



Appeal Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Appeal Ref: APP/X1545/X/23/3323188

Lyncroft, Bakers Lane, Tolleshunt Major Essex CM9 8JR

- 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 Donna McLean against the decision of Maldon District Council.
 - The application Ref LDP/MAL/23/00334 dated 27 March 2023, was refused by notice dated 22 May 2023.
 - 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 siting of a caravan for ancillary use, within a defined planning unit, does not amount to a material change of use of land 55 (1) of the 1990 Act.'*
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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. As I have been able to reach a decision based on the information already available, the appeal can be determined without the need for a site visit.
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 the 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 it has been shown that the proposal would not involve the carrying out of development as defined in s55 (1) of the 1990 Act.

Reasons

5. The onus is on the appellant to show that the proposal would be lawful, the relevant test of the available evidence being on the balance of probability.
6. The detached dwelling in this appeal stands in generous grounds. It is proposed to set up a freestanding structure towards the end of the rear garden. The submitted details indicate that the structure would be 13.55 m long and 6.55 m

wide with an internal height of 3 m, being composed of no more than two sections constructed separately and joined together at the property. There is no dispute that the structure would fall within the definition of a caravan set out in s29 (1) of the Caravan Sites and Control of Development Act 1960, being capable of movement from one place to another and satisfying the construction and maximum size requirements for a twin-unit in s13 (1) and (2) of the Caravan Sites Act 1968. There is also no dispute that the structure would be within the curtilage of the main dwelling. In relation to both of these matters, I concur.

7. The definition of development set out at 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 structure meeting the statutory definition of a caravan, as in this case, would not normally involve building operations. This is because a caravan would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment.
8. The structure would contain a living area, a kitchen and a shower room, along with two bedrooms. The structure would be a larger type of caravan, the gross internal floor area being above the minimum standard of 74 m² for a single storey three-bedroom four-person dwelling¹. The floor area would equate to around a third of that in the main dwelling. The facilities provided and its size do not necessarily mean however that the structure would be used as a separate dwelling. Relevant case law confirms that accommodation which would provide the facilities for independent day-to-day living but is nevertheless intended to function as part and parcel of the main dwelling would not necessarily result in the formation of a separate planning unit; it would be a matter of fact and degree².
9. The appellant explained that the structure would be occupied by their elderly parents, who both have ongoing health issues. The occupiers would sleep and undertake daily ablutions in the structure but would otherwise share their living activity, including taking main meals and carrying out routine tasks such as doing laundry, in company with family members in the main dwelling. The appellant went on to explain that all the utilities and services as well as the vehicular access and postal address would be shared with the main dwelling and that the structure would not have its own separate curtilage. This is all highly suggestive of the existence of a functional link between the use of the structure and the use of the main dwelling akin to that commonly associated with a residential annexe.
10. The information supplied by the appellant, including a copy of a signed and witnessed Statutory Declaration from their spouse confirming the proposed use of the structure, is sufficiently precise and unambiguous. The Council has not produced any evidence of its own which would cast doubt on the appellant's explanation of the proposed use. The planning history of the property, which includes recent planning and LDC applications for a residential annexe, is supportive of the proposed use being as set out by the appellant. Established case law makes it clear that the appellant's evidence should not be rejected

¹ Technical housing standards-nationally described space standard.

² *Uttlesford DC v SSE & White* [1992] JPL 171.

simply because it is not corroborated³. Accordingly, I afford the appellant's evidence significant weight.

11. At around 35 m away, the structure would be sited at a greater distance from the main dwelling compared to some of the structures referred to at other properties in a use similar to that proposed. Nevertheless, that does not necessarily point towards the formation of a separate planning unit. The appellant's explanation that the structure would be sited so as to safeguard maturing trees is not an unreasonable one. Besides, in my view the distance between the structure and the main dwelling is not so great as to limit the type of regular day-to-day interactions between family members, such as those set out above, which would generally be consistent with the proposed use as a residential annexe. Therefore, the siting would make little difference to the degree of independence enjoyed by the occupiers of the structure compared to, for example, if it were to be closer to the main dwelling.
12. In any event, if the structure were to be used in a manner so that it no longer formed part of the same planning unit as the main dwelling, for instance it was occupied other than in the circumstances set out above, and/or separate services and a separate garden and vehicle access provided, it is highly probable that a material change of use would occur at that stage. Since an LDC appeal is strictly concerned with matters of fact and law, whether the Council could effectively monitor the use of the structure in future is not before me.
13. Consequently, as a matter of fact and degree and on the balance of probability, I find that the proposed use of the structure would be integral to and part and parcel of the primary use of the property as a single dwellinghouse. The planning unit would remain in single family occupation, it would continue to function as a single household and there would be no material change of use. It follows that the proposal would not involve the carrying out of development as defined in s55 (1) of the 1990 Act and is lawful for planning purposes.

Conclusion

14. 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 for ancillary residential use 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

³ *Gabbittas v Newham LBC* [1985] JPL 630.



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 27 March 2023 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 and its use for a purpose integral to and part and parcel of the primary use of the residential planning unit as a single dwellinghouse and therefore would not fall within the definition of development set out in s55 (1) of the 1990 Act.

Signed

Stephen Hawkins

Inspector

Date 5 December 2023

Reference: APP/X1545/X/23/3323188

First Schedule

The siting of a caravan for ancillary use

Second Schedule

Land at Lyncroft, Bakers Lane, Tolleshunt Major, Essex CM9 8JR

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: 5 December 2023

by Stephen Hawkins MA, MRTPI

Land at: Lyncroft, Bakers Lane, Tolleshunt Major, Essex CM9 8JR

Reference: APP/X1545/X/23/3323188

Scale: Not to scale

