The Planning Inspectorate

Appeal Decision

Site visit made on 31 October 2011

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 21 November 2011

Appeal Ref: APP/T2215/X/11/2155415
Braeside, Roman Villa Road, Dartford DA2 7QS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] 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 W Lee against the decision of Dartford Borough Council.
- The application Ref DA/11/00424/LDC, dated 28 March 2011, was refused by notice dated 31 May 2011.
- The application was made under section 192(1)(a) of the Act.
- The development for which a certificate of lawful use or development is sought is the stationing of a mobile home in the curtilage for use as a family annexe [see also below].

Decision

1. The appeal is allowed and an LDC is issued, in the terms set out in the attached certificate, for the siting of a mobile home in the curtilage for use as a family annexe ancillary to the main house at Braeside, Roman Villa Road, Dartford DA2 7QS. A plan defining the area of land involved is attached to the LDC.

Procedural matters and background

2. The description of development set out in the above bullet-points has been taken from the first half of the final sentence in section 7 of the application form. At appeal stage section E says the description should be: *"The siting of a mobile home in the curtilage for use as a family annexe ancillary to the main house"*. There is not a great deal of difference between the two but the latter is more comprehensive and so I propose to deal with the appeal on this basis.

3. There is an extant enforcement notice pertaining to the use of land at Braeside for the siting of a caravan (mobile home) for residential use which includes, but otherwise extends to land outside, the current appeal site. That enforcement notice was upheld on appeal, albeit with a variation, by a decision letter dated 10 March 2011 [Ref APP/T2215/C/10/2134906]. Section 191 (2) says a use is lawful if (b) it does not constitute a contravention of any of the requirements of an enforcement notice in force. The notice issued on 28 July 2010 appears to be in force. Nevertheless at paragraph 26 of the appeal decision the Inspector expressly envisaged the submission of the LDC application which is now subject of this appeal. Whilst I have considered the requirements of the extant notice, I am satisfied that it does not preclude the lawfulness of a residential caravan in the circumstances advanced in this application. My view is consistent with the stance taken by my colleague and by the fact that the Council did not cite a conflict with section 191 (2) (b) in its reason for refusal of this application.

Reasons

4. The covering letter with the application, dated 31 March 2011, explained that it was intended to sell the mobile home and bring on a twin unit. I note that the grounds of appeal confirm the original mobile home has been removed so as to comply with the extant notice. The grounds of appeal continue by saying that the proposed mobile home *"…will comply with the definition of a caravan/*

mobile home set out in the Caravans Act…[and]…*will not be fully self contained in that it will not be fitted out with laundry facilities, or a fully domestic kitchen, although it will have facilities for making tea, coffee and snacks. The occupants* [the Appellant's daughter and her partner] *will therefore rely on the main dwelling for laundry and baking/proper cooking and preparation of meals. The appellant confirms that the family will eat together often…"*.

5. The Council's delegated report suggests that due to the scale of the mobile home that it could not *"…be sited under the provisions of Class E of the GPDO"*. However Article 3 and Class E to Part 1 of Schedule 2 of the 1995 Order [the GPDO] permits, amongst other things a building. A caravan as defined in the Caravan Sites and Control of Development Act 1960 [the 1960 Act] is, by definition, not a building. Although in some circumstances a twin unit that is within the legal size can cross the boundary so as to become a structure, e.g. where it is constructed on site from more than two sections, it is appropriate for me to deal with this appeal on the basis that the statutory definition is met. This is the basis upon which the application was made and the Council has no power to modify the description in a section 192 application or otherwise cast doubt on the basis upon which the application is advanced. The addition of a brick skirt and the connection to services might not in any event be conclusive.

6. The commentary at 3B-2088.2 of the Encyclopedia of Planning Law and Practice says that use of a caravan within the curtilage for purposes incidental to the enjoyment of the dwelling house falls within the primary use of the dwelling house, and does not require separate planning permission. Article 3 and Class A to Part 5 of Schedule 2 of the GPDO specifically excludes paragraph 1 of Schedule 1 to the 1960 Act. Although my colleague referred in paragraph 27 of the first appeal decision to whether siting the mobile home in the curtilage would be development permitted by the GPDO, for this reason I consider that the GPDO is not relevant to the circumstances of this appeal.

7. The issue to be determined in this case is whether the proposed caravan would be used for a purpose incidental to the enjoyment of the dwelling house as such, within section 55 (2) (d) of the Act. On the evidence before me it would. I do not doubt that few works would be required to facilitate independent living and given the extant notice, in the event that this did occur such use would not only be unlawful but illegal because it would be in breach of the requirements of the notice. The Appellant and any prospective occupier should be under no illusion that there is a clearly defined boundary and that the use of the mobile home in circumstances where they are not dependent on the dwelling would render them vulnerable to immediate prosecution under section 179 of the Act.

8. Conversely if the mobile home is used in the manner set out in the application such use would not be development and hence the use would not contravene the requirements of the extant notice. In my view, whilst the submitted plan shows 3 bedrooms, a bathroom and an en-suite bathroom, if the use that is made of it effectively comprises additional sleeping accommodation, albeit with serviceable bathrooms, this would fall within the statutory exemption. Just as one might have a tea or coffee making facility in one's bedroom, so the mere ability to do this in the mobile home would not give rise to development. Each case must be assessed on a fact and degree basis, and all I can do is assess this appeal on the basis of the claimed use. If some other use takes place or the mobile home is not within the definition of a caravan then an LDC will be of no benefit to the Appellant. Although there has been reference to a particular type of mobile home, a Stella Sunrise, which I inspected at the time of my visit and found it to have no fitted oven, this might change. At the time of my visit

it was sited on the concrete hardstanding, rather than the proposed site shown on drawing No 993/15. None of this matters so long as it is within the curtilage and the definition of a caravan and, crucially, that the use that is made of the caravan is incidental to the enjoyment of the dwelling house as such.

9. My view in this matter is supported by other examples to which reference has been made, including those in Sevenoaks and the case in this Council's area at Longfield Fruit Plantation [application Ref DA/98/00408/LDC]. The fact that the caravan subject of the latter LDC was smaller is not a relevant distinction. Both appear to have been within the statutory definition of a caravan.

Other matters

10. Reference has been to two businesses: (i) Braeside Horse Feeds; and (ii) sale of vehicles via the internet. On the limited information before me I have been unable to form a view on the materiality of these businesses and have assumed that, as at the time of the application[1], the use was not at such a level as to require planning permission. In reaching this view it is highly material that the Council did not refuse the application, subject of this appeal, for this reason as only it, rather than me, was in a position to judge the position at that time. Nevertheless I would record that at the time of my site inspection the curtilage of the bungalow was being used, amongst other things, for stationing a touring caravan, 2 containers, a portacabin, storage rack with associated storage, LDV flat bed van and Muttlear mini truck. If the curtilage of the dwelling house was in mixed use, i.e. business and residential, the provisions of section 55 (2) (d) of the Act would not apply. In this scenario an LDC would be of no value and so I make clear that any business storage and/or vehicles should not be kept within the curtilage in the future if it is intended to rely on the LDC.

11. The parties disagree about whether the floor area of the largest mobile home or twin unit would exceed that of the existing dwelling. However the officer's report on application No 03/00118/OUT expressly refers to a figure of 140 m² and the Council's appeal statement talks about a footprint of 108 m². Whilst I accept that the footprint of the bungalow, i.e. without the first floor bedroom, might be less, the largest mobile home would appear to have a smaller floor area than the existing dwelling. Regardless of the precise figures, the issue is whether the use that is made of the caravan is truly incidental to the dwelling and that goes to function, the manner in which it is used, rather than size.

12. The Appellant has claimed that neither the planning history of the use of the land nor the Appellant's future intentions is relevant to this appeal, but I am unable to agree. The extant notice is highly material given the definition of lawful in section 191 (2) of the Act but I have already given reasons why the use as proposed would not breach its requirements. It must follow that the Appellant's intentions are highly material to my findings in this appeal.

Conclusion

13. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC for the siting of a mobile home in the curtilage for use as a family annexe ancillary to the main house was not well founded. The appeal will succeed and I shall exercise the powers transferred to me in section 195 (2) of the Act.

Pete Drew

INSPECTOR

[1] See wording of section 192 (2) of the Act.

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Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990 ("the Act"): SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL MANAGEMENT PROCEDURE) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 28 March 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Act for the following reason:

The proposed use would not be development by virtue of section 55 (2) (d) of the Act.

Signed

Pete Drew
Inspector

Date: 21.11.2011

Reference: APP/T2215/X/11/2155415

First Schedule

The siting of a mobile home in the curtilage for use as a family annexe ancillary to the main house.

Second Schedule

Braeside, Roman Villa Road, Dartford DA2 7QS

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Act.

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 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 edged red 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. In this case it might also result in prosecution proceedings for non-compliance with the extant enforcement notice.

4. The effect of the certificate is subject to the provisions in section 192(4) of the Act, which states that the lawfulness of a specified use is only conclusively presumed where there has been no material change, before the use 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: 21.11.2011

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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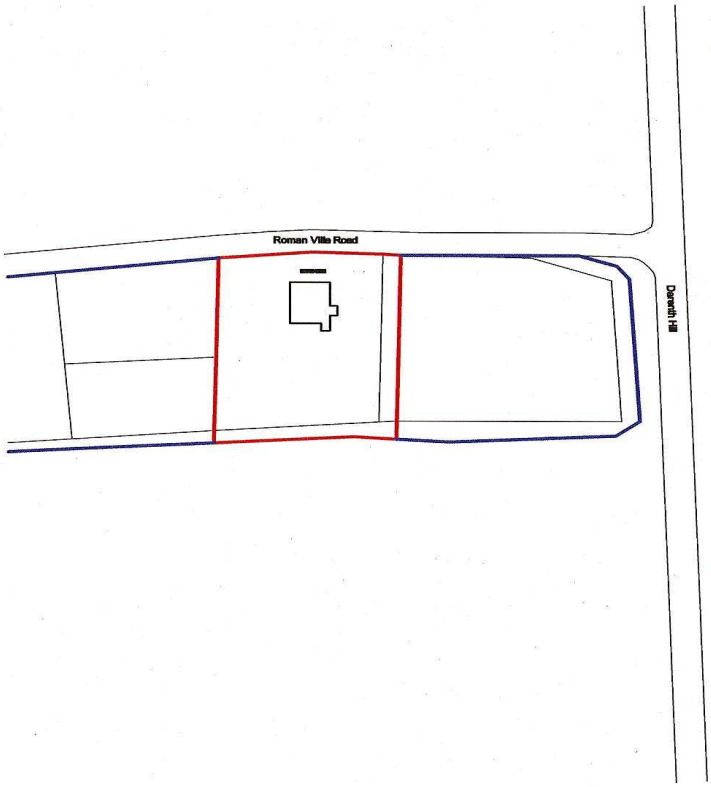

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Site	Brae-side, Roman Villa Road, Darenth, Kent.	
Drg Title	Site Location Plan	
Drg No	993 / 1A	Scale 1:1250 @ A4
Date	April 2010 Rev 03/11	Drawn by S.C.M.