The Planning Inspectorate

Appeal Decision

Site visit made on 28 April 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 26 May 2016

Appeal Ref: APP/L5810/X/15/3140569
27 Elmfield Avenue, Teddington TW11 8BU

- 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 (hereinafter "certificate").
- The appeal is made by Mr Albert Ellis, Mrs Joy Ellis, Mr David Ellis and Ms Tracey Agutter against the decision of the Council of the London Borough of Richmond upon Thames.
- The application ref. 14/4973/PS192, dated 01 December 2014, was refused by notice dated 2 September 2015.
- The application was made under section 192(1) (a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate is sought is described at section 2.1 of the Planning Statement accompanying the application as "The use of land within the curtilage of the dwelling for the stationing of a mobile home to be occupied ancillary to the main house."

Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed use which is considered to be lawful.

Matters of clarification

2. The names of the appellants set out in the heading above have been taken from section 1.5 of their appeal statement. This section is somewhat clearer than the details set out on the application form and the appeal form.

3. The appellants acknowledge that the location plan is actually scaled to approximately 1:900 (not 1:1250) and the block plan to about 1:400 (not 1:500). The revised plans submitted with an email dated 2 March 2016 are not particularly helpful in their A4 format. I proceed on the basis of the original plans (taking into account the revised scales) and the measurements stated on the plans as appropriate, noting that the location of the mobile home (unit) is stated on the location and block plans to be nominal in any event.

4. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.

5. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant, and they are not therefore issues for me to consider, in the context of an appeal made under section 195 of the 1990 Act as amended.

6. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellants. The test of the evidence is made on the balance of probability.

Main issue

7. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

8. The proposal would see the introduction of a "Homelodge" mobile home in the sizeable back garden of the appeal property which is a two-storey detached house located in a predominantly residential area.

9. The intention now is for the first two named appellants to occupy the mobile home, whilst their son and daughter-in-law (the last two named appellants) would occupy the existing house from where they would be able to help with their day-to-day living needs. A reverse arrangement was contemplated at the time of the application. I do not consider that this change has any material effect on the appeal as such.

10. As I see it, the main issue turns on whether the provision of this mobile home within the curtilage of the dwelling house would amount to development requiring planning permission.

11. Section 55 of the 1990 Act as amended sets out the meaning of development. The nub of the argument presented by the appellants is that the mobile home to be sited on the land within the curtilage of the dwelling would comply with the statutory definition of a caravan in every respect, such that no operational development would take place and that as the mobile home would be used for purposes incidental to the enjoyment of the dwelling house as such, there would be no material change of use of the planning unit or land.

12. The statement presented by the appellants sets out in full various legislation concerning the meaning of a caravan. In short, the definition of a caravan is any structure designed or adapted for human habitation which is capable of being moved from one place to another, whether by being towed, or by being transported on a motor vehicle or trailer. The structure can comprise not more than two sections designed to be assembled on site, which is physically capable when assembled of being moved by road from one place to another, provided the structure does not exceed specified dimensions.

13. There is no dispute that the proposed mobile home would fall within the specified dimensions of a "caravan", and nor is there any dispute that it would be designed or adapted for human habitation. The Council queries the tests regarding its construction and mobility.

14. I have closely studied the letter dated 27 April 2015 from the managing director of Homelodge Buildings Limited, the attached photographs of that company's units being lifted on to the back of a lorry, the bay plan showing how the structure would comprise no more than two sections which are designed to be assembled by being joined together on the site and the letter dated 16 February 2016 from a qualified structural engineer at Braeburn Structures Ltd.

15. I am satisfied that the mobile home unit would not be composed of more than two sections separately constructed and designed to be assembled on the site by means of bolts. The construction test would be met.

16. The mobility test does not require a mobile home to be mobile in the sense of being moved on any wheels and axles it may have. It is sufficient that the unit can be picked up intact (including its floor and roof) and be put on a lorry by crane or hoist. In the case of twin-unit mobile homes the whole unit must be physically capable of being transportable by road, the illegality of any such transportation on the public highway being irrelevant. As a matter of fact and degree, I consider that the proposed accommodation once assembled would be capable of being moved intact within the terms of the statutory definition.

17. I note that the proposed unit would rest on concrete "pad stones" placed on the ground. As such, the unit's degree of physical attachment to the ground and the effect on mobility would be minimal or non-existent. Similarly, any attachment to services is not the same as physical attachment to the land, as invariably disconnection from such services is a simple matter which can be achieved within minutes, in the event that the mobile home needs to be moved. The mobile home would not acquire the degree of permanence and attachment required of buildings. The mobility test would be met.

18. 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.

19. 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. Both the first two named elderly appellants have health problems and are becoming increasingly dependent upon the two younger appellants. The accommodation in the appeal unit would be used interchangeably with the accommodation in the main dwelling for socialising and practical support with day-to-day living needs. 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.

20. The appellants have referred to case law, previous appeal decisions and a considerable number of previous decisions for certificates that were granted by

other local planning authorities for similar proposals. This material supports the case being made by the appellants and I note that the Council has provided no written representations in response to this appeal to directly challenge any of the items submitted.

Conclusion

21. Drawing together the above, I find that, as a matter of fact and degree and on the balance of probability, the provision of the mobile home as proposed would not amount to development requiring planning permission. I conclude, on the evidence now available, that the Council's refusal to grant a certificate 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.

Andrew Dale

INSPECTOR