ROCK HOUSE, HIGHER ROAD, LONGRIDGE, LANCASHIRE, PR3 2TW

APPEAL AGAINST REFUSAL OF LAWFUL DEVELOPMENT CERTIFICATE APPLICATION FOR THE PROPOSED SITING OF A SINGLE STOREY MOBILE HOME TO PROVIDE ANCILLARY ANNEXE ACCOMMODATION

GROUNDS OF APPEAL

Council's Ref: 3/2024/0273

Introduction

This lawful development certificate appeal relates to a proposal to site a mobile home within the garden of an existing domestic dwelling, to be used by the occupiers of the property for purposes ancillary to that existing dwelling. The refused lawful development certificate application which is the subject of this appeal sought confirmation that the proposed mobile home falls within the definition of a 'caravan' as set out in the Caravan Sites & Control of Development Act 1960, as amended by the Caravan Sites Act 1968, and as such would not be operational development as defined in the Town & Country Planning Act 1990. It was also contended that there would be no material change in the use of the land on which the mobile home would be sited.

Full details of the proposal are included within the drawings and documents originally submitted with the appeal application, and particular attention is drawn to the Supporting Statement which accompanied that application.

The lawful development certificate application which is the subject of this appeal was refused by Ribble Valley Borough Council on the 30th May 2024 (Council's ref. 3/2024/0273). The Council's reason for refusal was as follows:

1. *The siting of the mobile home within the curtilage of the dwellinghouse known as Rock House would constitute development by virtue of Section 55(2)(d) of the Town and Country Planning Act 1990 insofar that the level of accommodation provided would exceed that which can be reasonably considered as incidental to the enjoyment of the main dwellinghouse. The mobile home is therefore deemed operational development for which planning permission is required.*

The planning officer's report setting out further details of the Council's reasoning for refusing the appeal application is included in the documents accompanying this appeal for reference.

Grounds of Appeal

As this appeal is against a refusal to issue a lawful development certificate, the planning merits of the proposal are irrelevant and not for consideration.

The Council planning officer's report confirms that the Council agrees that the proposal accords with the legislative definition of a caravan as set out in the Caravan Sites & Control of Development Act 1960, as subsequently amended by the Caravan Sites Act 1968. The definition of a caravan, and whether the proposal should be considered as a building or a caravan, is covered in greater detail in the Supporting Statement which accompanied the lawful development certificate application, so it is not considered necessary to repeat those arguments here. The Supporting Statement clearly set out how the proposal meets the commonly applied 'size', 'construction' and 'mobility' tests to be considered a caravan, and the Council agreed with the appellant in those respects.

Where the Council is at dispute with the appellant is in respect of the nature and amount of accommodation to be provided by the proposed mobile home, which the Council considers cannot reasonably be argued to be incidental to the enjoyment of the main dwellinghouse. However the appellant fails to see the logic in the Council's argument and would strongly assert that this is the wrong approach to take. The planning officer's report confirms that the proposal would be a caravan sited within the curtilage of the dwelling, yet concentrates on the incidental use of the structure (which it agrees is not a building) rather than on whether there would be any material change in the use of the land as a result of the proposed mobile home being sited there, which there would not be.

It is well established in planning case law that a caravan can be sited within the curtilage of a dwellinghouse without resulting in a change of use of the land on which it is sited, and this is supported by the appeal examples cited below. The appellant would suggest that the Council appears to be confusing incidental uses with uses which can be considered part and parcel of an existing lawful use, as well as confusing operational development with use of land and the fact that a caravan is not a building according to the judgements handed down in Measor (1998) and Massingham (2002) (both of those court cases are referred to in the Supporting Statement which accompanied the appeal application).

The proposal clearly falls well within the maximum size limits for a caravan as set out in the Caravan Sites Act 1968, so the legislation defining what a caravan can be in fact allows for a structure of this size. It is also obviously common for a caravan/mobile home to include primary accommodation of the type proposed here such as bedrooms, a sitting area, a kitchen and bathroom. So the proposal meets the technical requirements for being considered a caravan, would be sited within the curtilage of the main dwellinghouse, would

be used for purposes ancillary to that dwellinghouse and would not result in the creation of a separate self-contained dwelling or separate planning unit. Yet the Council considers that the level of accommodation proposed would result in operational development requiring planning consent, which is clearly a misguided approach.

A caravan will typically be equipped with all the facilities required for independent day-to day living. The same can be said of a typical 'granny-flat' constructed within the garden of a dwellinghouse. It does not follow automatically that once occupied such structures create a material change of use simply because primary living accommodation is involved. It depends more on the actual use of the structure.

As the Supporting Statement which accompanied the appeal application explained, the proposed mobile home would have no separate address, post box, utility meters, services, parking, garden area/curtilage or access. It is to be used only as extended accommodation by the family who occupy the main house and by visiting friends/relatives, so such matters as the provision of meals and washing of laundry would be shared as part of the day-to-day living within the house plot. So whilst the Council might see the proposed mobile home as being 'capable' of independent occupation, that is not the basis on which the lawful development certificate is sought. There will be no physical or functional separation of the land within the existing house plot, and no separate planning unit will be created. On the basis that at all times the occupation of the proposed mobile home will remain ancillary to the primary use of the land, no material change of use of land requiring planning permission will take place.

Clearly the lawful development certificate application should only have been determined on the basis of what is proposed, not what the Council consider might happen in the future.

Further to the above, a number of previous lawful development certificate appeal examples are referenced below which considered the issue of change of use of land in respect of the siting of a mobile home within the domestic curtilage of a dwellinghouse. The decision letters and relevant planning drawings for all these previous appeals are enclosed amongst the documents submitted with this appeal. This appeal statement quotes directly from those decision letters as relevant, in order to draw out principles which are applicable to the case under consideration here.

Appeal ref. APP/L5810/X/15/3140569 is referred to in the Supporting Statement which accompanied the appeal application and involved a mobile home offering a similar level and type of accommodation as that proposed here, including two bedrooms, a kitchen and lounge, and a bathroom. In allowing that appeal the Inspector commented:

> *I consider that what is being proposed meets the definition of a caravan. As the appellants say, it is settled law that stationing a caravan on land, even for prolonged periods, is a use of land rather than operational development. This principle is embedded in the legislative framework, endorsed by case law and routinely applied by the Planning Inspectorate. Thus, the limitations in the General Permitted*

Development Order that apply to the erection of buildings in the curtilage of a dwelling house have no relevance to this case (para. 18).

The appeal unit would provide accommodation for use ancillary to the residential enjoyment of the main dwelling. The appeal site would remain a single planning unit and that unit would remain in single family occupation. … A completely separate self-contained dwelling unit is not being provided. I am satisfied, having read all the written representations, that there would be sufficient connection and interaction between the mobile home and the main house, such that there would be no material change of use of the land or planning unit requiring planning permission (para. 19).

The issue was also considered in planning appeal ref. APP/Z3825/X/16/3151264, which proposed the siting of a caravan for ancillary residential use within the curtilage of a dwellinghouse. That proposal also involved a caravan offering primary accommodation of two bedrooms, two bathrooms and a sitting, dining and kitchen area. Similar to the case under consideration here, the Council refused the application on the basis that by virtue of the substantial size of the proposed caravan it would have all the facilities needed for everyday living, that it would appear physically and functionally separate from the main dwelling, the proposal would amount to a significant change in the character of the use of the land, and that it would not be incidental to the enjoyment of the dwelling. In allowing the appeal the Inspector commented:

The Council does not dispute that the proposed location for the siting of the caravan … would be within the residential curtilage. Nor is there any dispute that the caravan would be self-contained in terms of the facilities required for day-to-day domestic living and therefore capable of being used as a self-contained dwelling. However, it is well established in law that a caravan can be stationed within the curtilage of a dwellinghouse without comprising a material change of use for planning purposes (para. 5).

… it is emphasised that there is no intention that the caravan will be made available for separate independent residential use. Hot and cold water, and the electricity supply, would be from the main house, with no separate utility meters. The caravan will not have its own highway access or postal address, nor will it be registered as a separate unit of accommodation for Council Tax purposes. It is anticipated that the provision of meals, laundry facilities and housekeeping will be shared. Nor will there be any physical or functional separation of the land on which the caravan is proposed to be sited from the rest of the garden land (para. 6).

Whilst I can appreciate the concerns of the Council, the size of the caravan and the facilities provided, which would be found in most large caravans, do not cast substantial doubt on the applicant's explanation of the use that is proposed. On the balance of probabilities I consider that the use proposed would be subordinate and ancillary to the use of the property as a single dwellinghouse. It would not result in a material change of use.

The issue was also considered during planning appeal ref. APP/A1530/X/17/3177321 which reconsidered an application for a lawful development certificate for the siting of a caravan for ancillary use within the curtilage of a dwellinghouse. In that case, like the case under consideration here, the Council determined the application with reference to section 55(2)(d) of the 1990 Town & Country Planning Act, including use of the word 'incidental' which arises more in the context of permitted development rights for domestic outbuildings as contained within Class E of Part 1 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 2015. The appeal Inspector made it clear that that was the wrong approach to take to the determination of the lawful development certificate application, commenting:

> *However the proposal in this instance is not for the provision of a building, but the use of land for the siting of a caravan. Class E does not apply and so references to it and the judgement in Emin do not assist in establishing whether residential use of the caravan would be lawful (para. 8).*
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> *Moreover, a distinction is to be drawn between an incidental use and uses which are part and parcel of an existing lawful use (para. 9).*
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> *The issue requiring consideration is not whether there would be an incidental use as focussed on by the Council. Rather, the crux of the matter is whether or not the proposal would involve a material change of use of land and thus amount to 'development' within the meaning of section 55(1) of the Act. Just because the proposed use goes beyond what would ordinarily be regard as an 'incidental use' does not mean there is a material change of use. For instance, a 'granny' annexe, even in a separate building in the curtilage of the 'main' dwellinghouse, would normally be regarded as part and parcel of the main dwellinghouse use. If there is no material change of use of the land then there can be no development requiring planning permission (para. 10).*
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> *Typically, a caravan will be equipped with all the facilities required for independent day-to-day living. It does not follow automatically that once occupied there must be a material change of use simply because primary living accommodation is involved (para. 12).*
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> *Use of the caravan in the manner described would not involve physical or functional separation of the land from the remainder of the property. The character of the use would be unchanged. Thus, the use described would form part and parcel of the residential use within the same planning unit. Only if operational development which is not permitted development is carried out or if a new residential planning unit is created, will there be development (para. 14).*
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> *The Council concluded that the caravan is highly likely to be capable of independent occupation. However, the application must be assessed on the basis of the stated*

purpose and not what might potentially occur. An LDC can only certify the use applied for (para. 15).

In allowing planning appeal ref. APP/A1530/X/17/3177321, the Inspector also awarded costs against the Council for acting unreasonably. This was on the basis of the Council focussing on the 'incidental' nature of the proposal, rather like the Council has in the case under consideration here. In the costs decision letter the Inspector comments:

The Council focussed on whether use of the caravan would be incidental to the use of the dwelling so as not to involve development under section 55(2)(d) of the 1990 Act. In doing so it failed to have due regard to whether there would in fact be a material change of use of land. Having decided that the proposed use would not be incidental to the use of the dwelling, the conclusion was drawn that there must be a material change of use. This was seemingly done without grasping key points raised in material referenced in the officer's report. It included various previous appeal decisions where LDCs were granted for uses of caravans which were found to form part of the primary residential use of land and thus did not amount to a material change of use. One of these cases (ref. APP/Z3825/X/16/3151264) appeared to be strikingly similar to the proposal (para. 5).

Appeal ref. APP/Z3825/X/16/3151264 referred to in the above appeal is also referred to in this appeal statement. Having regard to the above it is of concern to the appellant that the Council in this case, similar to the situation described in appeal ref. APP/A1530/X/17/3177321, focussed on the incidental use of the proposed mobile home at the expense of properly considering whether there would be a material change of use of the land. Having agreed that the proposed structure could be considered as a caravan, the lawful development certificate application which is the subject of this appeal should have been determined on the basis of the proposal being for the siting of a mobile home within the curtilage of a dwellinghouse, rather than as a building comprising operational development.

Unfortunately the Council made no effort to contact the appellant during the course of the appeal application to discuss any concerns the planning officer had, and the lawful development certificate application was simply determined without offering the appellant any opportunity to provide further information or respond to any issues. Otherwise it may not have been necessary to submit this appeal. The Supporting Statement accompanying the appeal application included a section setting out why it was considered that no material change of use would occur, including clear references to the Uttlesford case and appeal ref. APP/L5810/X/15/3140569; however those cases appear to have been ignored by the Council.

Both previous appeal decision ref. APP/A1530/X/17/3177321, referred to above, and the Supporting Statement submitted with the appeal application refer to Uttlesford District Council v SoS & White (1991), which is one the leading cases in respect of the use of a building within the curtilage of a dwellinghouse for the provision of ancillary residential

accommodation. It is therefore worth reiterating the conclusions in that case reached by Mr Lionel Read KC (sitting at the time as a deputy judge of the Queen's Bench Division) that a building within the garden of a property could similarly be used as an integral part of the main residential use, without this representing a breach of planning control (ie. a material change of use). As he noted in his judgement:

> *…the Department's present view is that the use of an existing building in the garden of a dwellinghouse for the provision of additional bedroom accommodation … merely constitutes an integral part of the main use of the planning unit as a single dwellinghouse and, provided that the planning unit remains in single family accommodation, does not therefore involve any material change of use of the land.*

Although the proposed mobile home under consideration here could contain the facilities required for independent living, there will remain sufficient linkage with the main house and through its inter-dependent use by the same family, for the two to remain a single planning unit. No separate self-contained accommodation is proposed and there would be no material change in the use of the planning unit. As such, no development as defined by Section 55 of the Town & Country Planning Act 1990 would take place.

For the above reasons it is respectfully requested that this appeal be allowed.