



Appeal Decision

Site visit made on 29 October 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2024

Appeal Ref: APP/D1265/X/23/3327157

Merrywood, Manshay Barton, Marshwood, Bridport DT6 5PZ

- 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 Mr and Mrs Roderick Honeybourne against the decision of Dorset Council.
 - The application ref P/CLE/2023/00792, dated 9 February 2023, was refused by notice dated 1 August 2023.
 - The application was made under section 191(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 the residential mobile home and its use as a separate, independent residential dwellinghouse within use class C3, plus the use of the residential garden and the use of the outbuildings for domestic storage ancillary to the use of Merrywood.
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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 existing use which is found to be lawful.

Procedural matter

2. The description of the use for which the LDC is sought was for a residential mobile home used as a separate independent residential dwellinghouse. The term dwellinghouse could imply a building, but there is no dispute that the appeal relates to a mobile home that meets the statutory definition of a caravan. On this basis, no injustice would arise if I were to consider, and ultimately describe, the use as a mobile home for independent residential use, in the interests of clarity.

Reasons

3. Section 191(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) sets out that a use is lawful at any time if no enforcement action may be taken in respect of it (whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). This case concerns the use of a mobile home as a separate, independent residential dwelling. Such would be a material change of use of land and Section 171B(3) of the 1990 Act clarifies that in this scenario, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
4. The burden is on the appellant to prove their case to the standard of the balance of probabilities. If the evidence is sufficiently clear and precise and there is no evidence to contradict the appellants' version of events or make it

less than probable, then their evidence should be accepted and an LDC should be issued.

5. There is no dispute that the mobile home, known as Merrywood, has been on the site and occupied continuously by the appellants since 1 August 2011. However, the appeal turns on whether that use has been independent to Manshay Barton, or incidental to the occupation of that existing dwellinghouse.
6. The evidence all suggests that the appellants have long believed Merrywood to be sited on garden land to Manshay Barton. Nevertheless, the mobile home sits on an area of land to the side of Manshay Barton. There is a clearly defined garden around it that includes two outbuildings. That garden is separate to another clearly defined garden for Manshay Barton that is on the opposite side of the house. A bank and line of trees separate Merrywood from Manshay Barton, although there is a narrow footpath between the two. Both have separate accesses from a long drive/track. The situation that I saw appeared unchanged from the earliest aerial and ground level photographs before me, from 2013 and 2012 respectively.
7. The application documents include electricity bills for the mobile home and a tenancy agreement for its rental from the owner of Manshay Barton, who is one of the appellant's mother. While no Council Tax liability has been registered or paid, the absence of such is not indicative that independent use has not been ongoing. Nor is the addressing to Merrywood 'c/o Manshay Barton' of one of the appellant's P60 end of year Tax Certificates, given that it is a single item of irregularly received correspondence and Merrywood is not a registered address.
8. 4 statutory declarations set out that the appellants' have lived in the mobile home and occupied it as an independent dwelling. While two of the statutory declarations were made by people not resident at the site who may not be able to tell the difference between separate and incidental occupation, those provided by the appellants may lack detail, but are unambiguous. The Council confirms in its officer report that there is no reason to dispute those. Instead, the Council draws attention to circumstances before the start of occupation and in 2014/15 following an enforcement officer's visit to the site.
9. In 2010, a Principal Planning Officer at the Council wrote to Manshay Barton saying that the separate residential use of a caravan would require an application for planning permission. However, the letter is not so clear as the Council seeks to suggest as its second paragraph says that the parking of a touring caravan within the residential curtilage would not amount to development. That second statement is not caveated by any suggestion as to how such a caravan could be used. The advice given was, therefore, somewhat contradictory.
10. In any case, as there was no mobile home at the site when the letter was written in 2010, this is not in any way indicative as to how the mobile home has actually been used. Neither the appellants nor owner of Manshay Barton appear to have taken further advice and in 2011, occupation of the mobile home commenced.
11. In written correspondence to the Council in December 2014, the owner of Manshay Barton said that a mobile home was being used as a site office by a neighbouring farm. However, it is not clear whether the discussion was about

Merrywood or something else, as there had also been confusion over the potentially unauthorised use of holiday lets nearby and owned by others at the same time.

12. Towards the end of 2014, an enforcement officer visited the site. Contemporaneous notes from a telephone call and site meeting in January 2015 with the current appellants suggest that the mobile home was being occupied as 'ancillary accommodation'. The enforcement officer documented discussions about the extent of residential curtilage and that there was no separate metering from electricity and water, although it is not specified how this was known. There remains no evidence of a separate water supply and it is not clear from the evidence that these relate to a separate supply to Manshay Barton.
13. There is then a letter from Mrs Honeybourne to the Council explaining their occupation of the mobile home. It appears to be providing a response to an unspecified letter from the Council. In it, she documents a daily interaction with her mother-in-law who owns and occupies Manshay Barton, including taking evening meals together and undertaking various household chores. It was a clear statement that her mother-in-law is dependent on the appellants for her day to day living needs. In concluding the letter, she comments that she looks forward to clarification that the appellants were complying with the requirements of the siting of their mobile home within the curtilage of and used ancillary to the main dwelling, Manshay Barton. It does not clearly set out or clarify that was what was happening.
14. On the strength of this, the enforcement officer was satisfied that the occupation of the mobile home had not resulted in a material change of use of the land. No further active investigation, or the use of statutory processes such as planning contravention notices, that may have uncovered a different set of circumstances, were deployed. The case was closed with a comment that there was no breach of planning control.
15. However, whether or not through naivety or a deliberate decision to mislead the enforcement officer, neither the letter nor enforcement officer's notes describe activities or arrangements that would make the mobile home dependent or necessarily part and parcel of the main house. Rather, they simply describe various caring activities that could be undertaken by a relative living close by.
16. As the appellants now suggest, they may not have realised the implications of their choice of words in terms of the planning status, especially as the contemporaneous notes appear to suggest that the main concern of the officer may have been whether the land was within the garden of the house, or not. On the balance of probabilities, this language, posed as a request for clarification from the enforcement officer, and in response to unknown written comments, does not go so far as to result in positive deception in the planning process. Nor does it cast significant doubt as to whether the actual use was an independent one.
17. In concluding its assessment of the current case, I note that the Council's officer report suggests that, as the letter from Mrs Honeybourne identifies an incidental use was ongoing, the period of time for immunity would restart from 13 January 2015. It goes on to say that immunity would then be gained on 12 January 2025. That statement is replicated in the reason for refusal.

18. This strongly suggests that the Council does not have any evidence to contradict the appellants' version of events or evidence as to how the mobile home has been occupied since January 2015. Moreover, clarification of the actual immunity date in the reason for refusal indicates clear acceptance from the Council that Merrywood has been used as a separate independent dwelling since 13 January 2015. From the available evidence, there is no reason that the way that it was occupied would have changed on the day that the letter was written.
19. I have no doubt that there are certain interrelationships between Manshay Barton and Merrywood. They seem likely to share a water supply, may share an electricity supply, and the appellants undoubtedly spend a lot of time at Manshay Barton caring for its owner. However, the sharing of utility connections has little to do with the way in which the accommodation has been used and other than the use of the word 'ancillary' in the concluding paragraph of Mrs Honeybourne's January 2015 letter, there is nothing to suggest that the use at or before that date was incidental to Manshay Barton.
20. Even if it were once within the domestic garden area, since at least 2013, and probably since the start of occupation in 2011, the site has been clearly arranged as two separate units of accommodation. Nothing in the correspondence suggests that the occupiers of Merrywood were dependent upon, or ancillary to the use of Manshay Barton. Therefore, I find it more likely than not that, firstly, the use before and after 13 January 2015 was the same as the use that the Council says will become immune from enforcement action on 12 January 2025; secondly, that that use commenced on 1 August 2011; and thirdly, that the use was providing a separate, independent home for the appellants. It was simply conveniently located to suit family needs.
21. Therefore, on the balance of probabilities, I find that the use of the mobile home as a separate independent dwelling commenced on 1 August 2011 and continued, uninterrupted for 10 years. The time for taking enforcement action passed on 31 July 2021 and the use became lawful.
22. Aerial and ground-level photographs show that throughout this time, the associated garden and outbuildings were within the same enclosed piece of land. Therefore, there is no reason to dispute the appellants' claim that the use of that land incidental to Merrywood as garden and for domestic storage also became lawful over the same period.

Conclusion

23. For the reasons given above I conclude, on the evidence now available that, the Council's decision to refuse to grant an LDC in respect of the siting of the residential mobile home and its use for separate, independent residential purposes within use class C3, plus the use of the residential garden and the use of the outbuildings for domestic storage ancillary to the use of Merrywood 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).

M Bale

INSPECTOR

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 February 2023 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:

On the balance of probabilities, the use of the mobile home as a separate independent dwelling commenced on 1 August 2011 and continued, uninterrupted for 10 years.

Signed

M Bale

Inspector

Date: 04 November 2024

Reference: APP/D1265/X/23/3327157

First Schedule

The siting of the residential mobile home and its use for separate, independent residential purposes within use class C3, plus the use of the residential garden and the use of the outbuildings for domestic storage ancillary to the use of Merrywood.

Second Schedule

Land at: Merrywood, Manshay Barton, Marshwood, Bridport DT6 5PZ

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: 04 November 2024

by M Bale

Land at: Merrywood, Manshay Barton, Marshwood, Bridport DT6 5PZ

Reference: APP/D1265/X/23/3327157

Scale: Not to Scale

