The Planning Inspectorate

Appeal Decision

Site visit made on 20 January 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 19 February 2016

Appeal ref: APP/Y0435/X/15/3129568
80 Buckingham Road, Bletchley, Milton Keynes, MK3 5HL

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
- The appeal is made by Mr Michael Hill against the decision of Milton Keynes Council.
- The application no: 15/00939/CLUP dated 14/04/2015 was refused by notice dated 08/06/2015.
- The application was made under s192(1)(a) of the Act.
- The development for which an LDC is sought is: Stationing of a caravan.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use for the stationing of a caravan which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Michael Hill (the appellant) against Milton Keynes Council. This application is the subject of a separate decision.

Preliminary matters

3. In its decision notice the Council had changed the description of the proposed development from that stated on the application form and as set out in the heading above i.e. "stationing of a caravan" to "…siting of caravan in rear garden". The description of the proposal given on the appeal form is "Siting of a caravan for ancillary residential use". As the original description, and that given by the Council, did not explicitly make reference to the use of the caravan I shall adopt the description given on the appeal form for the purposes of the determination which describes the proposal more fully.

4. From the appeal submissions I understand that what the appellant is seeking is certification that the stationing of a caravan within the dwellinghouse curtilage for use as additional living accommodation associated with the main dwellinghouse (not self-contained) is lawful. This is what is meant by "ancillary residential use". I shall deal with the appeal accordingly.

5. The relevant date for the purposes of this determination of lawfulness is the date of the LDC application. The matter to be decided upon is whether the activity proposed, if instigated or begun at that date, would have been lawful.

6. In an LDC appeal the burden of proof to demonstrate lawfulness is upon the appellant. The planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law and judicial authority.

Main issue

7. The Council, as set out in its reason for refusal, considers that the caravan would not be permitted development falling within Class E of Part 1 to Schedule 2 of the General Permitted Development Order[1] [hereafter "the GPDO"]. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

8. The terms of the application, and the basis upon which the appeal is made, is that the proposal concerns a caravan and that the statutory definition of "caravan" as set out in the Caravan Sites and Control of Development Act 1960 as modified by the Caravan Sites Act 1968 is to be applied. The submissions are unequivocal on that point. As this matter goes to the description of the proposal (and there are no powers to change the description into something else) my consideration of this appeal is made from that starting point.

9. The caravan, falling within the statutory definition, would have been capable of being moved. The clear intention of the proposal is that no operational development would have been involved. The question to be asked, therefore, is whether the siting of the caravan and its intended use would have amounted to a material change in the use of the land and, thus, would have been development for that reason[2].

10. From the evidence and from what I saw at my site visit I am satisfied that the garden curtilage of the dwellinghouse, as shown edged in red on the application plan, defines the relevant planning unit for the purposes of assessing the materiality of any change of use. This is a physically distinct area with a clear functional purpose associated with the dwellinghouse. Whilst there is an annex building to the front of the property, I am told it is occupied by a family member in association with the main dwellinghouse and that it is not separate self-contained accommodation. The primary use of the planning unit is that of a single dwellinghouse.

11. The siting of the caravan within the planning unit, and its use as described in the application and appeal submissions, would not in my view have amounted to a material change of use for the following reasons:

    i. The caravan would have been positioned within the dwelling curtilage, sharing the access, parking, servicing facilities and garden area of the main dwellinghouse. It would have had no separate curtilage.

[1] The Council has referred to the Town and Country Planning (General Permitted Development)(England) Order 2015 which came into force on 15th April 2015. However, at the date of the LDC application i.e. 14th April 2015, it was the Town and Country Planning (General Permitted Development) Order 1995 (as amended) that was in force and, thus, that is applicable. There is little material difference between the Orders so far as the issues in this appeal are concerned.

[2] The meaning of "development" is set out in s55(1) of the Act. It comprises two limbs – the carrying out of operations or the making of any material change in the use of the land.

ii. The overall planning unit would have continued in occupation by family members, the appellant and his wife (owners and current occupiers of number 80) using the caravan with their son and his partner and three children moving into the main house, and another son occupying the annex.

iii. The occupants of the caravan would have continued to use facilities in the main dwelling, for the provision of meals, laundry and for domestic storage (for example) and would have played a part in the lives of their children and grandchildren including by providing childcare.

iv. The caravan would not have had a separate postal address or have been registered as a separate dwelling for Council Tax purposes; and it would have shared the utility services of the main dwelling.

12. Whilst the caravan would have contained all the facilities for independent living it would not have been used in that way. There would have been a functional link with the main dwelling. The use of the caravan in the manner described in the application would have been a use comprised part and parcel within the primary dwellinghouse use which was already taking place within the planning unit, as a matter of fact and degree.

13. The Council has argued that the use would not have been "incidental"[3] to the enjoyment of the dwellinghouse because it would have involved the provision of primary living accommodation. Had the proposal involved operational development to be assessed against Class E to Part 1 of Schedule 2 to the GPDO this would have been a plausible argument. Class E permits (amongst other things) buildings within the curtilage of a dwellinghouse but limited to those required for a purpose "incidental" to the enjoyment of the dwellinghouse.

14. However, the LDC proposal is founded on the basis of a caravan (not a building) and on the premise that there is no operational development to consider. From that starting point I cannot see that Class E has any bearing upon the matter to be decided upon, that being the question of whether there would have been a material change of use. Neither does Part 4 to Schedule 2 of the GPDO[4] (also cited by the Council) have any relevance in a situation where I have already concluded that the proposed siting of the caravan and its use does not give rise to an act of development (either operational development or a material change of use).

15. If it subsequently transpires that what takes place on the land does, in fact, amount to operational development and/or that the caravan is used in a different way to that described in the application then the LDC will be of no benefit to the appellant. However, I must decide this appeal on the basis of the proposal and supporting information that is presently before me.

16. For all these reasons I find that, had the caravan been sited and its use instigated at the time of the LDC application, there would not have been a breach of planning control. The siting and use of the caravan for the purpose

[3] Incidental uses are those which arise from the enjoyment of a dwellinghouse by an occupier, for example uses associated with a hobby, which are of a scale and nature which can reasonably be described as "incidental".
[4] Part 4 to Schedule 2 of the GPDO concerns Temporary Buildings and Uses.

of providing additional living accommodation as described in the application would have been lawful as a matter of fact and degree.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the siting of a caravan for ancillary residential use was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under s195(2) of the Act.

Susan Wraith

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE APP/Y0435/X/15/3129568
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 April 2015 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(2) 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 living accommodation associated with the main dwellinghouse (not self-contained use) would have been part and parcel of the primary use of the land as a single dwellinghouse and would not have given rise to a material change of use of the planning unit. Neither would the proposal have involved any operational development.

Susan Wraith

INSPECTOR

Date: 19.02.2016

First Schedule

The siting of a caravan for ancillary residential use.

Second Schedule

80 Buckingham Road, Bletchley, Milton Keynes, MK3 5HL

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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.
4. 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: 19.02.2016

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Scale: Not to scale