
Appeal Decision

Site visit made on 7 December 2015

by Sukie Tamplin Dip TP PG Dip Arch Cons IHBC MRTPI

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

Decision date: 04 February 2016

Appeal Ref: APP/X1735/X/15/3129556
27 Lodge Road, Havant, Hampshire PO9 3LL

- 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 Malcolm Wrath against the decision of Havant Borough Council.
- The application Ref APP/15/00317, dated 17 March 2015, was refused by notice dated 14 May 2015.
- 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 stationing of a caravan.

Summary of Decision: The appeal is dismissed.

Background and procedural matters

1. No 27 Lodge Road is a detached 2 storey house located on gently rising land at the head of a cul-de sac. The house is flanked to the left by an attached garage accessed from the turning head via a dropped kerb. To the right hand side there is a second dropped kerb and this leads to a driveway and double gates located under a tiled arch. The proposed caravan or unit would be stationed on the side garden accessed by these double gates and this land rises from the road.
2. The site plan also shows the demolition of a single garage and the erection of decking. No details have been submitted of the decking or its height above ground level but submitted illustrations show a unit placed on or adjacent to a substantial decked surround.
3. An application for a Lawful Development Certificate (LDC) under Section S192 of the Town and Country Planning Act 1990 (as amended) (TCPA) must specify whether the proposed development would be a use of land or, as the case may be operational development. It should include reasons, if any, for regarding the use, operations or other matter described in the application as lawful and such other information as the applicant considers to be relevant to the application. The application was required to be accompanied by a plan identifying the land to which it relates¹.

¹ Town and Country Planning (Development Management Procedure)(England) Order 2010 (DMPO): this document has subsequently been superseded by the DMPO 2015, but the relevant requirements are unchanged.

4. There is no dispute that the size and characteristics of the proposed caravan fall within the definition of a twin unit caravan as specified in the Caravan Sites and Control of Development Act 1960 as amended. It is also agreed that the proposal would be within the curtilage of no.27.

Reasons

5. The application form describes the proposed development as “the stationing of a caravan” but it does not specify whether a certificate is sought for development which is a use of land² or for operational development³. Both options are crossed out on the form. The stationing of a caravan is normally described as a use of land, but in this case the submitted drawings or plans also show the demolition of a garage and the construction of decking.
6. Section 192 of the TCPA, unlike Section 191, does not have an explicit provision for the decision maker to make a modification of the description to the proposed development in the application. However the Town and Country Planning (Development Management Procedure)(England) Order 2010⁴ (DMPO) paragraph 35(13) refers in terms to the modification of a description of a use, operations or other matters in an application. Schedule 8 of the DMPO says that the description of the use/operations/matter shall be by reference to details in the application or submitted plans, including a reference to the use class, if any...”
7. The description of the proposal on the application form is simply “stationing of a caravan”. There is no reference to the proposed use. The Council describes the proposal on its decision as the “Stationing of a caravan with decking areas as shown on submitted drawings”.
8. Taking the descriptions on the application form and in the Council’s decision notice in turn, the first scenario simply seeks a certificate for the stationing of a caravan. A certificate in this case would not certify that any use of that caravan would be lawful, and would not authorise residential occupation, whether ancillary to or independent from, the residential use of No 27. As a use is not specified it has, by reason of absence, not been demonstrated that any use thereof would be incidental. This is accepted by the appellant who notes that the courts have held that “in order to decide whether a material change of use would be made, the purpose for which a caravan is to be used must be known”.
9. As I have noted above the second scenario or description in the decision notice, would, by reference to the submitted plans, also involve operational development; I shall come back to this later in my decision. A third scenario or description is also used by the appellant in Section E of the appeal form. This section requests the appellant to ‘give a precise description of the proposed or existing use, operation or activity as outlined in the application in respect of which a certificate is sought’. The response says “proposed siting of a caravan for ancillary residential use”. However there is no implied power to modify the description of the proposed use or development or to substitute alternative plans in a Section 192 application at the appeal stage.

² Section S192(a)

³ Section S192(b)

⁴ The DMPO 2010 was in force at the time the application was made and under which it needs to be considered even though it has subsequently been superseded by the DMPO 2015.

10. Even if I was to accept the third scenario description on the appeal form, as valid the submitted evidence of the proposed use is contradictory. The covering letter submitted with the application says "the mobile home would be used as an annex by a family member and also used as a study space as an integral part of the overall use of the property as a single dwelling". The supporting document describes the proposed use differently and explains that the unit would be occupied by the elderly parents of the occupiers of the No. 27 who increasingly need care. It also says that, although the unit would provide day to day independence, all major meals will be taken in the main house which would also provide food and other storage facilities. It is said that in the longer term the mobile home would be solely used as additional recreational space for the occupants of no 27 and sleeping space for visiting guests.
11. There is no doubt that the accommodation could be used as a functionally separate living unit and this appears to be accepted by the appellant. The plans show that the unit provides or could provide, a fully functioning kitchen including a fridge freezer, several storage units lining the walls on either side of the kitchen, a dishwasher, washing machine, 2 bathrooms, its own boiler and heating system, and generous accommodation and storage facilities. The proposed physical arrangement of the site would also enable any residents now or in the future to use it and access it independently from the main house.
12. Section 55(2)(d) of the TCPA says that the use of any building or other land within the curtilage of a dwellinghouse for any purpose incidental to the dwellinghouse as such shall not be taken as development. In these circumstances the onus of proof is on the appellant to demonstrate that the proposed use of the unit would be incidental to the residential use of No 27. In these circumstances and in the light of the inconsistent descriptions of future occupation the evidence in terms of use is inconclusive and contradictory.
13. Of the three descriptions considered above the second description of the proposed development is, in my opinion, the most accurate because it provides a fuller and more precise depiction of the proposal subject of the S192 application by reference not only to the application form but also to the submitted plans. In this case, however, it is clear that the proposal would involve operational development.
14. Section 55(1A)(d) of the TCPA says that development includes (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder. Of these (b) and (c) are not relevant to the facts of this case. But from the evidence before me the proposed works include demolition (the garage) and the construction of a substantial area of decking. As a matter of fact the construction of a substantial area of decking constitutes operational works of a type that would normally be carried out by a builder and would therefore constitute development.
15. Section 57 says that planning permission is required for any development of land other than in respect of specified exceptions. Section 57(3) says in turn that an exception can be where planning permission has been granted subject to limitations by an Order. Applications for LDCs are determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. In this case the application was made on

- 17 March 2015 and is subject to the limitations and conditions of the Town and Country Planning (General Permitted Development) Order, 1995⁵ (GPDO).
16. Schedule 2, Part 1 Class E of the GPDO sets out the permitted development rights for proposals involving works within the curtilage of a dwellinghouse. This includes size restrictions for buildings, enclosures, raised platforms, pools and containers within the curtilage. Class E.1 (g) says that the construction or provision of a veranda, balcony or raised platform is not permitted by the GPDO. The *Permitted development for householders: Technical Guidance* (TG)⁶ provides an interpretation of Part 1 of the GPDO and in this case it says that a raised platform is defined as any platform that has a height of more than 300mm. Garden decking is permitted development subject to it not exceeding the 300mm height limit.
17. The proposed unit is shown on Floor Plan Dwg no 14698 and the accompanying block plan. Decking is shown to the south and west of the proposed unit. The garden slopes so that it would be necessary to provide a level surface for the unit and therefore the unit would have to be placed on a raised platform or structure of some kind. No cross section has been submitted but I note that the unit would be accessed by about 5 steps. This suggests that the raised platform would be about 600mm above the adjacent ground level. Accordingly it seems to me, on the balance of probability, that the raised platform would be in excess of the limitation in Class E.1 (g) of the GPDO.
18. Thus whether or not I had concluded that the unit would be incidental to the dwellinghouse, the sloping characteristics of the site and the size of the proposed unit, as is shown on the submitted plans, would necessitate operational development. In this case the proposed works would not benefit from the permitted development rights conferred by Class E of the GPDO.
19. Thus the stationing of the caravan together with the decking/raised platform which forms part and parcel of the application as submitted would constitute development requiring planning permission.
20. I have had regard to the appeal decisions and excerpt from Hansard relied upon by the appellant. In all those cases it appears that the applications were specifically for ancillary and/or incidental occupation. Moreover, where the form of the base/foundation is specified, this is described as concrete pad stones and would not constitute a raised platform. Accordingly, I do not find the circumstances comparable to the case before me.

Decision

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the stationing of a caravan with decking area was well-founded and the Appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and uphold that decision.

⁵ The Town and Country Planning (General Permitted Development) Order 1995 as amended by the No.2 Amendment (England) Order 2008 and Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014

⁶ *Permitted development for householders: Technical Guidance* Department for Communities and Local Government: Updated April 2014:

22. Consequently the appeal is dismissed.

Sukie Tamplin

INSPECTOR