Appeal Decision

Site visit made on 6 November 2009

by Derek Thew DipGS MRICS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
12 November 2009

Appeal Ref: APP/P2365/X/09/2109940
Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT

- 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 E & Messrs D, A and D Guest against the decision of West Lancashire District Council.
- The application ref 2009/0320/LDP, dated 24 March 2009, was refused by notice dated 9 July 2009.
- 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 proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as ancillary accommodation incidental and subordinate to the residential occupation of the dwelling house.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use describing the proposed use which I consider to be lawful.

Application for costs

2. An application for costs was made by Mrs D & Messrs E, A and D Guest against the decision of West Lancashire District Council. This application is the subject of a separate Decision.

Reasons

3. When I made an unaccompanied visit to the site I noted, from the highway, there were two caravans on the land sited to the north west of the main dwelling. I do not know if they are the caravans the subject of this application. But, notwithstanding their presence, the application made on 24 March 2009 sought a certificate in respect of the proposed siting of two caravans on the land (rather than a certificate in respect of existing caravans) and I have determined the appeal upon that basis.

4. Planning permission is required for the carrying out of any development of land (section 57 of the 1990 Act) and, for the purposes of the Act, "development" means:

> "*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or land.*" (section 55(1) of the Act).

5. The word "caravan" is not defined in the 1990 Act. That Act defines the term "caravan site" by reference to the Caravan Sites & Control of Development Act

1960; furthermore the Town & Country Planning (General Permitted Development) Order 1995 interprets the word "caravan" with reference to that same 1960 Act. Accordingly, it is reasonable to turn to the 1960 Act for a definition of the word "caravan" when considering matters relating to the control of development under the 1990 Act. Section 29(1) of the 1960 Act defines a "caravan" as:

> " *any structure, designed or adapted for human habitation, which is capable of being of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer….."*

As a caravan is capable of being moved from one place to another, then the placing of a caravan on land generally cannot be regarded as the carrying out of building, engineering, mining or other operations. In other words, the mere stationing of a caravan on land is not development. So it must follow that, for the siting of a caravan on land to amount to the carrying out of development (and thereby be subject to the provisions of section 57 of the 1990 Act) it has to result in the making of a material change in the use of the land (Guildford RDC v Fortescue [1959] 2 QB 112).

6. In considering whether or not there is a material change of use, it is appropriate to start by ascertaining what constitutes the primary use of the land and what is the planning unit to which that primary use is attached. In this case the caravans would be sited on land owned with Homefield and the primary use of that property is use as a dwelling. The supporting statement, submitted with the application, sets out that it is intended to site the caravans directly to the rear of the dwelling, within what is claimed to be the residential curtilage of the dwelling. The Council appears to accept that in such a position the caravans would be sited within the residential curtilage of Homefield. The caravans would, therefore, be sited within the same planning unit as the dwelling.

7. Homefield is lived-in by the 4 appellants – comprising mother, father and two adult sons – who all jointly own the property. The evidence for the appellants is that the caravans would be used by the two sons to provide their sleeping accommodation, "*and for social purposes and entertaining friends*". The supporting statement goes on to say that "*the sons will, as now, take all meals in the main house, use laundry facilities and generally inter-react with their parents in the normal manner associated with family occupancy*." As such, I consider the proposal is to use the caravans solely as living accommodation additional to that which exists at Homefield. The stated intention is that the caravans will not be used as independent units of accommodation, but will remain very much part and parcel of the main dwelling. If the caravans were to be used as self-contained living accommodation then it is likely that would amount to a material change of use of the land. But, so long as the caravans are sited within the residential planning unit, and so long as use of the caravans remains ancillary to the main dwelling, I am satisfied their siting does not result in any material change of use of the land.

8. As a last point I would add that, as the caravans would be providing accommodation which adds to that in the main dwelling, it is inappropriate to describe their use as being "incidental and subordinate". I will therefore delete that wording from the description of the application.

9. For each of the above reasons I find that the proposed siting within the curtilage of Homefield of 2 static caravans for use as accommodation ancillary to that dwelling is not development. I draw support for this finding from the judgement in Restormel Borough Council v Secretary of State for the Environment [1982] JPL 785. The Council's refusal to grant a certificate of lawful use or development in respect of the proposed caravans was, therefore, not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Derek Thew
Inspector

Lawful Development Certificate

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 24 March 2009 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 proposed siting of two caravans to be used solely as additional living accommodation for the main dwelling on the land is not development for the purposes of the Act.

Derek Thew
Inspector

Date 12 November 2009
Reference: APP/P2365/X/09/2109940

First Schedule

The proposed siting of 2 static caravans, each of which will not exceed 10.67m x 3.66m in dimensions, for use as accommodation ancillary to the residential use of the dwelling.

Second Schedule

Land at Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT

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

Plan

This is the plan referred to in my decision dated: 12 November 2009

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