
Appeal Decision

Site visit made on 08 December 2015

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 01 February 2016

Appeal Ref: APP/X0415/X/15/3035764

**Mildmay Cottage, Hawridge Common, Hawridge, Chesham,
Buckinghamshire HP5 2UQ**

- 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 Peter Hopkinson against the decision of Chiltern District Council.
 - The application Ref CH/2014/1622/SA, dated 10 September 2014, was refused by notice dated 14 November 2014.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the proposed use of domestic curtilage for siting a shepherd's hut (caravan) for uses ancillary to Mildmay Cottage.
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Formal 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.

Preliminary Matters and Main Issue

2. The appeal form identifies the appellants as Mr and Mrs Peter Hopkinson. However, the application to the Council was made by Mr Peter Hopkinson only. Section 195(1) of the Town and Country Planning Act 1990 stipulates that the 'applicant' may appeal to the Secretary of State. As such I have referred to the appellant as Mr Peter Hopkinson.
3. Within their decision notice the Council described the proposal as 'an application for a Certificate of Lawfulness for a proposed operation relating to the siting of a shepherd's hut (caravan) for uses ancillary to Mildmay Cottage'. No specific description of development was given within section 8 of the application form but the appellant ticked relevant boxes in that section to confirm his view that the proposal would not include the carrying out of any building or other operations and that it would not consist of a change of use in the land.
4. The appellant's view of the description of the proposal was subsequently confirmed in a letter from the agent, Mr Ian Firth, to the Council on 19 September 2014. I have used that description in the banner heading above and consider that the description forms the basis upon which a certificate of lawfulness is sought.

5. It is clear, from reading the application form and subsequent appeal submissions, that the appellant's view is that the proposal to site a shepherd's hut within the residential curtilage would not constitute development. The appellant seeks a certificate of lawful development on the grounds that the proposal would not constitute development with reference to the definition of development within section 55(1) of the Town and Country Planning Act 1990 (the Act).
6. From the information presented there was never any suggestion on behalf of the appellant that the proposal would have constituted 'permitted development' under the terms of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO), as was in force at the time the application was made. He accepts that, if the proposal did constitute development, no permitted development rights existed under Class E, Part 1 of Schedule 2 of the GPDO on account of the fact that the site forms part of the curtilage of a listed building.
7. He also accepts the Council's position that the proposal would not have qualified as permitted development under Class A, Part 5 of Schedule 2 of the GPDO, relating to caravan sites, because the terms of paragraph A.2 had the effect of excluding caravans used for purposes incidental to the enjoyment of dwellinghouses. I concur with those conclusions and, if I find that the proposal constitutes development, it would not have constituted 'permitted development' under the terms of the GPDO as it existed at the time the application was made.
8. Consequently, the main area of dispute between the parties is whether the proposal would constitute development and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well-founded.

Reasons

9. Section 55(1) of the Act defines development as: *The carrying out of building, engineering, mining or other operations in, on, over, or under land or the making of a material change in the use of any buildings or other land.* Furthermore, section 55(2)(d) states that "the use of any buildings or other land within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse as such" shall not be taken to involve development. The shepherd's hut would be situated within the residential curtilage of Mildmay Cottage and would be utilised for purposes incidental to or ancillary to the dwellinghouse. Accordingly, I am satisfied that the proposal would not result in a material change of use.
10. A building is defined by s336 of the Act as: *any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building.* Established case law has identified three primary factors that should be considered in determining what constitutes a building; whether it is of a size that is required to be constructed on site as opposed to being brought to the site; the degree of permanence; and whether the proposal would be physically attached to the ground. No one factor is decisive and any judgement will be a matter of fact and degree based upon the specific circumstances of the case.

11. From the information presented the hut would be designed for human habitation and could be moved from one place to another by being towed, or by transportation on a motor vehicle. As such, I concur with the appellant that it would fall within the definition of a caravan, as defined by section 29(1) of the Caravan Sites and Control of Development Act 1960. However, that point alone is not decisive and there is no automatic presumption in law that a caravan cannot constitute a building. Accordingly, I have considered whether the proposal would amount to a building based upon the specific circumstances of the case, when set against the three factors established by case law.
12. The hut would be constructed off-site and delivered to the site in its finished form. It would be of a modest size and no building work would be required on site. In addition, no base would need to be constructed but the wheels would sit on flagstones or pads as suggested in the appellants' appeal submission. In his statement the appellant also suggests that railway sleepers may be used as an alternative to flagstones. In either case I am satisfied that no building works would be involved in forming a base for the hut to sit on.
13. The unit would not be physically attached to the ground but would be held under its own weight. From the information provided, the wheels of the hut would be functional and the hut could be moved relatively easily subject to the availability of a suitable vehicle with a tow-bar.
14. In terms of the degree of permanence, the appellant states that the desire to use a shepherd's hut, as opposed to a more conventional summerhouse, is because of the ability to move it around or take it with him if he moved house at some future date, albeit that he has no plans to do so at the present time. Given its portable design, the absence of any physical attachment to the ground, and the ease with which it could be moved, it would be possible for the homeowner to move the hut to different parts of the garden if they chose to do so. In that sense I note that the application specifically sought a certificate of lawfulness for the 'use of domestic curtilage' for siting a shepherd's hut/caravan. It would not necessarily be fixed in the position indicated on the submitted plan.
15. Moreover, the hut could be readily transported away from site if the current occupants chose to move or to sell the unit in future. In determining the appeal it is reasonable for me to take account of how the appellant intends to use the hut and the information presented suggests that it would not be permanently situated. Taking account of the mobility of the hut, the lack of physical attachment, the lack of any proposed building works on site and the suggested way in which it would be used I conclude that the likely degree of permanence is not a factor that would, of itself, dictate that the proposal would amount to a building operation.
16. Thus, having regard to the three aspects established by case law I conclude that the proposal would not constitute a building as defined by s336 of the Act. As noted above, my decision on that point is a matter of fact and degree based on the specific circumstances of the proposal before me. The Council have referred to case law in which various structures have been found to constitute development, including polytunnels, a railway waggon and a tower crane on a steel track. Those cases are different to the proposal before me in terms of the type of development proposed and each of those judgements was based upon factors of size, permanence and physical attachment, all of which were

particular to the cases involved. Given the difference in the type of development proposed I am not satisfied that those cases are directly comparable to the appeal before me. My findings on whether the proposal would constitute a building are based on the particular circumstances of the case and the information presented.

17. Having regard to the above, the proposal would not constitute a building and no material change of use would arise from the use of the hut which would be incidental to or ancillary to the established residential use at Mildmay Cottage. Therefore, I conclude that the proposal would not amount to development as defined by section 55(1) of the Act. Given that the proposal would not involve development it follows that planning permission would not be required and that the use of the domestic curtilage at Mildmay Cottage for the siting of a shepherd's hut would be lawful.

Conclusions

18. For the reasons given above, I conclude that the Council's failure to grant a LDC in respect of the proposed use of domestic curtilage for siting a shepherd's hut (caravan) for uses ancillary to Mildmay Cottage was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Chris Preston

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 10 September 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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 use of the domestic curtilage for the siting of a shepherd's hut (caravan), as described within the application, for uses ancillary to Mildmay Cottage would not constitute development as defined by section 55(1) of the Town and Country Planning Act 1990.

Signed

Chris Preston
Inspector

Date: 01 February 2016

Reference: APP/X0415/X/15/3035764

First Schedule

Use of domestic curtilage for siting a shepherd's hut (caravan) for uses ancillary to Mildmay Cottage.

Second Schedule

Land at Mildmay Cottage, Hawridge Common, Hawridge, Chesham, Buckinghamshire HP5 2UQ.

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: 01 February 2016

by **Chris Preston BA(Hons) BPI MRTPI**

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Not to Scale:

