
Appeal Decision

Site visit made on 26 February 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/T0355/X/19/3237532

Bridge Cottage, Bisham Road, Bisham, Maidenhead SL7 1RP

- 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 Mr Wheeler and Mr Palmer against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/01312, dated 13 May 2019, was refused by notice dated 2 August 2019.
 - The application was made under section 192(1)(b) 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 permanent stationing of a mobile log home for use as a residential 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 which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Wheeler and Mr Palmer against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Preliminary Matter

3. There was no clear description of the proposal on the application form, which I have therefore taken from the Planning Statement. I have dealt with the appeal on this basis.

Reasons

4. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support his case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
5. The application seeks confirmation that a mobile log home, which the appellant considers to fall within the definition of 'caravan', can lawfully be stationed on the land and used as a residential annexe.

6. The parties agree that the log home as proposed would be within the curtilage of the dwellinghouse and would be used for a purpose incidental to the enjoyment of the dwellinghouse as such. The Council has refused the application on the grounds that the mobile log home cannot be classified as a caravan as it fails the construction and mobility tests. It concludes that it is a building operation, which would require planning permission.

Relevant legislative provisions

7. Subsection 29 (1) of the Caravan Sites and Control of Development Act 1960 as amended ('the CSCDA') says that a 'caravan' means 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, but does not include (a) any railway rolling-stock, which is, for the time being, on rails forming part of a railway system or (b) any tent. Subsections 13 (1) and (2) of the Caravan Sites Act 1968 as amended ('the CSA') define twin-unit caravans as follows: (1) a structure designed or adapted for human habitation which (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the CSCDA by reason only that it cannot lawfully be so moved on a highway when assembled.
8. It is a well-established principle that when considering whether or not a structure is deemed to be a caravan, the commonly applied 'construction' and 'mobility' tests should be considered. The following are relevant considerations; there has to be a structure, it has to be designed or adapted for human habitation and that structure must be capable of being moved as a single structure. A structure composed of not more than two separately constructed sections which are designed to be assembled on site, and, when assembled, is physically capable of being moved by road, is not excluded from the relevant legislative provisions.
9. Section 55(2)(d) of the Town and Country Planning Act states that '(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land – (d) 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'.

Is the log home a caravan?

10. Considering first the construction test, the appellants explain that the log home would be assembled on site as a single unit, mostly from timber, having been delivered in sections. It would be assembled on a full length timber engineered wooden chassis known as 'glulam beams', which are glued and laminated timber beams. The chassis is an integral part of the sub frame of the log home, and not a separate bolted frame deck. There is no requirement within the legislation for it to be assembled off site in order to be a caravan. As it would not be a twin-unit caravan, there is also no requirement for it to form two halves to be assembled on site. The log home would sit on padstones or a 'Jackpad' system. The evidence points towards the log home meeting the construction test.

11. The Council is concerned at inconsistencies in the appellants' proposal, which lacks a technical specification or construction method, includes some variation in the intended padstone/Jackpad design, and it was originally proposed that the log home would be delivered to the site already assembled. However, these inconsistencies do not cast doubt as to whether the lodge home would meet the construction test, and appear to result principally from the evolution of the proposal since the application was originally submitted.
12. In terms of the mobility test, the appellant's evidence indicates that the log home would not be fixed to the ground, but would be held in place by its own weight, supported by padstones or a 'Jackpad' system. The 'glulam' beam chassis would provide structural support and give it rigidity, allowing it to be lifted from below by crane and/or support it straddling across a flat-bed trailer. This gives the log home the rigidity to enable the transportation wheels to be fitted at a midway point and/or enable the log home to be moved around the site/moved off the site with equipment such as a tractor, a 4 wheel drive or a transporter low loader.
13. In support of their case, the appellants have provided photographs of a different model of log home, one of which is being craned into position, the other is shown on a chassis with wheels. The Council is concerned that the supporting evidence is ambiguous and lacks clarity. The photographs indicate a different model of log home, and the appellant states that there is no technical specification for their intended model, while some of the details have changed between the original application and the appeal submission. Be that as it may, my role is to determine the appeal on the basis of the information now before me and on the balance of probabilities. The written description of the mobility of the caravan is clear, while the photographs illustrate the supporting chassis, albeit with a different model of log home. On this basis I am satisfied that the log home would be capable of being moved without being dismantled. The log home therefore passes the mobility test.
14. While I can appreciate the concerns of the Council with the information that was before them when they determined the application, the additional information provided with the appeal shows that the log home would satisfy the relevant legislative provisions set out above in relation to caravans. The log home can be deemed therefore to be a caravan. It would involve a use of the land, and as that use would fall within the same use as the remainder of the planning unit there would be no material change of use requiring planning permission.
15. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 192 of the 1990 Act as amended and issue a Lawful Development Certificate.


INSPECTOR

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 13 May 2019 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 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would be incidental to the residential use of the planning unit and would not constitute operational development for which a grant of planning permission would be required.

Signed


Inspector

Date: 17 April 2020

Reference: APP/T0355/X/19/3237532

First Schedule

Permanent stationing of a mobile log home for use as a residential annexe.

Second Schedule

Land at Bridge Cottage, Bisham Road, Bisham, Maidenhead SL7 1RP

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 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 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 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.

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

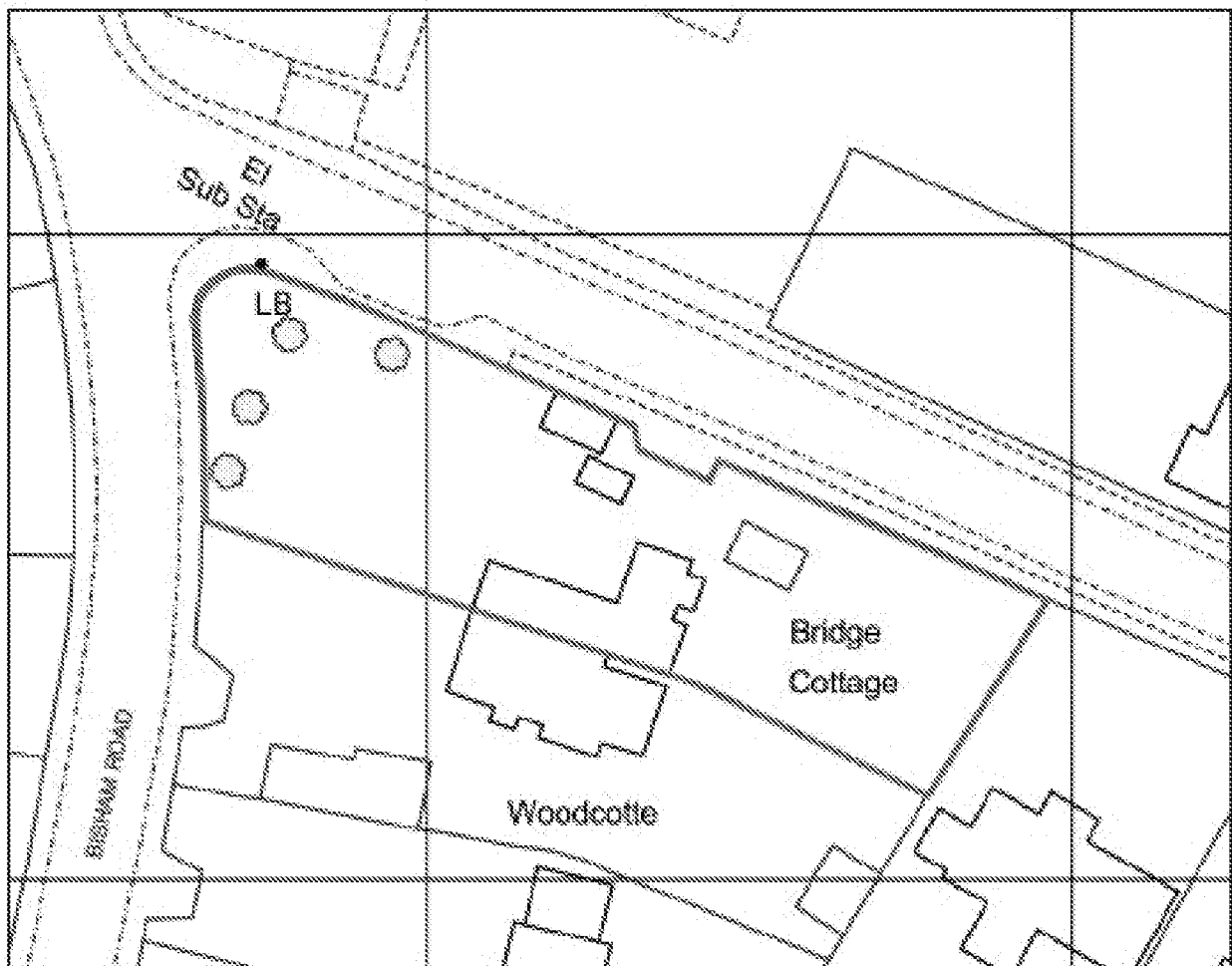
This is the plan referred to in the Lawful Development Certificate dated: 17 April 2020

by **N Thomas MA MRTPI**

Land at: Bridge Cottage, Bisham Road, Bisham, Maidenhead SL7 1RP

Reference: APP/T0355/X/19/3237532

Scale: Not to scale



Costs Decision

Site visit made on 26 February 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Costs application in relation to Appeal Ref: APP/T0355/X/19/3237532 Bridge Cottage, Bisham Road, Bisham, Maidenhead SL7 1RP

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Wheeler and Mr Palmer for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the permanent stationing of a mobile log home for use as a residential annexe.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 49¹ of the PPG gives examples of the type of behaviour that may give rise to a substantive award against a local planning authority. This includes failure to produce evidence to substantiate each reason for refusal on appeal, acting contrary to or not following well-established case law, refusing to enter into pre-application discussions or to provide reasonably requested information. Paragraph 50² advises how that where local planning authorities have exercised their duty to determine applications in a reasonable manner, they should not be liable for an award of costs.
4. The applicant claims that the Council failed to substantiate their reason for refusal and did not follow well-established case law, but instead made inaccurate and incorrect assertions about the proposed caravan and failed to have regard to legislation and case law, although the information provided to them was clear and unambiguous. In particular, erroneous statements were made in the delegated report, with regard to whether the caravan would be a single or twin-unit, details of plinth and foundations, and whether it would be fixed to the ground. The applicant also claims that the Council did not enter into discussions to set out why, on the basis of the evidence before them, they came to different conclusions. The applicant sent numerous emails to the planning officer during the consideration of the application, offering to discuss

¹ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

² Paragraph: 050 Reference ID: 16-050-20140306 Revision date: 06 03 2014

the proposal, and additional information was also provided. If the Council had entered into discussions the appeal could have been avoided.

5. However, it is clear from the correspondence provided that the Council requested additional technical information, due to its concerns about the clarity of the information provided. While the officer did not subsequently take the opportunity to discuss the case, there is no obligation to do so, and such discussions should normally take place at the pre-application stage.
6. Although I have found in favour of the appellant with regard to the certificate of lawfulness, I do not find that the Council has behaved unreasonably. It was entitled to conclude that the information was inconsistent, bearing in mind that the burden of proof lies with the appellant in an application for a certificate of lawfulness. There is evidence that the planning officer sought clarification and additional information from the appellant. The Council has substantiated its reason for refusing the application, with reference to the inadequate information provided with the application.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.



INSPECTOR