Appeal Decision

Site visit made on 8 April 2013

by Sara Morgan LLB (Hons) MA Solicitor

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

Decision date: 15 April 2013

Appeal Ref: APP/K3605/X/12/2181651
Sandy Holt, 9 Blackhills, Esher KT10 9JP

- 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 A Lakhani against the decision of Elmbridge Borough Council.
- The application Ref 2012/1887, dated 23 May 2012, was refused by notice dated 2 August 2012.
- 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 the provision of a mobile home within the curtilage of a dwelling house to provide ancillary staff accommodation.

Decision

1. 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

2. The main issue is whether the provision of a mobile home within the curtilage of the dwelling house for ancillary staff accommodation as described in the application would amount to development requiring planning permission.

Reasons

3. The description of the development set out in the heading above is taken from the appeal form. There is no clear description of the proposed use in the application. In its refusal notice the Council described the proposal as "Whether planning permission is required for the proposed use of a caravan ancillary to the main house". I consider that the description set out in the appeal form, which is the appellant's own description of what is proposed, should form the basis of my consideration of the appeal.

4. The mobile home would be sited within the curtilage of Sandy Holt, a detached dwelling in extensive grounds. No separate fenced garden area is proposed, and no separate access, so the access to the mobile home would be via the security controlled gates into the site off Blackhills, the estate road. The submitted drawing shows the mobile home containing two bedrooms, toilets and showers, and a living and eating area including hob, sink, fridge freezer and kitchen surfaces. The mobile home would not have its own separate electricity and water supply; these would be provided from the main house with no separate billing, and there would be no separate postal address.

5. According to the information provided with the application, the mobile home would provide staff accommodation for persons employed on the site as a chauffeur/handyman and or housekeeper with duties which require the staff to be available at various times of the day and evening. The occupiers of the mobile home would have to vacate it if the employment link to the main house ceased.

6. Staff duties would include chauffeuring, maintaining the family vehicles, maintaining the property itself, overseeing other staff, looking after the pool, providing day-to-day domestic support including cleaning and laundry and assistance in the kitchen. There would be no regular pattern of hours and days of employment; it would depend on the requirements of the family. The occupiers of the mobile home would continue with their duties in the house when the family were away and would provide an on-site presence for security purposes.

7. The appellant has referred to the decision of the High Court in *Whitehead v Secretary of State of the Environment and Mole Valley District Council*[1]. In that case, there was a proposal to use a building within the curtilage of that dwelling to provide living accommodation for a housekeeper. The Deputy Judge commented that -

> "it seemed impossible to hold that the use of the building thus converted would be otherwise than for a purpose incidental to the enjoyment of the main dwelling as a unit of living accommodation or, alternatively,… would form an integral part of the main use of the planning unit as a single dwelling house. It mattered not, whether this building, as converted, happened to include its own kitchen or bathroom. Nevertheless, the whole purpose of it was to provide somewhere to live for the housekeeper, who would doubtless be looking after the house at all relevant times, and walking to and fro the short distance to the house to cook meals in it and so on."

He concluded that planning permission would not be required for such a use.

8. The Council has argued that the mobile home would have all the facilities required for independent living, and that its occupiers would live a completely independent life from the occupiers of the principal dwelling. Consequently it is argued that the use of the mobile home would be for the enjoyment of its occupiers and not for the enjoyment of the occupiers of the dwelling. Nonetheless it is clear from the decision in *Whitehead* that it is possible for the provision of live-in staff accommodation not to amount to a material change of use.

9. In this case, the mobile home would be located a short distance from the main house, adjacent to the drive which would lead directly to the basement garage. It would also have easy access to the utility rooms of the house, either via the garage or through a side door. The dwelling house at Sandy Holt is large, and the mobile home would by comparison be small and provide only basic facilities for independent living. The description of the duties of the occupiers of the mobile home make it clear that there would be an essential link between the occupation of the mobile home and the use of the main house and gardens as a dwelling, and consequently a clear and integral functional link between the mobile home and the main dwelling.

[1] [1992] JPL 561

10. The whole of the appeal site would remain under one ownership and control, and as indicated there would be no functional separation of the main dwelling house use from the mobile home use. The siting of the mobile home would not, therefore, lead to the creation of a new planning unit. In addition, the proposal itself is for *ancillary staff accommodation*. There is nothing inconsistent between the use of *ancillary* here and the detail of what is actually proposed in the supporting information. Given the clear functional link between the mobile home and the dwelling, and the ancillary and subordinate nature of the accommodation to be provided, the siting of a mobile home for the purposes described would not amount to a material change of use.

11. The Council has referred to the case of *Rambridge v Secretary of State for the Environment*[2], but that case concerned the extent of rights under Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended to erect a building within a residential curtilage for a purpose incidental to the enjoyment of the dwelling house as such. The issues in that case were somewhat different from those arising here and it does not lead me to a different conclusion on the main issue.

12. The Council has also referred to a Secretary of State decision reported at [1987] JPL 144, referred to in the *Whitehead* judgment, concerning the meaning of *incidental*. In that case, the Secretary of State's view was that the use of an existing building in a residential garden as a bedroom was not *incidental* to the use of the dwelling, but an integral part of the main use of the planning unit. It is not inconsistent with my conclusions here.

13. Taking these factors into account, I conclude as a matter of fact and degree that the provision of a mobile home as proposed would not amount to development requiring planning permission.

14. 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 provision of a mobile home within the curtilage of the dwelling house to provide ancillary staff accommodation 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.

Sara Morgan

INSPECTOR

[2] (1997) 74 P. & C. R. 126

The Planning Inspectorate

Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 23 May 2012 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 use as described in the statement accompanying the application would not constitute development requiring planning permission

Signed

Sara Morgan
INSPECTOR

Date: 15 April 2013
Reference: APP/K3605/X/12/2181651

First Schedule

The provision of a mobile home within the curtilage of the dwelling house to provide ancillary staff accommodation, in accordance with the information provided in the report by Bell Cornwell dated May 2012 accompanying the application.

Second Schedule

Land at Sandy Holt, 9 Blackhills, Esher KT10 9JP

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations 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, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 April 2013

by Sara Morgan LLB (Hons) MA Solicitor

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Scale: DO NOT SCALE

