a matter of fact and degree, have been lawful at the time of the application.

Conclusion

15. On the evidence available and on the balance of probabilities, I consider that the appeal proposal does not involve the formation of an additional planning unit separate from that comprising the main property and its curtilage, and therefore would not amount to a material change of use. Therefore, I conclude that the Council's refusal to grant an LDC in respect of the siting of 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.

S A Hanson 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 19 May 2022 the development 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed siting of a mobile home, which meets the definition of a caravan (as set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended), to provide additional residential accommodation associated with the main dwellinghouse at Hulks Cottage for the applicant and her family would be part and parcel of the residential use within the same planning unit. Being functionally connected to Hulks Cottage, it would not give rise to a material change of use of the land. Thus, the use as proposed, would not constitute development requiring planning permission as defined by s55 of the Town and Country Planning Act 1990 (as amended).

Signed

S A Hanson

INSPECTOR

Date 27 October 2023

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First Schedule

The use of the land for siting a mobile home for use ancillary to the main dwelling and the proposed mobile home meets the definition of a caravan, in accordance with the application ref. P0705/22/LD2 and dated 19 May 2022 and the supporting information submitted therewith.

Second Schedule

Land at: Hulks Cottage, Allaston Road, Lydney, Gloucestershire GL15 4EX

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 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, 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated 27 October 2023

by S A Hanson BA(Hons) BTP MRTPI

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Scale: Not to scale

