The Planning Inspectorate

Appeal Decision

Site visit made on 30 January 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 9 February 2017

Appeal Ref: APP/X1545/X/16/3151073
32 Wembley Avenue, Mayland, Chelmsford CM3 6AY

- 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 Chris Parker against the decision of Maldon District Council.
- The application Ref LPD/MAL/16/00236, dated 11 March 2016, was refused by notice dated 24 May 2016.
- The application was made under section 192(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 a mobile home in the garden of a dwelling house for use as additional accommodation to the main house.

Decision

1. The appeal is allowed and I attach to this decision a Certificate of Lawful Development (LDC) relating to the siting of a mobile home in the garden of the dwelling house at 32 Wembley Avenue, Mayland, Chelmsford CM3 6AY, for use as additional accommodation to the main house.

Costs application

2. An application for an award of costs has been made by Mr Chris Parker against Maldon District Council. This is the subject of a separate decision.

Background information and matters of clarification

3. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are, or are not, *'well-founded'*. The planning merits of the case do not fall to be considered. This LDC was applied for in order to establish whether the siting of a 'mobile home' (a twin unit) within the residential curtilage of the appeal property, to provide additional residential accommodation, would be lawful for planning purposes under section 192 (1) of the Town and Country Planning Act 1990.

4. The Local Planning Authority (LPA) refused the application on the basis that there was insufficient evidence submitted to prove that the proposal would meet the definition of '*caravan'* as defined by the Caravan Sites and Control of Development Act 1960 (CSCDA) and the Caravan Sites Act 1968 (CSA). In particular it is contended by the LPA that the information provided was not conclusive as to whether or not the structure has the structural integrity to withstand a lifting operation and thereby meet the 'portability' criterion of a caravan. In addition it was also contended that there was a lack of clarity about the relationship between the proposed occupiers of the 'twin-unit' and the main dwelling house and the permanency of the situation.

5. As indicated by the LPA, the National Planning Practice Guidance (PPG) indicates that an applicant for an LDC is responsible for providing sufficient information to support an application and, without sufficient or precise information, an LPA may be justified in refusing a certificate. However PPG also indicates that a refusal is not necessarily conclusive that something is not lawful in that, to date, insufficient evidence has been presented.

6. It is sometimes argued that only the evidence which was placed before the LPA at the time of application for a LDC should be considered. However, section 195 refers only to the refusal being '*well-founded'* or *'not well-founded'.* This relates to the decision itself and not to the reasons for it. In the case of *'Cottrell v SSE and Tonbridge and Malling BC [1982] JPL 443',* it was held that the Secretary of State (SOS) cannot be compelled to issue a certificate where he is of the opinion that one should not be granted. However, conversely it was also held that, for a LPA to argue that the only evidence to be considered was that placed before them as part of the application, denies the purpose of the LDC procedure.

7. The LDC procedure is aimed at the decision-maker arriving at an objective decision (on the balance of probabilities) based upon the best facts and evidence available. It is also the case that if subsequent information became available it would always be open to an applicant to re-apply. It would, therefore, serve no purpose to refuse a LDC on the basis only of the evidence submitted with the application. In this case, in reaching my decision, I have taken into account all of the application and appeal submissions from the LPA and the Appellant. This must include the additional information submitted shortly before the LPA made its decision as, in my view, this formed part of the application for the LDC.

The issues

8. The issues relate firstly, to whether or not the unit of accommodation meets all of the requirements of a 'twin-unit' as set out in the relevant legislation and, secondly, whether it has also been shown on the balance of probabilities that its occupation would be an ancillary residential use of the main house at No 32 Wembley Avenue.

The gist of the LPA's case

9. In the officer report (5.4) it appears to be accepted that the unit is a *'twin unit mobile home'* as defined by the CSA. This appears to be the case. Section 13 of the CSA states that twin-units are composed of not more than two sections, constructed or designed to be assembled on site by means of bolts, clamps or other devices , and should not exceed 60 feet in length, 20 feet in width and 10 feet in height overall. These figures were amended by the CSA 1968 and the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of a Caravan) (Amendment) (England) Order 2006 (AEO 2006) as follows: Length 20 metres; width 6.8 metres and internal height 3.05 metres.

10. There is no dispute that the 'twin-unit' structure falls within the maximum dimensions as set out above and comprises 'two sections', which would be constructed or designed to be assembled on site by means of bolts, clamps and other devices. However, the report then goes on to indicate (as set out in the Reason for Refusal), that that there was insufficient evidence provided to demonstrate that the unit had the structural integrity to be moved as one entity. The LPA refers in its statement to 'Permanence and Ancillary Use'. It is indicated that there has been no appraisal of the flexibility of the structure with regard to its structural integrity were it to be removed.

11. The LPA indicates that, although the submitted information included a statement from the installers indicating that the unit was capable of being moved 'as one', there

was no detailed structural report regarding the materials used, the type of framework or the loading that the structure would be subjected to if moved. It is further argued that any structure which falls outside of the portability (and/or the dimensional criteria) of the CSA and the AEO 2006, or has a sufficient degree of permanence through physical attachment to the ground or mains services, will constitute operational development and be judged as such under section 55 of the 1990 Act.

12. It is pointed out by the LPA that the structure is to be situated on a parcel of land within the residential curtilage of the existing dwelling and, in the authority's view, it is not clear that the unit would rely on the main house to function. Reference is made to the fact that the unit possesses all of the necessary elements (bedroom, sitting room, bathroom and kitchen) to provide a self-contained unit and as such this would require planning permission. Finally the LPA refers to the burden of proof being on the appellant to show that the use of the unit does not require planning permission.

The gist of the Appellant's case

13. In support of the application it is indicated that a 'Certificate of Conformity' from the supplier was submitted with the application, indicating that the unit could be moved as one. It is considered that this provided sufficient evidence to the LPA regarding the status of the unit. In addition case-law and other decisions which supported the Appellant's case had been submitted with the application. Prior to the LPA's decision being issued on 24 May 2016, information submitted (by e-mail of 19 May 2016) on behalf of the Appellant had included a signed statement from the Appellant's daughter (the proposed occupier); the signed Certificate of Conformity; a technical manufacturers notes relating to the method of lifting the unit and a structural analysis of lifting and trailering.

14. A letter dated 19 May 2016 to the LPA referred to and requested that this additional information be taken into account and that it be placed before the Planning Committee. An additional Appeal and Costs decision was submitted. The letter also included a reference to the case officer initially being mindful to recommend the issue of the LDC. This letter also indicated that that there was no physical attachment of the unit to the ground and that connection to services does not make it a permanent development.

15. It is stressed on behalf of the Appellant that the LPA's objections to the issuing of an LDC were only raised towards the very end of the statutory period, following a prior verbal indication that the recommendation would be in favour of the application. When the LPA's reasons for refusal became known (but prior to the decision being issued) the additional information referred to above was submitted. However, notwithstanding the provisions of S39 (9) of the Town and Country Planning (Development Management Procedure) (England) Order, the information was not accepted by the LPA. It is further indicated that The Planning Inspectorate's guidance on LDC Appeals, whereby LPA's are advised to have 'constructive discussions' with applicants before deciding an application, was not followed.

Assessment

16. Having considered all of the submissions and the full planning history/chronology relating to this LDC appeal, I consider that the Council's decision to refuse to issue a LDC was not *'well-founded'*. Whilst acknowledging that most of the information was only supplied to the LPA some two months after the application was made, it was submitted prior to a decision being made and with a specific request that all of the information be placed before the Planning Committee. If a LPA is in doubt about any information submitted it can request further information. In this case it chose not to

and initially indicated (by telephone) that, in any case,it was satisfied that a LDC could be issued.

17. On the basis of all of the evidence now before me, it is my view that, on the balance of probabilities, the siting of the 'twin-unit' for residential use as an ancillary use to that of the main house was lawful at the time of the application.

18. The LPA accepts that the dimensional requirements of a 'caravan' are met and only questioned the 'portability' or structural integrity of the unit, by not accepting that it could be moved 'as one'. The LPA did not provide any counter evidence either to disprove the original 'Certificate of Conformity' or the additional information submitted prior to the decision being made. The sequence of events, and particularly the fact that the case officer initially (albeit only verbally) indicated that the application would be recommended for approval, suggests that the initial information was considered to be acceptable.

19. With regard to the proposed occupants of the unit, the application made it quite clear that it was intended to be used as ancillary accommodation to the main house. The additional information confirmed that the proposed occupant would be the daughter of the Appellant. Unless the LPA had evidence to dispute this, the application should have been taken on its face. No attempt appears to have been made by the LPA to establish who was proposing to occupy the unit. After the application was submitted the Appellant's agent had contacted the LPA to establish whether the case officer was satisfied with the information. It was then established that the application was to go before the Planning Committee which was stated to be 'unusual' for LDC applications.

20. In my view, if the LPA had properly considered all of the information submitted, it would be inconceivable to think that they could withhold a LDC for what had been applied for; that is the siting of what was clearly a 'twin-unit' mobile home (or caravan) within the curtilage of the dwelling house for a use which was incidental to the residential use of the dwelling. It is also difficult to understand the apparent reversal in the case officer's recommendation. Even without the additional information it seems to me that, on the balance of probabilities, there should have been sufficient information before the LPA for it to issue a LDC. Again the apparent initial stance of the case officer reinforces my view in this respect. In conclusion, therefore and for the above reasons the appeal succeeds and I attach a LDC to this decision.

21. In reaching my decision I have taken into account all of the other matters raised by the Council. However, none of these carries sufficient weight to alter my conclusion that the siting of a mobile home in the garden of the dwelling house for use as additional accommodation to the main house was lawful at the time of the LDC application even though not all of the eventual information had been submitted on 11 March 2016.

Anthony J Wharton

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 11 March 2016 the development described in the First Schedule hereto in respect of the land/property specified in the Second Schedule hereto, was lawful within the meaning of section 191(1) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposal is incidental to the use of the dwelling house and does not constitute development under section 55 of The Town and Country Planning Act 1990 as amended.

Signed

Anthony J Wharton
Inspector

Date: **9 February 2017**
Appeal Reference: APP/X1545/X/16/3151073

First Schedule

The siting of a mobile home in the garden of the dwelling house for use as additional accommodation to the main house.

Second Schedule

32 Wembley Avenue, Mayland, Chelmsford CM3 6AY

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates to the siting of the mobile home only within the curtilage of the dwelling.

It certifies that the proposal described in the First Schedule on the land specified in the Second Schedule was 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 development described in the First Schedule and to the land/property specified in the Second Schedule. Any 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.

The Planning Inspectorate

Costs Decision

Site visit made on 30 January 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 9 February 2017

Costs Application in relation to Appeal Ref: APP/X1545/X/16/3151073
32 Wembley Avenue, Mayland, Chelmsford CM3 6AY

- 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 Chris Parker against Maldon District Council.
- The appeal was against refusal of a Lawful Development Certificate relating to the siting of a mobile home in the garden of the dwelling house for use as additional accommodation to the main house.

Decision

1. The application for a full award of costs is allowed. See formal decision and Costs Order below.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. In support of the application for costs it is contended that the LPA had been provided with sufficient clear and unambiguous information at the time of the application. Initially the LPA had indicated that a LDC could be issued. It is then indicated that their objections had only been raised at the very end of the statutory period. It is stressed that if the LPA had considered that further information was required it should have had regard to section 39(9) of the 1990 Act. It is also contended that it failed to follow the Planning Inspectorate guidance with regard to LDC appeals by not having constructive discussions with the applicant prior to making a decision as to whether a LDC was justified.

4. In any case it is further contended that the LPA failed to take into account the further information submitted was unreasonable, particularly bearing in mind that it was the case officer's initial view that the LDC should be issued. The Council's reliance on such reasons relating to the weight and permanence of the unit is considered to fly in the face of established planning principles and the refusal on that basis was unreasonable. It is argued that the LPA failed to apply the test of 'on the balance of probabilities' thereby putting the Appellant to the unnecessary expense of an appeal.

5. In response the Council disputes that it has acted unreasonably and refers to PPG and, that parties generally meet their own expenses. The Council indicates that it did not consider that the submitted information was sufficient

to determine whether or not planning permission was required for the proposed unit of accommodation. In particular it is stressed that there was no indication that the unit had the structural integrity to be moved and, therefore, that it did not meet the 'portability' criterion of being a 'caravan'. It is contended therefore that, at the time of determining the application insufficient evidence had been submitted on which a decision could be made.

6. The Council indicates that it sympathises with the costs, staff time and travel expenses caused by the submission of the appeal but stresses that it has a duty to ensure that the proposal accorded with the legislation under section 192 of the 1990 Act. In this case it was considered that due to lack of information on the movability of the structure and how it would relate to the main dwelling it considered that it was unable to meet the requirements of the legislation. In referring to a previous appeal it is contended that the Appellant failed to quote a fundamental part of the decision which referred to the distance, in that case, of the caravan from the main house.

7. Having considered the full submissions of this costs application and taking into account my findings in the appeal against the refusal of the LDC, I consider that in general a Council is entitled to reach a decision on the basis of the application submissions. It could be argued that the additional information should have been submitted at that time. However, it is also evident that up until the very last minute, what had been indicated to be a recommendation of approval was then reversed. It was this reversal which then led to the need for further submissions to reinforce the then applicant's case.

8. In the overall circumstances of this case, therefore, I consider that the Council behaved unreasonably. That unreasonable behaviour related to the manner in which they dealt with the initial application and refused to take into account the later information. This latter submission was in response to the Council's then intended reasons for a recommendation against the issue of a LDC and, taking into account the chronology of the application, I find it difficult to understand why the Council did not take the further submissions into account. It may well be that this was due to pressures of time relating to statutory periods but the fact is that the information was submitted before the decision was made and with a specific request that it be placed before the Planning Committee.

9. If this had been the case then, based on the evidence, there would have been little doubt or reason as to why a LDC could not, or should not, have been granted. Whilst understanding the pressures that LPAs are under in having to reach decisions within the relevant periods, I find their actions, in this particular case, in not taking the later information into account to be unreasonable. It was this later action (non-action) that led to a refusal and the appeal being made by the Appellant and the start of the appeal process.

10. I conclude, therefore that the Council's unreasonable behaviour, in firstly seeming to indicate a a LDC would be issued and then, secondly, in not considering all of the information submitted was directly responsible for the appeal process. The Council's unreasonable actions clearly led to the need for the appeal and this resulted in unnecessary expense for the Appellant. The application for costs, therefore, succeeds and I set out the formal decision and costs order below.

Formal Decision and Costs Order

11. I allow the application for costs in full and, in exercise of the powers in section 250(5) of the Local Government Act 1972 and Schedule 6 to The Town and Country Planning Act 1990 and all other powers enabling me in this behalf, I order the Maldon District Council to pay to Mr Chris Parker the full costs of the appeal proceedings relating to this appeal.

    The costs are to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned the appeal described above.

    Mr Chris Parker is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. The enclosed guidance note describes how to apply for a detailed assessment by the Supreme Court Costs Office if the parties cannot agree the amounts.

Anthony J Wharton

Inspector