The Planning Inspectorate

Appeal Decision

Site visit made on 5 June 2013

by David Harrison BA DipTP MRTPI

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

Decision date: 18 June 2013

Appeal Ref: APP/K2230/X/13/2190398
7 Haynes Road, Northfleet, Gravesend, Kent DA11 7HL

- 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 Hawkes against the decision of Gravesham Borough Council.
- The application Ref: 20120792, dated 17 September 2012, was refused by notice dated 9 November 2012.
- The application was made under section 192(1) (b) 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 stationing of a mobile home in the rear garden for use as a granny annex.

Decision

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.

Main Issue

1. The main issue is whether the proposal would constitute operational development or a material change of use of the land.

Assessment

2. The appellants wish to site a "Homelodge" timber built mobile home[1] in the rear garden of their house to be used as ancillary accommodation for the elderly mother of one of the appellants, in the form of a "granny annex". The proposed unit measures 3908mm by 11316mm by 2091mm high (to the eaves) and 3027mm high (to the ridge) and is fitted out with living accommodation including a kitchen and shower room/WC.

3. The Council does not dispute that the dimensions of the structure would fall within those set out for a twin-unit caravan in the statutory definition in the Caravan Sites Act 1968 as amended[2], but they consider that the siting of the unit would amount to operational development as defined in Section 55 of the Act, rather than a use of land as contended by the appellants.

4. The Council's case is that the proposed development is of a sufficient size, permanency and degree of physical attachment to be operational development,

[1] Hereafter referred to as the "unit".
[2] Sub section 13(2) as amended by the Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (amendment) (England) Order 2006 (SI2006/2374).

as a dwelling which would not be incidental to the enjoyment of the main dwelling house. As an outbuilding it would not be permitted development under Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

5. The appellants originally suggested that the unit could be brought by lorry in two sections along the rear access lane, but this would involve removing the rear boundary fence and dismantling a concrete sectional garage. Although the lane appears to be wide enough to accommodate such a vehicle I agree with the Council that this would appear to be a difficult operation. However, the appellant subsequently submitted a letter from Tonhout Crane Hire Ltd confirming that "we can lift your building in one unit or two halves over the roof of the house from the road by obtaining a road closure and crane licence from Kent County Council. Alternatively we can access the site from the track road at the rear and crane over the garage in two halves if this is preferred". It would be lowered on to concrete pad stones and not bolted or fixed to them in any way. Services would be connected but this would not in itself amount to the fixing of the unit to the ground. The services could easily be disconnected and the unit could be removed by crane in one piece.

6. The Council maintains that the expert advice that the unit could be craned onto the site and removed in the same manner should have been provided with the original application. Furthermore, there is no stated intention to remove the unit and in that sense it should be regarded as a permanent feature. It is argued that once the unit has been located on the concrete pad stones there is no intention to move it around the site. I agree with the appellant that this is not a necessary requirement; "static" caravans often remain in one location (as the name suggests). If the unit is used as an annex during the proposed occupant's lifetime it would not be "permanent" and can reasonably be regarded as a use of land. The company providing the unit has confirmed that such units do have a second hand value and it seems to me that there is a reasonable prospect of the unit being removed when no longer needed.

7. I have taken account of the case law and the various LDC appeal decisions referred to by the parties. In *Carter v SSE* [1991] JPL 131 it was accepted that the stationing of a mobile home without wheels, which satisfied the definition of a caravan, would not amount to a building operation. In *Measor v SSETR* [1999] JPL 182 the Deputy Judge said that he would be wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a mobile home under S13 (1) of the 1968 Caravan Sites Act (as amended) could never be a building for the purpose of the 1990 Act but it would not generally satisfy the well established definition, having regard to factors of permanence and attachment. "Mobility" does not require the mobile home to be mobile in the sense of being moved on its own wheels. It is sufficient that the unit can be picked up intact and put on a lorry by crane or hoist. In the case of twin-unit mobile homes the whole unit must be transportable in this way.

8. In my view the closest parallel case referred to in the representations is Appeal Ref: APP/J1915/X/11/2159970 (December 2011) in which an LDC was granted for the stationing of a mobile home for purposes incidental to the existing dwelling. In that case the "Homelodge" unit was smaller (8.45m long 3.85m wide by 2.2m/3.2m high) and the access to the site appears to have been more straightforward, but the cases are very similar.

Conclusion

9. My conclusion is that the proposed development would not constitute operational development. It would involve a use of land, and as that use would fall within the same use as the remainder of the planning unit there would be no material change of use requiring planning permission.

10. All the other matters raised in the representations have been taken into account, but they do not outweigh those factors which have led me to my conclusion. 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 stationing of a mobile home in the rear garden for use as a granny annex 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 and issue a Lawful Development Certificate.

David Harrison

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE APP/K2230/X/13/2190398
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 2010: ARTICLE 35

Date: 18.06.2013

IT IS HEREBY CERTIFIED that on 17 December 2012 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 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed use would be incidental to the residential use of the planning unit and would not constitute operational development for which a grant of planning permission would be required.

David Harrison

INSPECTOR

First Schedule

The stationing of a mobile home in the rear garden for use as a granny annex.

Second Schedule

Land at 7 Haynes Road, Northfleet, Gravesend, Kent DA11 7HL

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:18 June 2013

by David Harrison BA DipTP MRTPI

Land at Land at 7 Haynes Road, Northfleet, Gravesend, Kent DA11 7HL

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Not to scale