



Appeal Decision

Hearing held on 9 January 2024

Site visit made on 9 January 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal Ref: APP/H2733/X/22/3312536

The Old Hall, West Lane, Snainton, Scarborough YO13 9AR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Helen Burrows against Scarborough Borough Council.
 - The application ref 22/00413/CLE is dated 21 February 2022.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is *The area of land shown within the red line on the submitted plans, indicates the curtilage of the land associated with the Old Hall over the last 10 years. This land includes the dwelling, gardens, driveways, parking areas and all amenity areas etc. This application is to include the siting of three shepherd huts on the site, that are "caravans" as defined in the Caravan Sites and Control of Development Act 1960, and all hard surfacing and works associated with the huts and all access steps, platforms and canopies attached to the huts and that are to remain on site and be used by the occupiers and owners of the Old Hall and immediate family.*
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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 existing use and operations which are found to be lawful.

Application for costs

2. An application for costs was made by Mrs Helen Burrows against Scarborough Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description in the banner heading above is taken from the original application form. However, as I explained at the Hearing, curtilage is not a use of land. From the appeal submissions, it is evident that the appellant is seeking to establish that the use of the land for purposes incidental to the use of the dwellinghouse and the siting of two shepherd huts (caravans) for ancillary use, including the provision of hard surfaces, steps and canopies attached to them is lawful.
4. This amended description was agreed by the appellant at the Hearing and an amended plan submitted following the event, which shows only two shepherd huts (hereinafter referred to as huts). Since the modified description and

amended plan do not relate to a totally different development, there is no injustice to the parties, and I shall deal with the appeal accordingly.

5. It appears the appellant has extended the garden further into a field south of the post and rail fence, for certainty that land is not subject of my decision.
6. Under s191(4) the relevant date for ascertaining whether the existing development is lawful, is the date of the application. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Main Issues

7. The appeal is a result of the Council not giving notice of its decision within the statutory determination period.
8. In their submission it is stated that they do not consider the area has an established lawful use as domestic curtilage and therefore does not benefit from section 55(2)(d) of the 1990 Act. This provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development of the land.
9. They also stated that the operational development would not constitute permitted development by virtue of Article 3 and Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, the appellant has not sought to demonstrate that the operational development constitutes permitted development, but that it was completed more than four years before the date of the application and is therefore lawful.
10. Finally, the Council stated that the use of two huts is not reasonably incidental to the enjoyment of the dwellinghouse, and if it were to be accepted that the huts are ancillary, such use would require planning permission.
11. At the Hearing, the Council also sought to suggest that the huts constitute operational development and not a use of land, although not previously raised, I shall address this in the interests of completeness.
12. Based on the above, I consider the main issues are whether the huts are caravans, whether the hard surfaces, steps and canopies attached to them are lawful, and whether the siting and use of the huts for ancillary purposes is development which requires express or deemed planning permission.

Reasons

Whether the huts are caravans

13. The siting of a caravan is generally held to constitute a use of land and not operational development. However, where a caravan has permanent appendages, it will be a matter of fact and degree as to whether what is on site has become a building or structure. If a caravan remains mobile, then the likelihood is that a use of land is involved.
14. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968. The term caravan is defined 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...’.

15. Section 336 of the Act states a building ‘includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.’ The main characteristics of a building as identified by the courts, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive.
16. The steps and canopies are modest structures, attached to the ground, with the canopies resting on the roof of the huts. Whilst they may affect the mobility of the huts, once removed, which would be relatively easy, I see no reason why it would not be possible to move the huts on a vehicle or trailer.
17. The huts are connected to services however, such connections could be disconnected relatively easily. While complete removal of the services may take longer, this would not be necessary for the huts to be moved.
18. Indeed, the Council confirmed that they consider that without the steps, canopies and attached services, the huts fall within the definition of a caravan.
19. Since the huts were not constructed on the site and could be moved relatively easily, I find, as a matter of fact and degree, that they fall within the definition of a caravan and are not buildings or structures.

Hard surfaces, steps and canopies

20. The huts were brought onto the land in 2016 and 2017 respectively, which the Council did not dispute, acknowledging that the hard surfaces were provided more than four years before the date of the application. In a photograph dated 21 August 2016, attached to the general affidavit of Lucy Woodhead, it is possible to see the hard surfaces, and the steps and canopy around one of the huts.
21. Since the huts are sited on the hard surfaces and as the steps and canopies provide the means of access to the huts, it seems on the balance of probabilities that they were completed more than four years before the date of the application and are therefore lawful.

Use of land

22. I have established that the huts are caravans. The stationing of caravans is generally held to be a use of land. Whether the use amounts to a material change of use and therefore development for which planning permission is necessary, requires an understanding of the planning unit. If the use of the planning unit has not changed because of the development, and it remains a single planning unit, a material change in the use of the land is unlikely to have occurred.
23. The Old Hall is a detached house which stands in reasonably generous grounds. The property once formed part of a larger farmstead, with the former farm buildings having been sold off and converted to dwellings sometime before the appellant purchased the property.

24. Pedestrian and vehicular access is via a driveway to the front of the house. Either side of the driveway are landscaped areas with gravelled parking areas to the front and east side of the house. Immediately to the rear of the house is a lawned garden bound by a wall to the east and a wall and hedge to the south boundary. Beyond the walled garden, to the south, is a further area which is laid to lawn and landscaped with ornamental planting and features. A post and rail fence forms the south boundary.
25. All the land described above is within the appellant's ownership and is for the most part enclosed. Whilst there is a wall to the side of the garden immediately to the rear of the house and a wall and hedge to its south boundary, there are gaps in the hedge and wall which provide ready pedestrian passage between the areas of land such that, whilst there is some visual distinction between them, they essentially read as a continuum so as to be part and parcel of the same residential garden.
26. It is evident from those historical maps, along with the Nationwide sales particulars, that the area to the front of the house, the walled garden area immediately to the rear and the land to the east, formed part of the enclosure with, and was occupied with the house when the appellant purchased the property in 1994.
27. Whilst the maps do not necessarily provide an indication of how the land was used, they do record the existence of boundaries and how the land was divided over the years. Notably, none of the maps appear to show the land to the east, where the huts are sited, to be separated from the areas to the front and side of the house.
28. They indicate the land to the east to be in use as orchard at a point in time, a use which could be considered incidental to the enjoyment of the house. A letter from the previous owner's granddaughter stated that to the east of the main house was an orchard and garden, which ended at the cultivated field, which I take to be the field to the south, as it existed prior to the appellant incorporating part of it into the garden.
29. The appellant when asked, stated that the land to the east, was in use as garden when they purchased the property, being laid to grass with some grassed over hard surfacing closer to the side of the house. An aerial photograph dated 2001 shows the walls around the upper and lower south garden and the area to the south and east primarily laid to grass, with some hardstanding evident broadly where the huts are sited. In later aerial images, prior to 2016, the land has, for the most part, that same appearance.
30. It is not disputed that the additional land purchased by the appellant, south of the original walled garden, was formerly in agricultural use and incorporated into the garden.
31. The appellant stated that the wall between the lower garden and this land was demolished as it had fallen into disrepair. An aerial photograph from 2012 shows the wall around the lower garden removed and the area to the south laid to grass, but little can be gleaned in respect of the use of the land. However, it seems probable that the removal of the garden wall facilitated the extension of the garden into the additional land.

32. Whilst somewhat ambiguous in terms of describing actual use, a number of the general affidavits, corroborate the fact that the lower garden wall was removed around 18-20 years ago and that the land was used for garden purposes. Hand dated photographs from the mid-late 1990s appear to show the appellant's, then relatively young children, on the land to the east and camping on land to the south.
33. The Council referred to photographs from 2011 which show the land to be overgrown and somewhat unkempt, with photographs from 2014 which show the land to the east overgrown and in use for the storage of various items.
34. When asked, the appellant explained that significant renovation works were undertaken at the house which were ongoing for some time, and the land to the east of the site was used for the storage of associated building materials and rubbish. The extent of renovation works is corroborated by remarks in some of the general affidavits.
35. Given the significant renovation works which were apparently undertaken at the house, it seems probable that areas of land around the house were used to store materials, in this respect the land served the purposes of the house in a useful manner. Moreover, it seems unlikely that significant efforts would have been made towards keeping the garden manicured during this time.
36. The Council also referred to an agricultural use ongoing until 2019. However, it appears that involved the keeping of pigs and sheep on the land south of the post and rail fence.
37. Whilst supporting documentary and photographic evidence is not comprehensive, it is nonetheless sufficient to establish the use of the land at various points in time with a reasonable degree of certainty, and to give credibility to the appellant's account of events.
38. The courts have considered the issue of curtilage many times. The term generally refers to land which serves the purpose of a building in some reasonably necessary or useful manner. In the domestic context it has been held that curtilage means a piece of land attached to a dwelling and forming one enclosure with it, not restricted in size but it must fairly be described as being part of the enclosure of the dwelling to which it refers. Whether or not land falls within the curtilage of a building is a matter of fact and degree to be considered on a case-by-case basis and thus primarily a matter for the decision maker.
39. As established, there are three factors to be taken into account when determining whether land constitutes curtilage, these include the physical layout of the building and attached land, the ownership, past and present; and their use or function; past and present.
40. There is no evidence that the land to the east, where the huts are sited, has ever been physically separated from the land at the front and side of the house, and is accessible from the lawned garden at the rear by an opening in the wall. It can be fairly described as forming one enclosure with the land attached to the house and as a domestic garden it serves the purpose of the house in a reasonably useful manner. There is no evidence that the land has ever been in separate ownership and the appellant's submission gives a firm indication that the land has been used for incidental purposes in association

with the dwelling for the duration of their occupation and indeed at the time they purchased the house.

41. Whilst not all of the images show the level of formality that exists now, a manicured or landscaped appearance is not necessarily needed to show an intimate association with the residential occupation of the house. The fact it is there and serves that purpose is enough.
42. As a matter of fact and degree, when the application was made, the curtilage of the house consisted of those areas of land to the front, the walled garden to the rear, including that area formerly enclosed, and the land to the east, where the huts are sited, being the land which the appellant originally purchased.
43. The Council stated that the huts have been used for holiday letting, although few details were provided, and it was acknowledged that this use was not ongoing at the date of the application. In any event, the land on which the huts are sited is curtilage, which is not a use of land for planning purposes and cannot be 'lost' or interrupted by the introduction of what may have been an unauthorised use.
44. In respect of the section of land to the south, there is no evidence that this has been used for anything other than domestically incidental purposes since the appellant purchased the land, around six months after they purchased the house. The appellant has therefore demonstrated on the balance of probabilities that this land has been used for purposes incidental to the enjoyment of the dwellinghouse for at least ten years before the date of the application.
45. Accordingly, I conclude that all the land described above is now a single planning unit in residential use.
46. The huts consist of a multi-purpose living space including a bed, small kitchen area and sitting area with an en-suite bathroom. There were no cooking facilities at the time of my visit, but it would not be difficult to provide them.
47. Typically, a caravan will be equipped with all the facilities required for independent day-to-day living. It does not automatically follow that once occupied there must be a material change of use simply because primary living accommodation is involved. Much depends on how they are used.
48. The appellant stated they are seeking to establish that the huts can be used by family or friends occasionally, *subject to them being used as though it were part of the house (like an extra bedroom)*. They explained that they live in the house and the huts have been used by family and friends as overflow accommodation, and were not, at the time of the application, used independently of their house. The occupants had access to the facilities in the house, including cooking facilities, and all services are shared, with no separate meters.
49. I acknowledge the Council's concerns since the huts may have previously been let for holiday purposes. Nevertheless, my decision is based upon the evidence before me and the use of the huts at the date of the application. At that time, there was a functional link with the house. The use of the huts in the manner described would have been part and parcel of the residential use of the same planning unit, as a matter of fact and degree.

50. No new planning unit would have been created, and the use of the existing planning unit was not changed. Therefore, there would have been no material change of use arising from the development. The use of the huts at the date of the application did not therefore amount to development as defined in section 55(1) of the Act for which planning permission is required.

Conclusion

51. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the *use of land for purposes incidental to the use of the dwelling house and the siting of two shepherd huts (caravans) for ancillary use, including the provision of hard surfaces, steps and canopies attached to them*, 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.

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Dixon Agent
Helen Burrows

FOR THE LOCAL PLANNING AUTHORITY:

Katja Harper Planning Officer

INTERESTED PARTIES:

Julie Staveley
Lucy Woodhead
Harry Stockhill

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 21 February 2022 the use and operations 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The use of the land for purposes incidental to the use of the dwellinghouse is lawful. The siting of the shepherd huts (caravans) and their use as ancillary accommodation to the dwellinghouse does not constitute a material change of use of the land. They do not therefore fall within the meaning of development set out in section 55(1) of the Town and Country Planning Act 1990 as amended.

The hard surfaces were provided, and the steps and canopies erected, more than four years before the date of the application and are therefore lawful.

Signed

Felicity Thompson
Inspector

Date: 05 February 2024

Reference: APP/H2733/X/22/3312536

First Schedule

Use of land for purposes incidental to the use of the dwellinghouse and the siting of two shepherd huts (caravans) for ancillary use, including the provision of hard surfaces, steps and canopies attached to them.

Second Schedule

Land at The Old Hall, West Lane, Snainton, Scarborough YO13 9AR

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 05 February 2024

by Felicity Thompson BA(Hons) MCD MRTPI

Land at: The Old Hall, West Lane, Snainton, Scarborough YO13 9AR

Reference: APP/H2733/X/22/3312536

Scale: Not to Scale

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