The Planning Inspectorate

Appeal Decision

by K R Saward Solicitor

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

Decision date: 2 November 2017

Appeal Ref: APP/A1530/X/17/3177321
Heathfield House, West End Road, Tiptree CO5 0QH

- 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 [redacted] against the decision of Colchester Borough Council.
- The application Ref 170191, dated 26 January 2017, was refused by notice dated 13 April 2017.
- 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 caravan for ancillary use.

Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Application for Costs

2. An application for costs was made by [redacted] against the Council. This application is the subject of a separate Decision.

Procedural Matters

1. The appeal involves the consideration of relevant planning law and the facts which have not necessitated a site visit.

2. Since the date of the Council's refusal to issue a lawful development certificate (LDC) planning permission has been granted for the "siting of ancillary residential caravan" at Heathfield House, subject to conditions. This has no bearing on my consideration of the appeal which must be decided strictly on the application of the relevant law and judicial authority to the facts.

Main Issue

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

Reasons

4. The appellant seeks a LDC to site a caravan within the garden of her home at Heathfield House for "ancillary use". The appellant makes clear that what is meant by this is that she wishes to use the caravan as additional living

accommodation associated with the main house rather than use as a separate self-contained unit.

5. In order for an LDC to be granted under section 192 of the 1990 Act, the onus is firmly on the appellant to show that the development would be lawful at the time the application was made.

6. It is undisputed that provided the proposed park home style caravan remains a moveable structure that meets the definition of a "caravan" within the Caravan Sites and Control of Development Act 1960 as amended by the Caravan Sites Act 1968, then it would not constitute a building. Nor is it contested that the proposed siting of the caravan as shown in the submitted site plan would be within the residential curtilage of Heathfield House.

7. The Council proceeded to determine the application with reference to section 55(2)(d) of the 1990 Act. This provides that 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 shall not be taken to involve development of the land. In following this approach, the Council analysed the meaning of the word "incidental" from various sources including with reference to an ordinary dictionary definition, online commentary and case law.

8. Specific mention is made of the case of Emin v SSE[1] where the Court considered the meaning of "incidental" in the context of permitted development rights for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. Similar provision is now contained within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015. However, the proposal in this instance is not for the provision of a building, but the use of land for the siting of a caravan. Class E does not apply and so references to it and the judgment in Emin do not assist in establishing whether residential use of the caravan would be lawful.

9. Moreover, a distinction is to be drawn between an incidental use and uses which are part and parcel of an existing lawful use.

10. The issue requiring consideration is not whether there would be an incidental use as focussed on by the Council. Rather, the crux of the matter is whether or not the proposal would involve a material change of use of land and thus amount to "development" within the meaning of section 55(1) of the Act.[2] Just because the proposed use goes beyond what would ordinarily be regarded as an 'incidental use' does not mean there is a material change of use. For instance, a "granny" annexe, even in a separate building in the curtilage of the "main" dwellinghouse, would normally be regarded as part and parcel of the main dwellinghouse use. If there is no material change of use of the land then there can be no development requiring planning permission.

11. In Uttlesford DC v SSE & White[3] the judge considered that, even if the accommodation provided facilities for independent day-to-day living it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. In that case the accommodation gave

[1] *Emin v Secretary of State for the Environment and Mid-Sussex County Council, QBD, 1989, 58 P&CR*
[2] For the purposes of section 55, "development" comprises either operations or the making of a change of use.
[3] [1992] JPL 171

the occupant the facilities of a self-contained unit although it was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. A fact and degree judgment has to be made on the specific circumstances of the case.

12. Typically, a caravan will be equipped with all the facilities required for independent day-to-day living. It does not follow automatically that once occupied there must be a material change of use simply because primary living accommodation is involved. Much depends on how the caravan would actually be used, as also set out in Appeal Decision ref: APP/Z3825/X/16/3151264 and commentary referenced in the Council Officer's delegated report.

13. The proposal is for a caravan to be occupied by the appellant's elderly mother who has health issues as outlined in the application. The intention is that care and assistance would be provided as needed whilst allowing the appellant's mother a degree of independence. Meals would be shared in the main house, as would laundry facilities, storage of domestic items and housekeeping. The water and electricity supply would be shared and the caravan would not have its own utility meters. There would be no separate postal address and so all bills would be sent to the house. The caravan would not be registered as a separate unit of occupation for Council Tax purposes.

14. It is clear that there would be a close family and functional link between the uses with the land also remaining in single ownership and control. Use of the caravan in the manner described would not involve physical or functional separation of the land from the remainder of the property. The character of the use would be unchanged. Thus, the use described would form part and parcel of the residential use within the same planning unit. Only if operational development which is not permitted development is carried out or if a new residential planning unit is created, will there be development. From the application, neither scenario is proposed. Accordingly, the proposal would not have required separate planning permission.

15. The Council concluded that the caravan is highly likely to be capable of independent occupation. However, the application must be assessed on the basis of the stated purpose and not what might potentially occur. An LDC can only certify the use applied for. If the caravan is not used in association with the dwelling, as described, and the functional link is severed, then it would not benefit from the LDC.

16. In the circumstances of this case, I find that the siting of a caravan in the garden of Heathfield House for the provision of additional living accommodation as described in the application would, as a matter of fact and degree, have been lawful at the time of the application. My findings in this regard are consistent with the approach taken to the application of the law in the other Appeal Decisions[4] brought to my attention by the parties.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the

[4] APP/Z3825/X/16/3151264 dated 28 October 2016, APP/Y0435/X/15/3129568 dated 19 February 2016, APP/K2230/X/13/2190398 dated 18 June 2013, APP/K3605/X/12/2181651 dated 15 April 2013, APP/J1915/X/11/2159970 & APP/P2365/X/09/2109940 dated 6 November 2009.

Council's refusal to grant a certificate of lawful use or development in respect of the siting of a caravan for ancillary use 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.

KR Saward

INSPECTOR

The Planning Inspectorate

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 26 January 2017 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 siting of the caravan and its use as additional residential accommodation associated with the main dwellinghouse at Heathfield House, as described in the statement accompanying the application, would be part and parcel of the residential use within the same planning unit and would not constitute development requiring planning permission.

Signed

KR Saward

INSPECTOR

Date 2 November 2017
Reference: APP/A1530/X/17/3177321

First Schedule

The siting of a caravan for ancillary use in accordance with application reference 170191 dated 26 January 2017 and the supporting statement and drawings submitted therewith.

Second Schedule

Land at Heathfield House, West End Road, Tiptree CO5 0QH

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 /operations 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 /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.

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.

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Plan

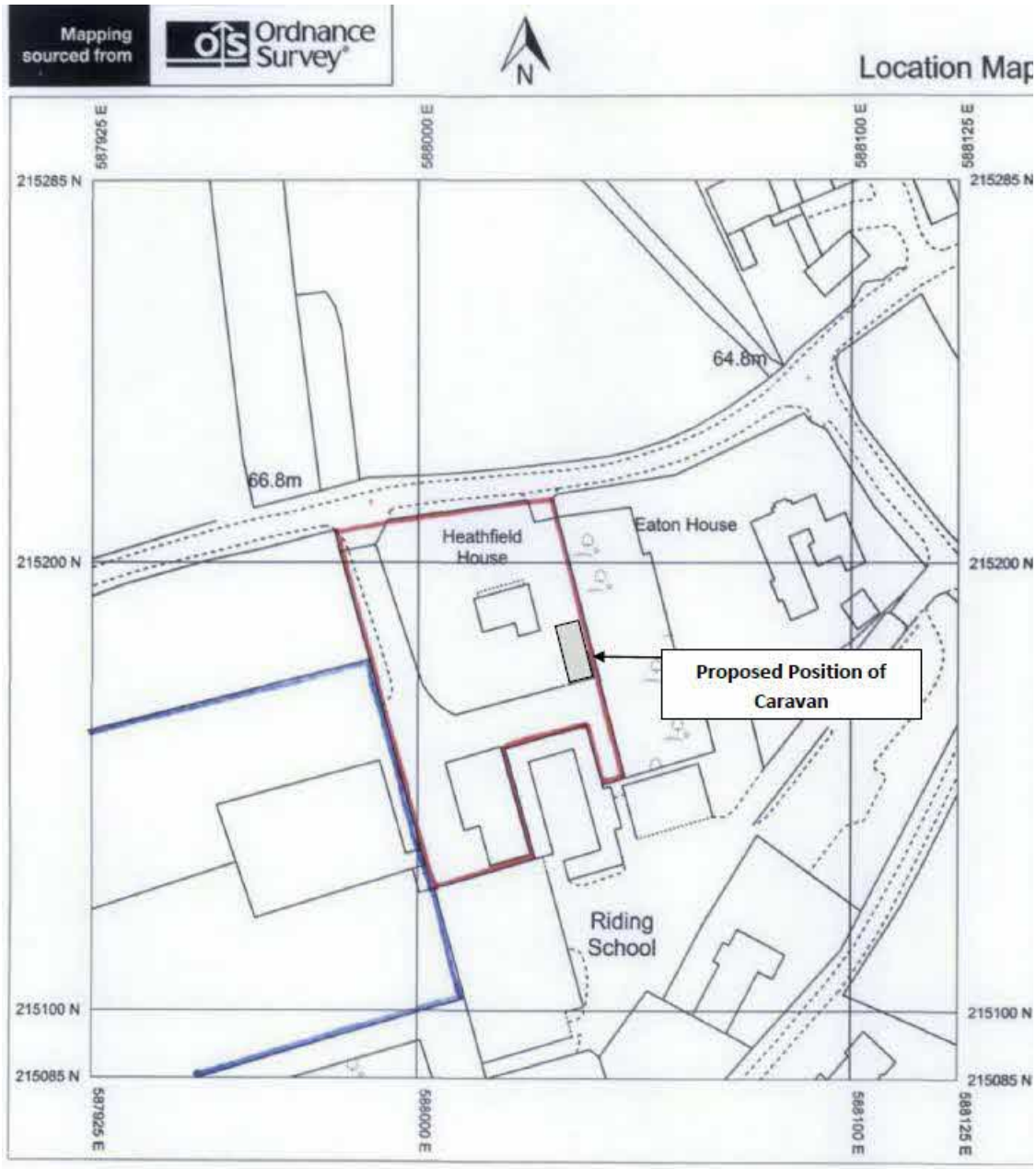
This is the plan referred to in the Lawful Development Certificate dated: 2 November 2017

by K R Saward Solicitor

Land at: Heathfield House, West End Road, Tiptree CO5 0QH

Reference: APP/A1530/X/17/3177321

Scale: NOT TO SCALE



The Planning Inspectorate

Costs Decision

by K R Saward Solicitor

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

Decision date: 2 November 2017

Costs application in relation to Appeal Ref: APP/A1530/X/17/3177321
Heathfield House, West End Road, Tiptree CO5 0QH

- 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 Mrs Tamara Kelsey for a full award of costs against Colchester Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development for the siting of a caravan for ancillary use.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Paragraph 030 of the Appeals section of the national 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. The application is made on the basis that the appellant considers the Council to have erred in its approach to the law to be applied to the intended use of the land.

4. As set out in my Appeal Decision, the appellant applied for a lawful development certificate (LDC) to site a caravan within her garden for residential occupation by her mother as ancillary accommodation to the main house. The appellant considers the Council acted unreasonably by steadfastly maintaining that the proposed use was not "incidental" to the enjoyment of the dwellinghouse and giving precedence to the capability of the caravan for independent occupation over its stated intended use. In response, the Council says that the appellant has not fully understood the importance and relevance of the word "incidental" and ignored recent caselaw in relation to 'primary accommodation'.

5. The Council focussed on whether use of the caravan would be incidental to the use of the dwelling so as not to involve development under section 55(2)(d) of the 1990 Act. In doing so it failed to have due regard to whether there would in fact be a material change of use of land. Having decided that the proposed use would not be incidental to the use of the dwelling, the conclusion was drawn that there must be a material change of use. This was seemingly done without grasping key points raised in material referenced in the Officer's report. It included various previous Appeal Decisions[1] where LDC's were granted for uses of

[1] APP/Z3825/X/16/3151264 dated 28 October 2016, APP/Y0435/X/15/3129568 dated 19 February 2016,

caravans which were found to form part of the primary residential use of land and thus did not amount to a material change of use. One of these cases (ref: APP/Z3825/X/16/3151264) appeared to be strikingly similar to the proposal.

6. Despite being aware of all these decisions and having quoted passages of text that should have alerted the Council to the need to establish whether the proposal would form part of the primary use of the land, it did not undertake that exercise. Even where the circumstances differed in the Appeal Decisions they still provided a steer on the principles to apply. Indeed, it was plain from both Appeal Decision APP/Y0435/X/15/3129568 and the text recited by the Council itself that it is the actual use of a caravan that is determinative rather its potential to be occupied as a self-contained residential unit.

7. Had the Council properly applied the information available to it then it is difficult to see that it would have reached the same conclusion.

8. The appellant was absolutely clear in explaining that an ancillary use was sought with reliance placed on the main house for care, assistance and facilities. The intended manner of occupation was described along with details of the facilities to be shared with the main house. The combination of factors pointed clearly towards a use that would comprise additional living accommodation without creating a separate planning unit. Yet, the Council formed the view that there would be a material change of use having been influenced by what might occur as the caravan is "highly likely to be capable of independent occupation". That was the wrong approach which neglected to understand that a LDC can only be issued for what is actually applied for.

9. Throughout the course of the appeal the Council remained resolute that its stance was correct. That was so despite much of the reference material that it relied upon being concerned with different forms of development than that proposed. The persistence of the Council in its misdirected approach amounted to unreasonable behaviour which caused the appellant to incur costs in bringing the appeal.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Colchester Borough Council shall pay to Mrs Tamara Kelsey, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Colchester Borough 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.

K R Saward INSPECTOR

APP/K3605/X/12/2181651 dated 15 April 2013, APP/J1915/X/11/2159970 & APP/P2365/X/09/2109940 dated 6 November 2009.