The Planning Inspectorate

Appeal Decision

Site visit made on 15 March 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH APRIL 2023

Appeal Ref: APP/B0230/X/22/3295944
34 Hayton Close, Luton LU3 4HD

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 and Mrs Tracey and Warren Lee against the decision of Luton Borough Council.
The application Ref 21/01601/LAWP, dated 16 November 2021, was refused by notice dated 14 January 2022.
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 proposed siting of a caravan for ancillary residential use.

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 Matter

2. As there is no description on the application form, the description in the banner heading of the use for which an LDC is sought has been taken from the appeal form. This is similar to the description on the Council's decision notice. I have used a corresponding description on the attached certificate.

Application for costs

3. An application for costs was made by Mr and Mrs Tracey and Warren Lee against Luton Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in this appeal is whether the Council's refusal to grant an LDC in respect of the proposal was well-founded. This turns on whether the appellants have been able to show that the proposal would not involve the carrying out of development as defined in s55(1) of the 1990 Act.

Reasons

5. The onus is on the appellants to show that the proposal would be lawful, the relevant test of the evidence being on the balance of probability.

6. The appeal property contains a modern two storey, link-detached dwelling. The dwelling has been enlarged to the rear at some stage. It is proposed to set up a freestanding unit, described as a caravan, in the rear garden. The unit would be around 7.8 m in length, around 4.2 m wide and about 2.7 m in height. The unit would contain a living area, kitchen, and a bedroom with an ensuite WC/shower. I am given to understand that the unit is intended to provide additional living accommodation for an adult member of the appellants' immediate family.

7. The definition of development in s55(1) of the 1990 Act includes the carrying out of building operations in, on, over or under land, as well as the making of any material change in the use of any buildings or other land. The definition of a building in s336(1) of the 1990 Act 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. The established tests of size, degree of permanence and physical attachment to the ground are relevant in assessing whether the unit would be a building falling within the above definition.

8. A caravan is defined in s29(1) of the Caravan Sites and Control of Development Act 1960 as "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)…". Relevant case law confirms that a structure which met the definition of a caravan would not generally be a building, with regard to permanence and attachment[1].

9. The unit would be composed of two separately constructed sections, which would be brought to the property then joined together. The unit would be much smaller than the maximum dimensions of a twin-unit caravan provided for at s13(2) of the Caravan Sites Act 1968. The unit would rest on supporting screw piles by means of its own weight. Other than connections to utilities, there would be no works physically attaching the unit to the ground. It is highly likely that the utilities could be disconnected with ease, within a short space of time. To fall within the definition of a caravan, the unit does not need to be mobile in the sense of being moved on its own wheels and axles. The unit would be capable of being picked up and moved intact, including its floor and roof, and put on a lorry by crane or hoist. There is a void beneath the unit so that it could be lifted using belts or straps if required. As a result, there is little in terms of the size or the extent of physical attachment to the ground to indicate that the unit would be other than a caravan.

10. In the context of the established tests referenced above, 'permanence' is generally concerned with works that would affect the mobility of a structure-for example, if it were to be fixed to a foundation, or if a brickwork outer skin and/or a roof were to be constructed. No such works are proposed. It is reasonably safe to assume that the unit might remain in situ for some years, having regard to its intended use. Even so, I do not regard this as being a significant factor in relation to the test of permanence. A caravan can often stay in one position for an indeterminate period, without adversely affecting its ability to be moved. For example, a static caravan at a residential or holiday park will often remain in the same position for several years without being moved. Such a caravan would also generally remain connected to services. In no sense could a residential or holiday park caravan be described as a building

[1] Measor v SSETR & Tunbridge Wells DC [1999] JPL 182.

simply because it had not been moved periodically. Neither is the intended use of the unit of great relevance in terms of whether operational development would occur, instead having more application to whether there would be a material change of use.

11. Consequently, on the basis of the available evidence and as a matter of fact and degree, having regard to the factors of size, degree of permanence and physical attachment to the ground the unit would not be a building as defined in s336(1) of the 1990 Act. The unit would however meet the definition of a caravan in in s29(1) of the 1960 Act. It follows that the setting up of the unit at the property would not involve the erection of a building.

12. Turning to whether the proposal would involve a material change of use. Although the unit would be self-contained, that does not necessarily mean that a separate planning unit from the main dwelling would be formed. This is because the provision within the curtilage of a dwelling of a separate structure which would provide the facilities for independent day-to-day living but is nevertheless intended to function as part and parcel of the main dwelling would not normally involve the making of a material change of use.

13. My understanding is that the unit would perform a similar function to a residential annexe, with the occupier sharing their living activity, including taking meals and carrying out routine tasks such as laundry, in company with the family members in the main dwelling. The intended use would therefore be integral to and part and parcel of the primary use of the planning unit as a single dwellinghouse. The planning unit would remain in single family occupation and would continue to function as a single household. Therefore, as a matter of fact and degree there would be no material change of use.

14. Accordingly, the available evidence shows that, on the balance of probability, the proposal would not involve the carrying out of development as defined in s55(1) of the 1990 Act, as the setting up of the unit would not amount to a building operation or the making of a material change of use. It is consequently unnecessary to consider whether the proposal would be granted planning permission by Article 3, Schedule 2, Part 1, Class E of the GPDO[2].

Conclusion

15. 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 ancillary residential 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.

Stephen Hawkins

INSPECTOR

[2] Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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 16 November 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

On the balance of probability, the proposal (as shown on the drawings submitted with the application) involves the stationing of a caravan and its use for a purpose integral to and part and parcel of the primary use of the residential planning unit as a single dwellinghouse and therefore would not fall within the definition of development set out in s55(1) of the 1990 Act.

Signed

[redacted]

Inspector

Date 4TH APRIL 2023
Reference: APP/B0230/X/22/3295944

First Schedule

Proposed siting of a caravan for ancillary residential use

Second Schedule

Land at 34 Hayton Close, Luton LU3 4HD

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: 4TH APRIL 2023

by Stephen Hawkins MA, MRTPI

Land at: 34 Hayton Close, Luton LU3 4HD

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Scale: Not to scale