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# Appeal Decision

Site visit made on 18 September 2017

**by Jessica Graham BA (Hons) PgDipL**

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

**Decision date: 27 September 2017**

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**Appeal Ref: APP/R5510/X/16/3166035**

**2 Westfield Cottages, Sipson Lane, Harlington, Hayes UB3 5EJ**

- 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 Mrs Rebecca Hampton-Flory against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 71826/APP/2016/3207, dated 23 August 2016, was refused by notice dated 9 November 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 within the curtilage of the dwellinghouse to be used for purposes incidental to the enjoyment of the dwellinghouse as such.

**Summary of Decision: The appeal is allowed, and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision**

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## Main issue

1. The main issue is whether the Council's refusal to issue a LDC was well founded. That turns on whether the siting of a mobile home within the curtilage of the dwellinghouse, for use as described in the application, would amount to development requiring planning permission.
2. S.55(2) of the Town and Country Planning Act 1990 Act lists operations and uses of land that, for the purposes of the 1990 Act, shall not be taken to involve development of the land. This includes at s.55(2)(d) *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*.
3. The Council refused to issue a LDC on the grounds that the proposal would not fall within s.55(2)(d) of the 1990 Act for two reasons: firstly, that the size, scale and facilities of the proposed mobile home were not such as would be required for purposes incidental to the enjoyment of the dwellinghouse, and secondly, that its siting would involve the installation of a substantial foundation which would constitute operational development.
4. The key questions for this appeal, then, are (1) whether the use of the mobile home would be for purposes incidental to the enjoyment of the dwellinghouse as such; and (2) whether siting the mobile home would involve operational development.

## Reasons

### *Background*

5. In applications for LDCs, it is for the Appellant to make out her case on the balance of probability.
6. The Appellant wishes to site a mobile home within the garden of her house, as ancillary accommodation for her elderly parents. The evidence of the Appellant, which is supported by letters from medical practitioners and is not disputed by the Council, is that both of her parents are in ill health and need a considerable amount of care and support. The appellant is a healthcare professional, and with help from her eldest daughter, wishes to care for her parents at home. There is insufficient space for this in the existing three-bedroom dwellinghouse at No. 2 Westfield Cottages, and the appellant's father would be unable to access the bathroom, which is upstairs.
7. The proposed mobile home is intended to provide a secure and supervised environment for the appellant's parents, while still allowing them a degree of independence and privacy. The mobile home would have three bedrooms; one for each of the appellant's parents, and one for her eldest daughter. There would be an en-suite bathroom attached to the bedroom used by the appellant's father, and a separate bathroom for the other two occupants. While the mobile home would have its own kitchen, main meals would be prepared by the appellant, and her parents would eat with the rest of the family in the dining room of the dwellinghouse.

### *Whether use would be for purposes incidental to the enjoyment of the dwelling*

8. The curtilage of 2 Westfield Cottages consists of the garden around the dwellinghouse, as shown edged in red on the application plan. The mobile home would be sited within the garden just under 5m from the back door of the house, and would share the same access from Sipson Lane. It would not have its own separate postal address, and nor would services be separately metered: the electricity, central heating and water would connect to the existing supply, and would be paid for by the appellant.
9. I note the Council's concern that with a footprint of 92m<sup>2</sup>, the proposed mobile home would represent 170% of the original 54m<sup>2</sup> footprint of the house, and so would fail to appear subservient. However, the dwellinghouse has two storeys, which together provide floor space of 108m<sup>2</sup>. This is only slightly more than that provided by the mobile home, but the single-storey structure would appear visually subservient to the two-storey house. In any event, while comparative scale is a relevant consideration, it is not a determinative factor: the size of the proposed mobile home does not preclude it from being used for purposes incidental to the enjoyment of the dwellinghouse.
10. The Council also expressed concern that the proposed orientation and positioning of the mobile home would create a secluded private garden area to its rear, such that it would have its own curtilage independent from the original dwelling. However, the evidence of the appellant is that the proposed position of the mobile home is so that its entrance, living space and front bedroom would be visible from the main dwellinghouse. It would have no back door to open on to the rear portion of the garden, which would not be fenced off or severed from the rest of the curtilage in any way, but rather would continue to

be used as garden space for the enjoyment of all family members, whether resident in the main dwellinghouse or the mobile home.

11. The Council contends that because the mobile home would contain all the facilities required for day to day living, the appellant's parents would not be dependent on any of the facilities in the main dwellinghouse, and so there would be no functional link between the dwellinghouse and the mobile home. The appellant does not dispute the fact that the mobile home would contain all the facilities needed for day to day living, but her evidence makes it clear that the proposed use is not as an independent unit of accommodation. The use of the mobile home in the manner described in the application would be a use that was part and parcel of the use of the existing dwellinghouse at 2 Westfield Cottages. If it subsequently transpired that the mobile home was being used in a different way to that described in the application, then the LDC would be of no benefit to the appellant and it would be open to the Council to take appropriate action.
12. On the basis of the evidence before me, I conclude that 2 Westfield Cottages and all of its curtilage would remain under one ownership and control, and there would be no functional separation of the use of the mobile home from the use of the main dwellinghouse. I am satisfied that the mobile home would be used for purposes incidental to the enjoyment of the dwellinghouse as such.

*Whether siting the mobile home would involve operational development*

13. The plans and supporting information submitted with the application demonstrate that the dimensions of the proposed mobile home would not exceed the size limitations set out in the statutory definition of a caravan given within the relevant legislation<sup>1</sup>. It would rest on top of spaced breeze blocks placed on a concrete slab and would not be physically attached to the ground. It could be removed by running straps between the breeze blocks, and lifting the unit by crane. The Council contends that laying the concrete slab would constitute the provision of deep foundations, "extending downwards by at least 1 metre", and would amount to engineering operations falling within the definition of development.
14. It is not clear how, on the basis of the information provided by the appellant, the Council has reached this conclusion. The plans submitted with the application do not indicate a concrete slab approaching anywhere near a depth of 1m, and in the course of the appeal the appellant has confirmed that the slab would be 30cm at its thickest point. In any event, the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is, subject to limitations and conditions which do not apply here, Permitted Development<sup>2</sup>. Since I have found that the proposed mobile home would be used for purposes incidental to the enjoyment of the dwellinghouse, it follows that the creation of a concrete slab for it to stand on would not constitute development.
15. This accords with the findings of the Inspector who determined an appeal in Hertfordshire<sup>3</sup>, referred to in evidence by both the Council and the Appellant, albeit that the proposal in that case specified padstones for the mobile home to

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<sup>1</sup> Caravan Sites and Control of Development Act 1960 (CSCDA) & Caravan Sites Act 1968 (CSA).

<sup>2</sup> By virtue of Article 3 and Schedule 2, Part 1, Class F of the General Permitted Development Order 2015.

<sup>3</sup> Appeal ref: APP/J1915/X/11/2159970

rest on, rather than breeze blocks. In support of its contention that the mobile home here proposed would have sufficient permanence and physical attachment to the land to constitute development, the Council drew my attention to reference within that Hertfordshire decision to caselaw concerning the readiness with which a unit of residential accommodation could be moved<sup>4</sup>. The test derived is whether the unit, once fully assembled, is capable, as a whole, of being towed or transported by a single vehicle.

16. The Council contends that since the appellant states the mobile home would be transported in sections by lorry and be assembled on site, it must follow that its removal would also have to be done in sections, which would fail the above test. However, the supporting material<sup>5</sup> submitted with the application not only states that the mobile home would be delivered to the site in panels which would be assembled in two sections prior to connection as a whole, it explains that its structure has the appropriate integrity to allow lifting with crane and cradle when assembled as a whole. This would allow the mobile home to be lifted on to a HGV trailer and transported by a single vehicle, thus satisfying the test in *Carter v SoS*, and the requirements of the CSCDA.
17. The Council also refers to the judgment in *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385 as authority for the proposition that if a structure can only be moved through the use of specialist equipment then, as a matter of fact and degree, it will have a greater permanence and physical attachment to the land so as to constitute operational development: the Council points out that a crane is not a piece of equipment commonly found in residential dwellings.
18. I accept that cranes are not readily available to householders or members of the public, but they are frequently deployed by operators engaged in the construction, sale and transport of mobile homes, static caravans, park homes, and other such structures. Importantly, the appellant in this case has provided sufficient information to demonstrate that the proposed mobile home would comply with all of the relevant criteria set out in the CSCDA and the CSA, would be capable of transportation by a single vehicle, and would not be physically attached to the land. In my judgment, when assessed against the considerations set out in *Cardiff Rating Authority* it is clear that the proposed mobile home would be a caravan rather than a building or structure.
19. I am therefore satisfied that the siting of the mobile home would not constitute operational development.

#### *Other matters*

20. The Harlington Conservation Area Advisory Panel has expressed concern about the impact the proposed siting of the mobile home would have on the Green Belt. However, I am unable to take such considerations into account since the planning merits of the proposal are not before me: applications for LDCs must be determined solely on the basis of whether or not the existing or proposed development is, or would be, lawful.

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<sup>4</sup> *Carter v Secretary of State* [1995] JPL 311

<sup>5</sup> Value Mobile Homes Ltd: Caravan Construction Methodology

## **Conclusion**

21. 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 siting of a mobile home within the curtilage of the dwellinghouse to be used for purposes incidental to the enjoyment of the dwellinghouse as such 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.

## **Formal Decision**

22. 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.

*Jessica Graham*

INSPECTOR

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# 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

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**IT IS HEREBY CERTIFIED** that on 23 August 2016 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 use as described in the information accompanying the application would not constitute development requiring planning permission.

Signed

*Jessica Graham*  
Inspector

Date: 27 September 2017

Reference: **APP/R5510/X/16/3166035**

## ***First Schedule***

The siting of a mobile home within the curtilage of the dwellinghouse to be used for purposes incidental to the enjoyment of the dwellinghouse as such

## ***Second Schedule***

Land at 2 Westfield Cottages, Sipson Lane, Hayes UB3 5EJ

## 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: 27 September 2017

by **Jessica Graham BA(Hons) PGDipL**

**Land at: 2 Westfield Cottages, Sipson Lane, Hayes UB3 5EJ**

**Reference: APP/R5510/X/3166035**

Do Not Scale

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