
Appeal Decision

Site visit made on 13 October 2016

by Susan Wraith DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 December 2016

Appeal ref: APP/Q1255/X/16/3142534
542 Blandford Road, Poole BH16 5EG

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
 - The appeal is made by Mr Nicholas Gray against the decision of Borough of Poole Council.
 - The application no: APP/15/01398/K dated 2 October 2015 was refused by notice dated 1 December 2015.
 - The application was made under s192(1)(a) of the Act.
 - The development for which an LDC is sought is: To site a mobile home at the rear of the property and use it as a Granny annexe.
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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 comprising the siting of a mobile home at the rear of the property and its use as a Granny annexe which is considered to be lawful.

Preliminary matters

2. The description of the proposed development given on the decision notice is "to locate a mobile home in place of existing garage and summerhouse". On the appeal form the proposal is described as "to site a mobile home at the rear of the property and use it as a Granny annexe". I shall adopt the appellant's description for the purposes of the appeal as I consider this to more fully reflect the matter applied for.
 3. Explanation is given in the Planning Statement and other supporting information that, in a number of respects, the mobile home would be functionally linked to the main dwelling. The proposal does not involve use as a Granny annex independently from the main dwellinghouse.
 4. The relevant date for the purposes of this determination of lawfulness is the date of the LDC application i.e. 2 October 2015. The matter to be decided upon is whether the activity proposed, if instigated or begun at that date, would have been lawful. For ease of reading, however, I shall write in the present tense.
 5. In an LDC appeal the burden of proof to demonstrate lawfulness is upon the appellant. The planning merits of the matter applied for (including those concerning the extent to which the development affects outlook from
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neighbouring properties and the accommodation needs of the applicant) do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law and judicial authority.

Main issue

6. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

Whether the caravan is a building

7. The parties agree that the mobile home would be sited on land comprised within the curtilage of the main dwellinghouse. It is also agreed that the mobile home (which is designed for human habitation), would fall within the statutory definition of caravan¹ when taking into account its size, mobility and method of construction.
8. The appellant argues that, because the mobile home falls within the statutory definition, it follows that the proposal is for a use of land rather than for an operational development. The Council, on the other hand, considers that there is a further test to be applied. In the Council's opinion it is also necessary to consider whether the mobile home is a building as defined by s336(1) of the Act².
9. The stationing of a caravan usually constitutes a "use" of land. The legislation which defines "caravan" is primarily concerned with habitable accommodation that is mobile and, thus, in most cases a use. However, as a matter of law, the possibility of a caravan also being a building cannot be ruled out³. I therefore agree with the Council that this is a further matter to consider.
10. The term "building" is to be interpreted widely. Case law⁴ has held that there are three primary factors that determine what is a building, those being "size", "permanence" and "physical attachment". It may be appropriate to give greater weight to one over another in reaching a conclusion. No one factor is decisive.
11. In terms of permanence, the mobile home is required by the appellant and his wife (who currently occupy the main dwelling together with their daughter and her family) for a duration of time sufficient for them to provide childcare to their grandchildren so that their daughter can return to work and train as a nurse and also so that they themselves can receive help from the family into their retirement years. The mobile home would have a considerable degree of permanence.

¹ The term "caravan" is defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended).

² S336(1) of the Act defines "building" as including "any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building".

³ In *Measor v SSETR* [1999] JPL 182, J.1007 the Deputy Judge said that he would be wary of holding, as a matter of law, that a structure which satisfies the definition under the 1968 Caravan Sites Act could never be a building for the purposes of the 1990 Planning Act but it would not generally satisfy the well established definition of a building having regard to factors of permanence and attachment.

⁴ Cases which have examined the matter of what constitutes a "building" include *R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin) and *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2000] JPL 1025.

12. However, on the evidence, it appears that the mobile home would still remain mobile. It would be positioned upon the land (on a slab or pad stones for example) and be designed with the appropriate structural integrity to allow it to be lifted and placed on an HGV trailer and transported off the site⁵. This simple placement of the mobile home which could, at some point in the future, be removed in the manner described would not amount to a physical attachment to the land.
13. There would be attachments to services (such as water, drainage and electricity). However, detachment from such services is usually a simple matter which can be quickly achieved and, in any event, connection to services is not the same thing as physical attachment to the land.
14. The size of the mobile home is substantial. However, it falls well within the size limitations for a caravan as set out in the statutory definition. The statutory definition provides a strong indication that mobile homes of such size can be uses of land rather than buildings. Size is not a consideration which weighs heavily in my overall assessment of whether or not the mobile home is a building.
15. When considering all these three factors together, and taking into account the statutory definition of "caravan" which usually relates to uses rather than buildings, I conclude on balance that the siting of the mobile home for the use described would not amount to operational development as a matter of fact and degree.

Consideration of the use of the land

16. Turning now to the matter of use in more detail, the stationing of a caravan on land does not necessarily amount to a material change of use of the land⁶. It is necessary to consider how the caravan is to be used to determine whether a material change in use, and thus development, would be involved⁷.
17. From the evidence and from what I saw at my site visit I am satisfied that the garden curtilage of the dwellinghouse defines the relevant planning unit for the purposes of assessing the materiality of any change of use. This is a physically distinct area with a clear functional purpose associated with the dwellinghouse. The primary use of the planning unit is that of a single dwellinghouse.
18. For the following reasons I consider that the siting of the mobile home within the planning unit, and its use as described in the application and appeal submissions, would not amount to a material change of use:
 - (i) The mobile home would be positioned within the dwelling curtilage, sharing the access, parking, servicing and garden areas of the main dwellinghouse. It would have no separate curtilage.
 - (ii) The overall planning unit would continue in occupation by the same family members as presently occupy the main dwelling.

⁵ The mobility methodology for the mobile home is set out in the Mobile Home Report at Appendix B to the Planning Statement.

⁶ Wealden DC v SSE & Day [1988] JPL 268

⁷ The meaning of "development" is set out in s55(1) of the Act. It comprises two limbs – the carrying out of operations or the making of any material change in the use of the land.

- (iii) The appellant and his wife, who would occupy the mobile home, would continue to play a part in family life including by providing childcare for their grandchildren within the main dwelling.
 - (iv) They would continue to use facilities in the main dwelling, including by taking their main meals with the family in the main kitchen/diner and undertaking laundry.
 - (v) The spare bedroom in the mobile home would be available for use by the family as a guest room.
 - (vi) There would be no separate postal address or separately metered services.
19. Whilst the mobile home would contain all the facilities for independent living it would not be used in a manner independent from the main dwelling. The use of the mobile home as described in the application would be a use comprised part and parcel within the primary dwellinghouse use which is already taking place within the planning unit, as a matter of fact and degree.
20. It has been argued that the use of the mobile home is a use "incidental" to the enjoyment of the dwellinghouse as such. However, "incidental" uses within the curtilage of a dwellinghouse are generally those which arise as an incidence of the dwellinghouse but which are not, in themselves, part and parcel of the existing dwellinghouse use⁸. The nature of use in this case, which would involve primary living space (for example sleeping and lounge areas) together with the functional linkages between the mobile home and the main dwelling, and the size of the mobile home, lead me to conclude that the use would be part of the primary use and not incidental to it. However, because there is no change to a different use, such use can take place without the need for planning permission.
21. I have considered whether the mobile home would result in a material change of use by reason of intensification, in particular when having regard to its size. However, when taking into account the suburban location, that the mobile home will replace an existing summerhouse and garage and that there will be no change in the level of occupation within the planning unit overall, I do not find that the mobile home will change the character of the primary use of the land to any material extent.

Other matters

22. The evidence indicates that the mobile home would sit upon pad foundations, a concrete slab or breezeblock pillars positioned on the slab⁹ and that services (albeit taken from the main property) would be installed. This raises the question of whether these works would, in themselves, amount to development and, if so, whether or not they would be permitted

⁸ Incidental uses are those which arise from the enjoyment of a dwellinghouse by an occupier, for example uses associated with a hobby, which are of a scale and nature which can reasonably be described as "incidental". The interpretation given at Class E to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) states that "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

⁹ Paragraph 2.14 of the Planning Statement says that the mobile home would rest on a concrete slab. The Mobile Home Report, at page 3 "Ground Works" says that, instead of sitting directly on the groundwork slab, the mobile home would sit on pillars of breezeblocks. The appellant has said in correspondence dated 21 November 2016 that it is intended to install individual pads.

development. However, these works do not expressly form part of the matter which is before me and, insofar as the placing of the mobile home is concerned, the appellant says there is no dependency upon foundations as the mobile home can rest on blocks or pads placed on the ground. I am satisfied that any of the above preparatory works (if they amount to development) would be separate operational developments to be carried out prior to the placing of the mobile home. It is not within the scope of this LDC appeal for me to decide upon these matters which can be left for the appellant and the Council in the first instance.

23. I have been referred to a number of appeal decisions. Whilst taking these into account I have determined this appeal based on the facts and circumstances of this particular case.

24. Although the "Woolley Chickens" case explores points of law around the interpretation of "building" (and to that extent it is relevant) it is distinguishable from the appeal case as it concerns a different type of development (poultry units). There was no need, in that case, to consider the statutory definition of "caravan" whereas, in this current appeal, the statutory definition has bearing upon the conclusion as to whether or not the matter applied for is a "building". This case law therefore carries only limited weight in my decision.

Conclusion

25. I find that, had the mobile home been sited and its use instigated at the time of the LDC application, there would not have been a breach of planning control and the matter applied for would have been lawful as a matter of fact and degree. For all the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC for the siting of a mobile home at the rear of the property and its use as a Granny annexe (not used independently from the main house) was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under s195(2) of the Act.

Susan Wraith

INSPECTOR

Lawful Development Certificate

APPEAL REFERENCE APP/Q1255/X/16/3142534

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 October 2015 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, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended) for the following reason:

The proposed siting of the mobile home at the rear of the property and its use as a Granny annexe (not used independently from the main house) would have been part and parcel of the primary use of the land as a single dwellinghouse and would not have given rise to a material change of use of the planning unit.

Susan Wraith

INSPECTOR

Date: **16 December 2016**

First Schedule

Siting of a mobile home at the rear of the property and its use as a Granny annexe (not used independently from the main house).

Second Schedule

542 Blandford Road, Poole BH16 5EG

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.
4. 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.

This is the plan referred to in the Lawful Development Certificate dated: **16 December 2016**

by Susan Wraith DipURP MRTPI

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Scale: Not to scale

