The Planning Inspectorate

Appeal Decision

Site visit made on 31 August 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/Z5630/X/21/3277752
3A Coombe Lane West, Kingston-upon-Thames KT2 7EW

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 the Council of the Royal Borough of Kingston-upon-Thames.
The application Ref 21/00987/CPU, dated 30 March 2021, was refused by notice dated 26 May 2021.
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 described as: Proposed siting of a caravan for purposes incidental to the enjoyment of the dwellinghouse.

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 found to be lawful.

Application for Costs

2. An application for costs was made by [redacted] against the Council of the Royal Borough of Kingston-upon-Thames. This application is the subject of a separate decision.

Preliminary Matters

3. There is no clear description on the application form and so I have taken the description in the heading above from the appeal form which is consistent with the Council's decision notice.

4. The application has been made under section 192 ('Certificate of lawfulness of proposed use or development'). Yet at my site visit I saw that a structure exists within the garden of the appeal property in broadly the same location as the proposal. What I saw is not entirely consistent with drawings provided for this appeal. So I cannot be certain whether the structure which exists is that which is described in the application or not. Therefore, I have based my decision on the application documents provided and not what I saw on my site visit. Should it transpire that what exists is materially different to that described, it may be a breach of planning control which could be liable to enforcement action by the local planning authority.

5. I am aware that the appellant wished for video evidence to be accepted as part of their submissions. Video evidence cannot be accepted as part of a written representations appeal and so it was returned to the appellant and I have not taken it into account in my deliberations.

Main Issue

6. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

7. Section 192(1) of the 1990 Act provides for the making of an application to ascertain whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land would be lawful. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.

8. In an LDC application the question is whether the proposed use or operation would be lawful if 'instituted or begun' on the date of the application. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

9. The appellant proposes the siting of a caravan for purposes incidental to the enjoyment of the dwellinghouse on the site. A drawing provided indicates the caravan would be fitted out with a kitchenette and bathroom and would accommodate office workspace and gym equipment. It appears that it would be designed for human habitation.

10. The information provided indicates that the proposed caravan would be composed of two sections and it is the appellant's position that it is a twin-unit caravan. As such, in broad terms, the basis of the application is that what is proposed is not "development" under the 1990 Act. However, as is reflected in the Council's first reason for refusing the application, the Council is not satisfied that the proposal would not constitute building operations as defined within section 55(1A) of the 1990 Act.

11. In summary, section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(1A) clarifies that building operations includes other operations normally undertaken by a person carrying on business as a builder.

12. Section 55(2)(d) of the 1990 Act 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 for the purpose of the Act to involve development of the land.

13. The stationing of a caravan is normally taken as constituting a use of land, rather than operational development, and so I need to consider, based on the information provided, whether what is proposed would constitute a caravan or not.

14. The term 'caravan' is defined in section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA60) as meaning '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'.

15. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the CSCDA60 and the Caravan Sites Act 1968 (CSA68) as amended. Section 13 of the CSA68 defines 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 Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

    (2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely— (a) length (exclusive of any drawbar): 65.616 feet (20 metres); (b) width: 22.309 feet (6.8 metres); (c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10.006 feet (3.05 metres).

16. In light of the above, the tests to be applied in determining whether a proposed structure is a caravan are commonly referred to as the construction test, the mobility test and the size test.

17. In respect of the size test, based on the submitted drawings, the Council states the approximate measurements for the proposed caravan are 6.12 metres wide, 4.92 metres deep and with a maximum external height of 2.79 metres. As such, there is no dispute between the parties that the proposed caravan would satisfy the size test.

18. In respect of the construction test, the appellant states that the proposed caravan would be composed of two sections which would be separately constructed and then joined together on the site as the final act of assembly. This being the case, I have no reason to believe that the proposal would not satisfy the construction test, based on the information provided.

19. In respect of the mobility test, the appellant states that the unit will rest on blocks and is not fixed to the ground. It is said that at all times it will remain capable of being moved. A lifting diagram has been provided which, according to the appellant, shows how temporary lifting beams could be installed under the unit, to enable it to be lifted safely for transportation. I have no reason to believe this would not be the case.

20. A drawing indicates the caravan would likely need to be connected to services. But it is invariably simple to detach a caravan from connections to services such as water, drains and electricity.

21. Given the limited degree of the proposal's attachment to the ground, other than service connections and that the caravan would rest by its own weight, I have no reason to believe that it would not satisfy the mobility test, based on the information provided.

22. Taking all of the above points into account, I conclude, as a matter of fact and degree, that the proposed structure would accord with the statutory definition of a caravan.

23. In respect of the caravan's use, the Council states that as the site is already established as a residential use and the placing of a 'mobile home' would be for use in conjunction with the original property, it is not considered that the proposal would constitute a material change of use of the land in this case. I have no reason to disagree with the Council's assessment in this regard. So based on the information provided, and consistent with section 55 referred to above, I conclude that the proposal would not constitute a material change of use of the land.

24. Turning to the Council's concern that the proposal may constitute building operations, pursuant to section 55 of the 1990 Act, I have had regard to section 336(1) of the 1990 Act and the Skerritts[1] case.

25. Section 336(1) states that a "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. But as has been established in case law, it is not the case that because caravans are defined as 'structures' in the CSA68, that they fall within the definition of a building in the 1990 Act.

26. The Skerritts case established 3 primary factors as decisive of what constitutes a 'building': size, permanence and physical attachment to the land. None of these factors are necessarily decisive and greater weight may be given to one over others in reaching a conclusion on whether a structure constitutes a building.

27. I have considered these 3 factors for the proposal described and I make the following observations. A caravan is mobile by definition and I have found that the proposal would be a caravan. Notwithstanding that its size would be considerable, I have not found it would be a permanent structure given that it would be mobile and with a limited degree of attachment to the land.

28. The proposed caravan may well remain in place for years. But this is not unusual for a twin-unit caravan and does not necessarily mean therefore that the proposal would be permanent. There is no evidence that the proposal would result in a permanent physical alteration to the land or interfere with its physical characteristics.

29. Taking into account all of the above, and as a matter of fact and degree, I give greater weight to the lack of permanence and physical attachment to the ground than to the size of the proposal. I conclude that what is proposed is not

[1] Skerritts of Nottingham Ltd v SSETR (No. 2) [2000] 2 PLR 102

a building, notwithstanding that section 336(1) contains a wide definition of what a building is.

30. The Council has indicated that the appellant has not discharged the burden of proof that the proposal would not constitute 'other operations'. But, in this regard, nothing has been provided to substantiate the Council's position or to contradict the appellant's case or make it less than probable. So I have no reason to believe the proposal would constitute other operations, pursuant to section 55(1) of the 1990 Act.

31. With regards to the Woolley[2] case, this concerned poultry units and so, in my view, it has limited (if any) relevance to a very different structure, such as a caravan, as proposed in this application, to which specific tests apply, based on the statutory definition of a caravan.

32. I have also been referred to an appeal decision at 14 Almshouse Lane in Chessington[3]. Nevertheless, each case will turn on its own specific facts and, based on the information provided, I cannot be certain that the circumstances in that case are the same as those in the case before me.

33. In respect of the Council's second reason for refusing the application, given that I have found the proposal would not be operational development, I do not need to consider whether it is permitted development, under Schedule 2, Part 1, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Other Matters

34. Representations received raise concerns about ownership of the access to the site, plan accuracy, damage said to have been caused, visual effects and loud music. But as is set out in the Planning Practice Guidance, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application[4]. Therefore, I cannot take planning merits into account.

Conclusion

35. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed siting of a caravan for purposes incidental to the enjoyment of the dwellinghouse, 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.

L Perkins

INSPECTOR

[2] R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)
[3] Reference APP/Z5630/X/20/3254407 dated 1 March 2021
[4] Lawful development certificates, paragraph: 008 Reference ID: 17c-008-20140306

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 30 March 2021 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 proposal described in the application documents and shown on the unnumbered drawing entitled "THE CARAVAN" and drawing number 2021_0033-01 dated September 2021, constitutes a caravan and would not be operational development or a material change of use of the land and so planning permission is not required.

Signed

L Perkins

INSPECTOR

Date: 26 October 2022

Reference: APP/Z5630/X/21/3277752

First Schedule

Proposed siting of a caravan for purposes incidental to the enjoyment of the dwellinghouse.

Second Schedule

Land at 3A Coombe Lane West, Kingston-upon-Thames KT2 7EW

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.

The Planning Inspectorate

Plan

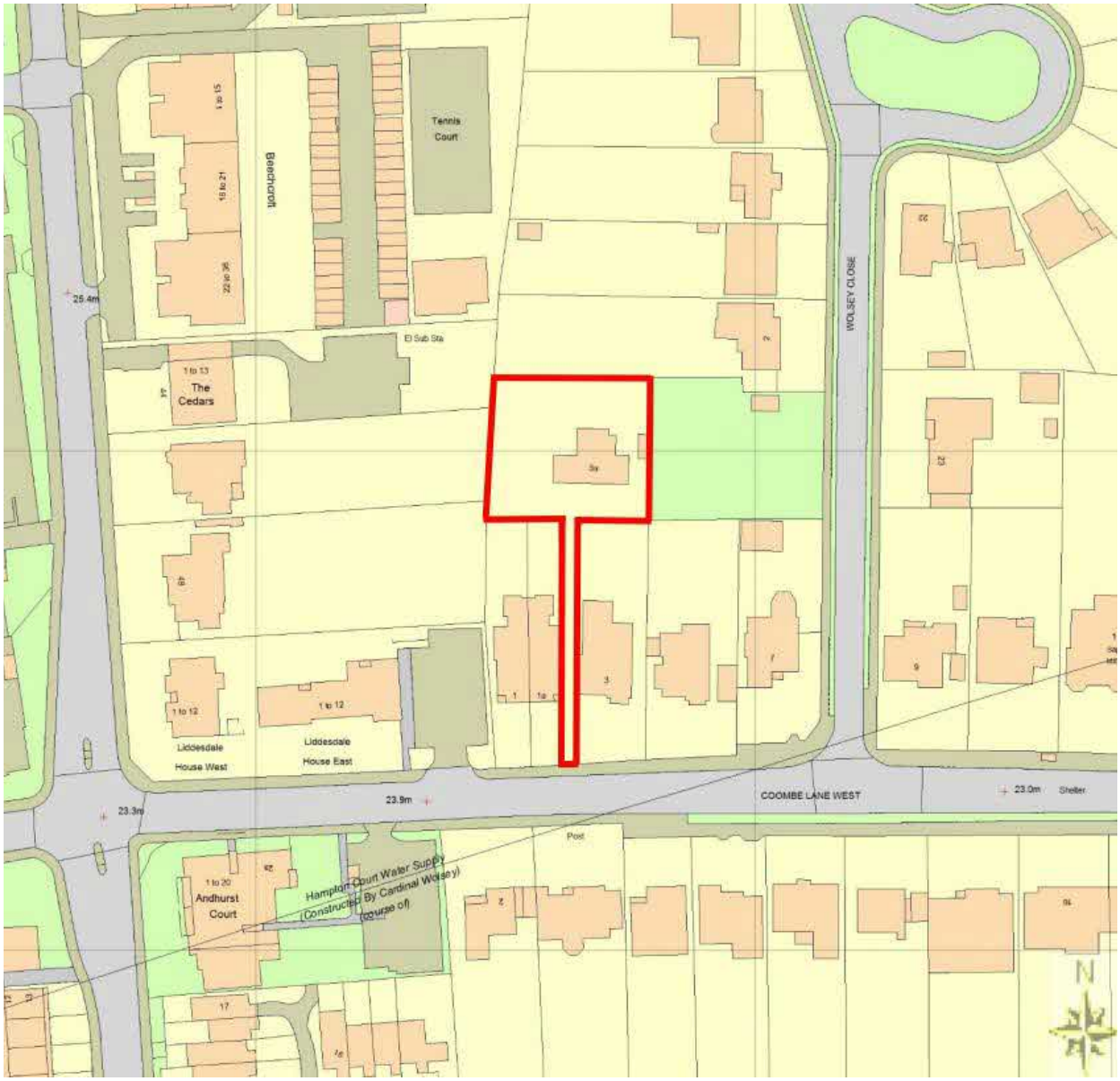
This is the plan referred to in the Lawful Development Certificate dated: 26 October 2022

By L Perkins BSc (Hons) DipTP MRTPI

Land at: 3A Coombe Lane West, Kingston-upon-Thames KT2 7EW

Reference: APP/Z5630/X/21/3277752

Scale: Not to scale



The Planning Inspectorate

Costs Decision

Site visit made on 31 August 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Costs application in relation to Appeal Ref: APP/Z5630/X/21/3277752
3A Coombe Lane West, Kingston-upon-Thames KT2 7EW

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 and Mrs B Barikor for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
The appeal was against the refusal of a certificate of lawful use or development for: Proposed siting of a caravan for purposes incidental to the enjoyment of the dwellinghouse.

Decision

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

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. Unreasonable behaviour may be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. In this case the application is made on substantive grounds.

4. The applicant has referred to paragraph 38 of the National Planning Policy Framework (the Framework) and states that the Council has not been proactive and that there has been no opportunity for meaningful engagement with the Council at all. But based on the information provided, the Council offers a pre-application advice service and section 10 of the application form indicates that the applicant did not avail themselves of this.

5. The applicant states that at no point did the Council request additional information in order to demonstrate that the siting of the proposed caravan would not constitute building operations or other operations as defined within section 55(1) of the 1990 Act. But as is set out in the PPG, the applicant is responsible for providing sufficient information to support an application[1] and in this regard a Council is under no obligation to request additional information.

6. However, the applicant states that the Council's decision appears to be predicated primarily upon a judgement that has no relevance to the siting of a caravan, ie the Woolley[2] case.

[1] Lawful development certificates - paragraph:006 Reference ID: 17c-006-20140306
[2] R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)

7. In its assessment, the Council also drew on an appeal decision at 14 Almshouse Lane in Chessington[3], which it said was for a "similar proposal". But, as the applicant has pointed out, the Inspector in that case stated that the Woolley case had no bearing on his decision, given the very different nature of the structures being considered. So, as is set out in my appeal decision, the Woolley case has limited (if any) relevance to a caravan and in my view, the Council misdirected itself in relying on this case law to substantiate its decision.

8. The Council says that a "comprehensive assessment" of the application is contained within the officer's report. But there is no mention in the report of the Caravan Sites and Control of Development Act 1960 or the Caravan Sites Act 1968. So I am not satisfied that the Council properly engaged with the statutory definition of a caravan and whether the proposal complied with this or not.

9. In light of the case put forward by the appellant for the appeal and consistent with the PPG[4], the Council should have reviewed its case promptly following the lodging of the appeal, as part of sensible on-going case management. But there is no evidence this occurred, despite the appellant inviting the Council to reconsider its position via the appeal and noting that no statement for the appeal was provided by the Council to counter any of the evidence submitted by the appellant.

10. The appellant has indicated that the appeal would have been withdrawn if the Council had confirmed its support for a resubmission, on the basis of the evidence submitted with the appeal. The implication of this is that the appeal was avoidable and nothing has been provided by the Council to satisfy me this was not the case.

11. 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

12. 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 the Council of the Royal Borough of Kingston-upon-Thames shall pay to Mr and Mrs B Barikor, 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.

13. The applicant is now invited to submit to the Council of the Royal Borough of Kingston-upon-Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Perkins

INSPECTOR

[3] Reference APP/Z5630/X/20/3254407 dated 1 March 2021
[4] Appeals – paragraph: 049 Reference ID: 16-049-20140306