



Appeal Decision

Site visit made on 16 November 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 16 April 2024

Appeal Ref: APP/X1545/X/22/3306192

Fairmead, Burnham Road, Latchingdon, CM3 6HA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Petra Back against the decision of Maldon District Council.
 - The application ref: LDE/MAL/21/01275, dated 9 December 2021, was refused by notice dated 2 August 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is the placement/use of an on-site caravan that provides ancillary living accommodation to the host dwelling.
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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 which is found to be lawful.

Preliminary Matters

2. The description the appellant used on their application form includes their justification for seeking the LDC, which is not an act of development. The description the Council has used on its decision notice reflects the appellant's description but omits their justification. The appellant has used the Council's description in their appeal form. In the banner heading above, I have therefore taken the description of the use from the Council's decision notice.
3. The application was made in the name of Petra Back. The appeal was made in the name of P Black. The appellant sets out that the reference to 'Black' on the appeal form was a typographical error. The name spellings are very similar, and I am satisfied with the explanation provided, such that I have determined the appeal before me on the basis of it being pursued by the individual named on the application form.
4. An interested party has queried a change in planning agents between the application being submitted and the appeal being made. In my experience, such a change is not unusual and is unlikely to have any bearing on the case.
5. The appellant's final comments include detailed evidence in support of their case. The Council has been given the opportunity to provide their comments on this evidence through the appeal.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

7. In an LDC appeal, the onus of proof is firmly on the appellant to make out their case to the standard of the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Issues of planning merit do not fall to be considered. The application before me must be considered in light of the facts and relevant law.
8. Section 191(1) of the Act states that if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application to the local planning authority. Section 191(2) of the Act sets out that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
9. Whilst I am advised that the Council has undertaken an enforcement investigation¹ in the past regarding the use of the caravan at the appeal site, I am told that this did not result in an enforcement notice being served. The use of the caravan does not, therefore, constitute a contravention of any of the requirements of an enforcement notice then in force.
10. The appellant seeks a LDC for the use of an *in situ* caravan for ancillary living accommodation to the main dwelling. However, the appellant sets out what is meant by this in that the caravan is used for residential purposes as accommodation associated with the main house, rather than use as a separate self-contained unit. Since it is clear this is what the appellant is seeking, I shall consider the appeal on this basis.
11. The Council does not dispute that the caravan meets the definition of a caravan laid down in section 29 of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) and Caravan Sites Act 1968. While the caravan has decking and a skirt, the Council advises this could be easily removed and so the structure can still be considered a caravan. From my inspection of the site, I concur with the Council's conclusion in this regard and agree it meets the definition of a caravan in law.
12. The 1960 Act sets out that a caravan site licence is not required for the use of land as a caravan site if the use is incidental to the enjoyment as such of a dwellinghouse within the curtilage of which the land is situated. However, while the 1960 Act is relevant to understanding whether the appeal caravan is a caravan in law, the question of whether a site licence is required is not relevant, since it does not prevent the grant of a LDC, which must be considered under planning legislation, namely the Town and Country Planning Act 1990 (as amended)(the Act) and subsidiary legislation.
13. Section 55(1) of the Act sets out the meaning of development. Development comprises two limbs: (1) the carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) the making of any material

¹ Ref: 20/0051/CU

- change in the use of any building or other land. The siting of a caravan is generally held to constitute a use of the land and not operational development.
14. The use of the caravan for sleeping, washing and cooking is not a purpose incidental to the enjoyment of the dwellinghouse and the use of the caravan is therefore not exempt from the definition of development by virtue of section 55(2)(d) of the Act. Nevertheless, where the land is within the same planning unit as the dwellinghouse, the use of a caravan will not necessarily have resulted in a material change of use.
 15. If there has been no material change of use of the land, then development for the purposes of the Act has not occurred and no planning permission is required. Whether a material change of use has occurred will turn on whether the use of the caravan would be part and parcel of the use of the dwellinghouse, such that the dwellinghouse and caravan remain part of the same planning unit.
 16. Fairmead comprises a detached two storey dwelling with a frontage to Burnham Road. It is set within a sizeable plot with a modest area of garden to its front and a substantial sized garden to its rear. A single point of access leads from the highway to a driveway which runs along the side of the house and part of the rear garden. A length of hedge is positioned to the side of the driveway and it acts as a physical boundary between the driveway and the grassed area of the garden.
 17. The caravan, the subject of this appeal, is located to the rear of the main dwelling, beyond the length of hedge. Beyond the caravan are a number of small outbuildings together with a garage and a small paddock which was being used for the playing of football as part and parcel of the garden and in my view, the site forms a single planning unit.
 18. Despite the Council's assertion that the caravan is screened at its front given the presence of the hedge, it is positioned and orientated in such a way that, to my mind, I find there is no physical delineation between the main dwelling and the caravan. Given the limited distance between the main dwelling and the caravan, this results in it being possible to walk easily between the two.
 19. At the time of my visit, I observed a ramped walkway and an area of level decking gave access to the entrance into the caravan. The caravan contained a number of rooms including two bedrooms, a living room, kitchen and a bathroom. The bathroom included a toilet, sink and bath with an overhead shower attachment. The kitchen comprised a sink, hob, oven, microwave, fridge freezer and washing machine. The caravan appeared unoccupied at the time of my visit, however, the relevant date for determining lawfulness is the date of the LDC application.
 20. A caravan will typically be equipped with all the facilities required for independent day-to-day living. However, it does not automatically follow that once the caravan is occupied there has been a material change of use of the land simply because primary living accommodation is involved. Instead, much relies upon how the caravan is actually used in conjunction with the use of the main house.
 21. The appellant has explained the history that led to the caravan being brought to the site which was intended for living accommodation for their elderly

parents who were in need of support and care due to their age, frailty and failing health. In support of the application, the appellant has set out a number of medical conditions and illnesses that their family members have experienced.

22. An extensive list of medical conditions and ailments have been detailed together with a serious injury in April 2022 which led to a period in hospital following which their family member passed away in August 2022. At a visit to the caravan by the Council, a hospital bed was observed in the front room of the caravan which gives some support to the appellant's account about their parent.
23. It is the appellant's case that the health of their remaining parent declined following the bereavement of their spouse and this was to the extent that independent living became impractical and constant 24 hour care was necessary. Their parent became reliant upon members of the family within the main dwellinghouse for daily tasks including cooking, shopping and cleaning.
24. The appellant carried out the shopping and cooking and food was shared as a family. On occasion, the appellant cooked a separate meal for their parent and at other times, the appellant cooked for the whole family. In addition, their parent was unable to walk unaided, needed help arranging appointments and making phone calls and was not able to attend medical appointments in person and therefore home visits by a medical professional were necessary.
25. There was a reliance upon the appellant for help with their parent's daily personal hygiene. Although washing and bathing is stated to have been originally undertaken within the main dwelling, a decline in mobility precluded the use of the stairs in the main dwelling and this necessitated the use of bathing facilities within the caravan, albeit with the aid and assistance of the appellant.
26. In addition, the family are stated to interact and socialise together through the sharing of meals and watching television with the occupant of the caravan spending their time between sitting in the caravan and with the family in the main dwelling.
27. The Council has referred to a visit by an officer of the Council that they carried out and which they suggest contradicts the appellant's account. During the visit, the bathroom was noted to be fully stocked and a discussion took place with the occupant of the caravan. The occupant is stated to have confirmed *'that the kitchen was used to cook meals and laundry for the occupiers of the caravan was undertaken in the caravan'*.
28. However, the date of the visit has not been given, nor have detailed, contemporaneous notes of the visit been provided. It is not clear to me whether the submitted quote is taken from a contemporaneous record of what was said. There is no information about what questions were asked, the specific responses that were given, or what follow up questions, if any, were asked to clarify the information that had been provided by the occupant.
29. Importantly, the Council's evidence does not help to establish who carried out any tasks that were carried out in the caravan, their frequency, and what tasks were carried out within the main dwelling. There is no description of the demeanour or behaviour of the individual questioned at the visit nor has the

Council contested the appellant's assertion that the individual was anxious and confused when being questioned on their own. To my mind, I find it is a plausible explanation that a person who was previously independent and self-sufficient would tone down the level of support and care they truly required for fear of being placed into a care home.

30. Although the appellant's comments are unsworn, it has not been disputed that the caravan was occupied by a family member, nor is it disputed that this individual had medical needs and that those needs necessitated support and care.
31. Given the high level of care and support that has been detailed, I find it likely that the appellant frequently cooked meals for their parent and that the provision of meals would have mainly come from the main dwellinghouse. In any event, even if meals, laundry and bathing have been undertaken in the caravan, this does not automatically mean the caravan is in use as a separate planning unit, rather it is the degree of interdependence with the main dwellinghouse and the individuals who reside there.
32. Even if the occupant of the caravan no longer entered the main dwelling on a daily basis at the date of the LDC application, given the level of care required and the significant reliance placed upon the appellant and their family, I find that, on the balance of probability, the family functioned as a single household and the use of the caravan can reasonably be regarded as having been part and parcel of the use of the main dwellinghouse.
33. The Council has referred to Google Earth photographs and suggests that they show the caravan appeared between June 2018 and April 2019 which conflicts with the date of December 2019 provided by the appellant. However, the photographs have not been provided to me as part of this appeal and moreover, they do not provide me with evidence as to the actual use of the caravan.
34. My attention has been drawn to a previous application for planning permission² having been made by the appellant for '*retrospective planning permission for continued use of a mobile home/caravan as an incidental granny annexe*' which was refused by the Council. However, no documents forming part of that application have been presented to me as part of the appeal.
35. Whilst I note that the caravan is connected to utilities including electricity, water and drainage, these are said to be shared with the main dwelling rather than being separate supplies with separate liability for payment. It is not unusual for the gas supply of a caravan to be by gas cylinder rather than a mains supply and in any event, the payment of gas and satellite tv bills independently of the main house does not render the caravan as being occupied as a separate unit of accommodation.
36. A neighbouring resident comments that '*the occupants rarely, if ever, leave their home*'. However, to my mind, this would not be unusual given the stated decline of mobility experienced by the appellant's parents over time.
37. Drawing all matters together, I conclude that, on the balance of probabilities, at the date of the LDC application, the use of the caravan for the provision of additional living accommodation as described in the application would, as a

² Planning Ref: 21/00839/FUL

matter of fact and degree, be regarded as part and parcel of the use of the main dwellinghouse and thus is within the same planning unit and did not require planning permission.

Conclusion

38. For the reasons given above I conclude that on the evidence available, the Council's refusal to grant a certificate of lawful use or development in respect of 'placement/use of an on-site caravan that provides ancillary living accommodation to the host dwelling' was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the Act.

E Brownless

INSPECTOR



The Planning Inspectorate

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 9 December 2021 the use 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The siting of the caravan and its use as additional residential accommodation associated with the main dwellinghouse at Fairmead, as described in the statement accompanying the application, was part and parcel of the residential use within the same planning unit and did not constitute development requiring planning permission.

Signed

E Brownless

Inspector

Date: 16 April 2024

Reference: APP/X1545/X/22/3306192

First Schedule

The siting of the caravan and its use as additional residential accommodation associated with the main dwellinghouse in accordance with the application reference LDE/MAL/21/01275 dated 9 December 2021 and the supporting statement and drawings submitted therewith.

Second Schedule

Land at Fairmead, Burnham Road, Latchingdon, CM3 6HA

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: 16 April 2024

by E Brownless BA (Hons) Solicitor (non-practising)

Land at: Fairmead, Burnham Road, Latchingdon, CM3 6HA

Reference: APP/X1545/X/22/3306192

Scale: Not to Scale

