



Appeal Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/V1260/X/23/3316929

Flat 1, 38-42 Albert House, Parkstone Road, Poole BH15 2PG

- 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 David Young against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref APP/22/01291/K, dated 14 September 2022, was refused by notice dated 24 November 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 *'permission for formation of flat (residential dwelling, use class C3) in 2016, the siting of a caravan is a lawful land use within the curtilage of a dwellinghouse.'*
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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 proposed use which is considered to be lawful.

Preliminary Matters

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. The description of the proposal in the banner heading is taken from the application form. So that the Certificate is concise, I have used a shortened version of that description which relates only to the matter for which an LDC is sought.

Main Issue

4. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the proposal would involve the carrying out of development as defined in s55 (1) of the 1990 Act.

Reasons

5. The burden of proving that the proposal would be lawful rests with the appellant, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a ground floor flat. The proposal entails setting up a freestanding unit, described as a caravan, in a garden/courtyard area behind the flat. According to the submitted details, the unit would be around 7.6 m in length and 4.5 m in width, with an overall height measured internally not exceeding 3.05 m. The finished appearance of the unit would resemble a

timber log cabin. The proposed use is as a home office in association with the residential use of the flat as a single dwelling.

7. A caravan is defined in s29 (1) of 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) ...*'. At s13 (1), the Caravan Sites Act 1968 defines a twin-unit caravan as '*a 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 a 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.*' The 1968 Act at s13 (2) has the effect of excluding from the statutory definition of a caravan a twin-unit within s13 (1) that exceeds any of the following dimensions-20 m in length, 6.8 m in width and 3.05 m in overall height as measured internally from the floor at the lowest level to the ceiling.
8. The legislation does not assist in interpreting what sort of structure might be regarded as being 'designed or adapted for human habitation.' The unit would have a 'residential' design and external appearance, not dissimilar to that of many other structures that would ordinarily be regarded as falling within the statutory definition of a caravan. The unit has been designed so that it could be lived in, even if there is no intended use as primary living accommodation. Moreover, having regard to the proposed use it is likely that the unit would, in a meaningful sense, be in a form of human habitation at times. There is nothing which prevents a structure lacking the facilities required for day-to-day private domestic existence, as in this instance, from being defined as a caravan. Given the above factors, whether the unit would also share some of the characteristics of garden sheds and other outbuildings is of limited relevance. Accordingly, it is not unreasonable to regard the unit as having been designed for human habitation.
9. My understanding is that the unit would be assembled on site from prefabricated components, as opposed to being delivered as a whole or in two sections. That is not fatal however to the unit falling within the statutory definition of a caravan. There is no requirement in the definition in the 1960 Act for a caravan to be pre-assembled off-site or for it to be transported to the site in no more than two sections. The requirements of s13 (1)(a) of the 1968 Act apply only to twin-unit caravans; they do not extend to single units. The appellant makes it clear that the proposal is for a single unit. The unit is not dissimilar in terms of its size to that normally associated with a single unit caravan. The unit would be much smaller than a typical twin-unit caravan, with less than half the footprint of the largest twin-unit allowed by s13 (2). Therefore, it is not unreasonable to regard the proposal as a single unit, in which case the two-section limit for a twin-unit in s13 (2) is not applicable. That being so, the construction and size tests set out in s13 (1) and (2) do not show that the unit is unable to meet the statutory definition of a caravan.
10. Also relevant to whether the unit would meet that definition is its mobility. The unit would not be wheeled nor would it have a drawbar, as in a caravan in the conventional sense. However, that does not necessarily mean that the unit would be immobile. 'Mobility' does not require a caravan to be mobile in the sense of being moved on its own wheels and axles. A caravan may be mobile if it can be picked up intact and put on a lorry. According to the details supplied, the unit would have a steel chassis, enabling it to be lifted and moved if necessary. The unit would be placed on an existing hardstanding, with blocks used to make the unit level and to raise it slightly off the ground so that strops could be fed through to facilitate lifting with a crane. The unit would rest on the hardstanding by means of its own weight. Other than connections to

utilities, there would be no works physically attaching the unit to the ground. A photograph was supplied of a similar unit in the process of being transported on a trailer, presumably following lifting.

11. The clear inference I draw from the above information is that, more likely than not, the unit would be capable of being picked up intact and moved by lifting it onto a trailer, using a hoist attached to a crane. I regard the information concerning the mobility of the unit as sufficiently precise and unambiguous. Whilst the Council criticised the appellant's submissions as 'generic,' that is an inherent characteristic of prefabricated structures such as caravans and mobile homes. It might have been helpful for the submitted drawings to have indicated how the unit could be moved and/or for a risk assessment and method statement prepared by a crane hire company to be provided showing that the unit could be safely lifted. However, having regard to the facts already available, to require the appellant to provide further information on mobility goes beyond what would normally be required to satisfy the relevant burden of proof. Ultimately, there is little which casts any meaningful doubt on the likely inherent mobility of the unit. Accordingly, it is not unreasonable to find that the unit would meet the mobility test.
12. I have taken account of the recent appeal decision referred to by the Council concerning an LDC sought for a caravan stationed within the curtilage of a dwelling¹. However, in that case the Inspector was not persuaded that the mobility test was met, there being evidence that cast significant doubt over whether the caravan, which was already in situ, was capable of being lifted safely. The facts and circumstances of that case thus differ considerably from those in this appeal.
13. The above all leads me to conclude that, as a matter of fact and degree, the unit would meet the statutory definition of a caravan. The definition of development in s55 (1) of the 1990 Act includes the carrying out of building, engineering, mining or other operations in, on, over or under land and the making of any material change in the use of any buildings or land. The stationing on land of a unit which, as in this case, meets the definition of a caravan, would not normally involve building operations. A caravan would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment. Furthermore, the proposal would not amount to a material change of use. There is no dispute that the unit would be stationed within the curtilage of the flat. The use of land within the curtilage of a dwelling for, as in this instance, a purpose incidental to the enjoyment of the dwelling as such, is taken to not involve development having regard to s55 (2)(d) of the 1990 Act.
14. Therefore, on the balance of probability, the available evidence shows that the proposal would not involve the carrying out of development, as there would be no undertaking of building operations or the making of any material change in the use of the property.

Conclusion

15. 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 the siting of a caravan within a residential curtilage 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.

Stephen Hawkins

INSPECTOR

¹ Appeal Ref: APP/V1260/X/21/3278972.



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 14 September 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

On the balance of probability, the proposal involves the stationing of a caravan within the curtilage of the dwelling for use for a purpose incidental to the enjoyment of the dwelling as such and therefore would not fall within the definition of development set out in s55 (1) of the 1990 Act.

Signed

Stephen Hawkins

Inspector

Date 24 November 2023

Reference: APP/V1260/X/23/3316929

First Schedule

Siting of a caravan within the curtilage of a dwellinghouse

Second Schedule

Land at Flat 1, 38-42 Albert House, Parkstone Road, Poole BH15 2PG

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: 24 November 2023

by Stephen Hawkins, MA MRTPI

Land at: Flat 1, 38-42 Albert House, Parkstone Road, Poole BH15 2PG

Reference: APP/V1260/X/23/3316929

Scale: Not to scale

