



Appeal Decision

Site visit made on 4 May 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 25 May 2021

Appeal Ref: APP/V1260/X/21/3269291

Horn Cottage, Burley Road, Christchurch BH23 7AL

- 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 Yolanda Gomez-Cornejo de Smith against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/20/0671/CLP, dated 12 August 2020, was refused by notice dated 8 October 2020.
 - 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 siting of a mobile home to provide additional accommodation for household members.
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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.

Procedural matter

2. The application form does not set out a concise description of the proposal, so I have adopted the description given on the decision notice, which I consider fairly describes what is sought.
3. The Council referred to two High Court cases, but despite copies of the judgments or reports being requested, they were not provided. Accordingly, I have not been able to take them into account.

Main Issue

4. An appeal under section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the development would be lawful if begun at the time of the application for the certificate. The planning merits of the development are not relevant to the appeal and there is no planning application before me. The main issue is whether the Council's refusal of the application was well-founded.

Reasons

5. The starting point is to establish the lawful status of the land concerned. The Council makes the point that no lawful development certificate has been issued in respect of the land concerned, but that does not prevent my making a

finding on the lawful status of the land, applying the same principles as if the application had been made under s.191(1)(a) of the Act.

6. If the land on which the mobile home is proposed to be sited has a lawful use as residential use arising from its use as a garden in connection with the dwelling, then uses which are part and parcel of the lawful residential use would not involve a change of use.
7. The Council argues that the land concerned is not part of the curtilage and does not enjoy a lawful use as residential land. The appellant says that the land where the mobile home is proposed to be sited has formed part and parcel of the garden to Horn Cottage since the property was acquired in 2006, and has the same character as the rest of the garden. From what I saw on my site visit, I agree that the land comprises mown grass of a similar quality to the rest of the garden, and I saw that a bench swing was sited near the eastern boundary. Chickens roamed freely over all parts of the garden. A line of trees runs intermittently approximately along the line which is shown as once separating the land into different titles (separating the blue and red hatched land from the yellow land and the pink land" as shown on the Land Registry plan submitted by the appellant), but these trees do not prevent access from one part of the land to the other.
8. The Planning Practice Guidance says that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
9. The Council argues that the easternmost part of the appellant's land, including the site of the proposed mobile home, was shown as lying outside of the residential curtilage in an application submitted in 2011. The accompanying statement says "the dwelling enjoys a large rear garden area which extends to approximately 35 metres from the rear wall of the house and then across open fields". However, that is clearly a reference to the southern boundary, rather than the eastern boundary of the site.
10. The omission of the land which is now said to be garden land from the 2011 application is said by the appellant to have been merely a mistake. It seems to me to have been an odd mistake to make, as on the appellant's account, it would artificially divide up what is said to be a single garden. Be that as it may, the appellant says that the land formed part and parcel of the residential garden when they bought the site in 2006; stamp duty was paid on the whole of the site, not just the land which the Council says falls within the curtilage, and that it has been used in the same way as the rest of the garden, including for keeping of miniature horses.
11. The Council has no evidence to dispute this, and to my mind the depiction of the red line on the 2011 planning application is insufficient to set aside the appellant's evidence. I therefore conclude that, on the balance of probabilities, the whole of the application site has been used as part of the dwellinghouse since at least 2006 and that the time for taking enforcement action has expired. I therefore find that the land where it is proposed to site the mobile home is part of the same planning unit as the dwelling house.

12. The Council also contends that the proposal would involve operational development for which planning permission is required. The appellant has made it clear that the mobile home would comply with the definition of a caravan in the Caravans Sites and Control of Development Act 1960 (as amended by the Caravans Act 1964). The essence of a caravan is its mobility, and absent of evidence to show otherwise, I am satisfied that there would be insufficient attachment to the land to amount to a building operation. The provision of a hard surface and the connection of services would not be sufficient to alter this conclusion. Although no timescale is given for the duration of the siting, the mobile home would be inherently mobile, and thus it would have only a limited degree of permanence. When assessed in the round, I am satisfied that the siting of the proposed mobile home would not amount to a building operation, but would be a use of land.
13. The third aspect is whether the intended use of the mobile home would be lawful. The leading case on this matter is *Uttlesford District Council v Secretary of State and RJ White* [1992] JPL 171 where the court found that an elderly relative to be accommodated in a building at the rear of a garden would have her own bedroom, bathroom, lavatory, small kitchen, somewhere to sit and her own front door. The Court decided that whilst to that extent she would be independent from the rest of her family, there was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.
14. The Court held that such a finding was a matter of fact and degree. In this case, the mobile home would have a living space, kitchen, bathroom and bedrooms, and the part of the garden in which it would be located has a field gate which has the potential to provide independent access. Thus, I accept that it would have the potential to be used as a separate, independent planning unit. However, the evidence is that it is not to be so used. It is intended to accommodate members of the 6 person household and visiting friends and relatives, who will share services and facilities with the dwelling. The appellant has explained that in the first instance the mobile home would be occupied by her dependent elderly parents, but in the future by the appellant's children and friends.
15. In my judgement, the mobile home would be sufficiently close to the dwelling to ensure that there would be both a functional and physical relationship compatible with the use of the whole property as a single dwelling house. The intended use would not be one that would be incidental to the use of the dwelling; it would be part and parcel of that use. Accordingly, I find that the proposed use would be lawful in that the residential use of the land is lawful because the time for taking enforcement action has passed, and that the use of the mobile home would not constitute development requiring planning permission.
16. I have decided this proposal on the basis of the supporting evidence. Should the mobile home be used in the future as a separate dwelling, such a use would not be lawful, and planning permission would be required.

Conclusion

17. 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 siting of a mobile home to provide additional accommodation for

household members 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.

JP Roberts

INSPECTOR



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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 August 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black 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 reasons:

1. The site of the proposed mobile home has a lawful residential use.
2. The proposed use would not involve a material change of use of the land and would not constitute development requiring planning permission.

Signed

JP Roberts

INSPECTOR

Date 25 May 2021

Reference: APP/V1260/X/21/3269291

First Schedule

The siting of a mobile home to provide additional accommodation for household members.

Second Schedule

Land at Horn Cottage, Burley Road, Christchurch BH23 7AL



Plan

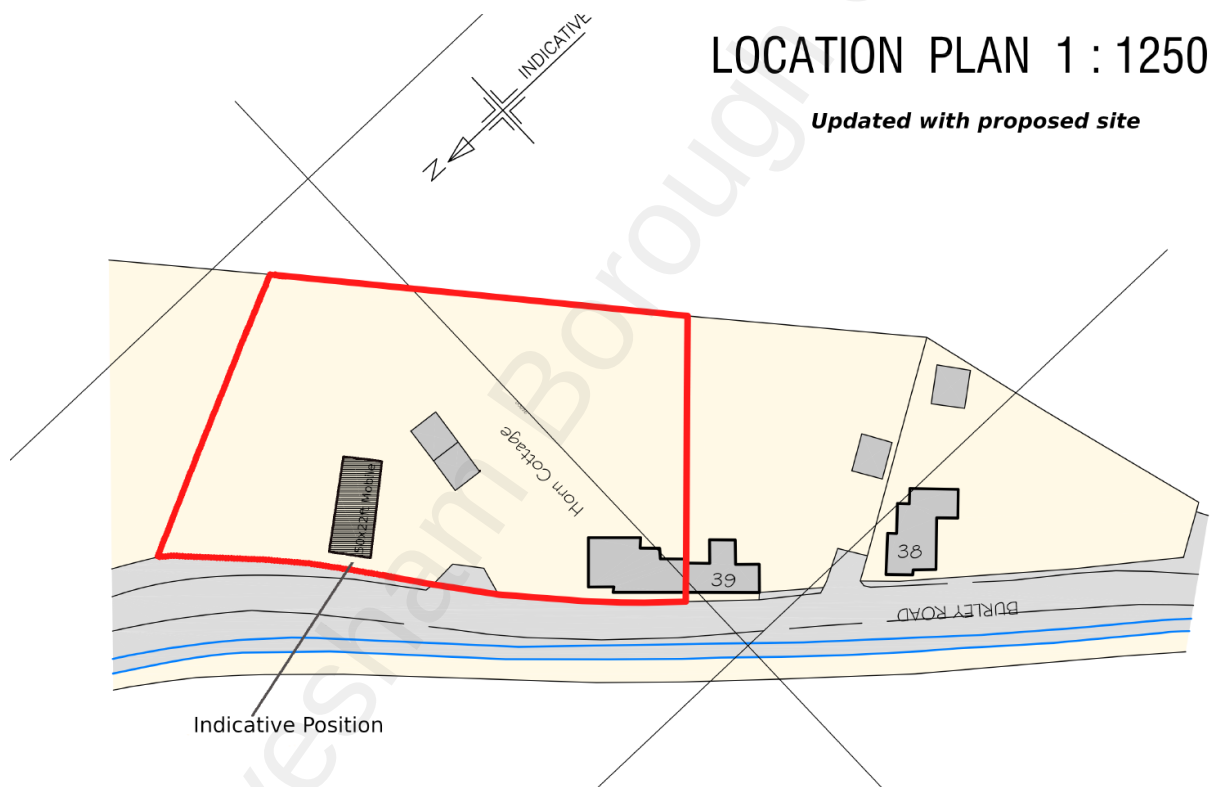
This is the plan referred to in the Lawful Development Certificate dated: 25 May 2021

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

Land at: Horn Cottage, Burley Road, Christchurch BH23 7AL

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Not to scale



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.