



## Appeal Decision

Site visit made on 16 September 2022

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 October 2022**

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**Appeal Ref: APP/L3245/X/22/3295581**

**Mistletoe Cottage, Crows Nest, Snailbeach SY5 0LU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Daniel Watts against the decision of Shropshire Council.
  - The application ref 21/05826/CPL, dated 15 December 2021, was refused by notice dated 18 March 2022.
  - 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 'lodge built to caravan specifications which will be located at the rear of property as ancillary and will be in the original curtilage'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of proposed development in the banner heading above is taken from the application form. During the Council's consideration of the application, the appellant agreed to amend the wording to say 'application for a Lawful Development Certificate for the proposed siting of a residential lodge built to caravan spec<sup>1</sup>, ancillary to the main house'. I do not believe this description changes the substance of the proposal, though I do find the wording suggested by the Council to be clearer and shall consider the appeal on this basis.
3. The appellant raises concerns regarding the Council's handling of the application, the provision of third party representations and the publication of information on the Council's website. Whilst I have noted the appellant's concerns in this regard, I have seen the representations referred to and am satisfied that the appellant has had the opportunity to comment on matters raised through the appeal. Significantly, the matters raised largely relate to matters concerning the planning merits of the proposal, which are not relevant in determining an application for an LDC.
4. For consistency, I shall refer to the proposal as a 'lodge'.
5. I note an interested party refers to work which they state has already been undertaken within the site, including the excavation of foundations and construction of block walls. However, such works do not form part of the application for an LDC and so do not form part of my consideration of this appeal.

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<sup>1</sup> I shall use the term 'specifications'.

## **Main Issue**

6. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

## **Reasons**

7. An application under Section 192(1)(a) of the Act seeks to establish whether any proposed use of buildings or other land would be lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
8. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. As set out above, planning merits form no part of the assessment of an application for a LDC under S192 of the Act and so examples cited of recent planning permissions do not therefore have a bearing on my decision. The proposed development must be considered in the light of the facts and the law.
9. Section 55(1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land.
10. The siting of a caravan is generally held to constitute a use of the land and not operational development. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968 (CSA)(as amended). The evidence provided by the appellant points towards the proposal being a 'twin-unit' and so section 13 of the CSA, which sets out the meaning of twin-unit caravans, is of particular relevance.
11. Section 13(1) of the CSA defines twin-unit caravans as 'a structure designed or adapted for human habitation which (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)...'. Section 13(2) sets out the dimension, which length (exclusive of any drawbar): 20 metres; width 6.8m and overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level, 3.05 metres.

## *Size*

12. In order to meet the definition of a twin-unit caravan, the proposed lodge must meet the limitations set out in the CSA. There is no *de minimis* allowance, the requirements are absolute. The 'GF Setting Out Plan' shows that the proposed structure would be a 'twin unit split line on centre' and would measure 16m by

6.7m by 3.195m<sup>2</sup>. While the appellant's agent states that the internal ceiling height once the insulation and ceiling is installed will measure 2.79m, this is not what is shown on the plan.

13. Whilst the appellant intends to purchase the lodge from a firm specialising in purpose-built caravans, this in itself is not a guarantee that the proposal will accord with the definition of a caravan for the purposes of the CSA. Although the length and width of the proposed structure would accord with the limitations set out in the CSA, it appears unlikely that the height would accord with the limitations.

#### *The construction test*

14. Section 13(1) defines a twin-unit caravan as a structure designed or adapted for human habitation which (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices.
15. The description of the proposed development is 'lodge built to caravan specifications...'. The appellant advises that 'The land would not allow the delivery of it (the lodge) built in two halves and the firm we chose...can assemble the unit on site...'. However, the appellant has provided no substantive information as to how the lodge would be constructed on site; how many pieces would be brought to the site and how these pieces would be joined together.
16. Section 55(1A)(d) of the Act describes building operations as operations normally undertaken by a person carrying on business as a builder. While PG Carpentry may specialise in the provision of purpose built caravans, they are likely to be a skilled tradesman who, in the context of the Act could be considered a builder.
17. The plans provided indicate central floor beams and glulam central ridge beams 'to be bolted together...as last action of construction'. However, even if the resultant structures would be composed of two sections which would be bolted together as the final act of construction, the act of constructing the two halves would be likely to constitute building operations. It has therefore not been shown that the proposal would meet the construction test.

#### *The mobility test*

18. Section 13(1)(b) of the CSA requires that the structure, when assembled, is physically capable of being moved by road from one place to another (whether by being towed, or being transported on a motor vehicle or trailer). The appellant suggests that the caravan could be moved from location to location by undoing the bolts and brackets, provided the roads are sufficiently wide.
19. The appellant has provided no substantive evidence to support this assertion and given the uncertainty regarding the construction of the lodge, it is not clear that it could be moved without its structural integrity being compromised. Moreover, the CSA 1968 refers to 'when assembled' not in two parts. It has therefore not been demonstrated that the proposal would meet the mobility test.

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<sup>2</sup> The Section A-A plan shows an internal height of 2790mm to the glulam central ridge beam and approximately 405mm to the internal ceiling.

20. Since the proposed lodge would not meet the size limitations set out in the CSA, the construction test or mobility test, it would not be a twin-unit caravan for the purposes of the CSA.

*Whether the structure would be a building*

21. Section 336 of the Act states a "building" 'includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' The main characteristics of a building found, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive.
22. The proposed lodge would be substantial in size and, as pointed out above, the would be constructed on site by a company who has been chosen because of their experience and skill in constructing this sort of structure. Although the lodge would rest under its own weight, the appellant has made it clear they do not intend to move the structure and so it would have a degree of permanence. Thus, as a matter of fact and degree, I consider the proposed lodge would be a building.
23. There is no suggestion that any such building would be permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO)(as amended) and since the proposed use is for primary living accommodation, the building would not be permitted by Class E, Part 1 of Schedule 2, which permits buildings etc incidental to the enjoyment of the dwellinghouse. Consequently, planning permission would be required and the proposed development is not lawful.

*Whether a material change of use would occur*

24. Although it is not necessary for me to determine whether a material change of use would occur, because I have found the proposed lodge would not meet the definition of a caravan and would be a building, I am mindful that the appellant may wish to reapply for an LDC in the future. Of relevance to whether a change of use would occur is whether the proposed use would be part and parcel of the residential use of the main dwelling and whether the lawful use of the land is residential.
25. Mistletoe Cottage comprises a detached dwelling which dates from the early 1800's. The dwelling is set in substantial grounds, part of which appears to be in equestrian use. The appellant has requested the LDC on the basis that its use would be ancillary to the use of the main dwelling. Where a caravan or building is located within the curtilage of a dwellinghouse, the residential use may be regarded as part and parcel of the use of the dwellinghouse, even if it contains the facilities required for day to day living, so long as it remains part of the same planning unit and is occupied by a functionally single household.
26. The appellant advises that additional space is required as a result of medical issues. It is proposed that the appellant and their wife would use the lodge and the appellant's children, their partners and children would occupy the main dwelling. The officer report states that main meals would be taken inside the main dwelling. While the lodge would be sited approximately 20m from the dwelling, it would not be so far that it would deter the occupants from walking to the main house for meals.

27. Although the lodge would be capable of independent living, as long as it is used as part and parcel of the main dwelling and is located within a part of the site with lawful residential use, no material change of use would occur. If the lodge is then occupied in a different manner, it would be open to the Council to consider whether a material change of use has occurred.
28. The Council has provided me with aerial photographs which show that the lodge would be located in a part of the site which previously had a number of trees, described as the 'wooded area'. The Council has also provided me with a photograph which shows part of a fence, which it is suggested may have previously separated the 'garden area' from the previously wooded area. Part of the fence was still *in situ* during my visit.
29. The appellant suggests the wooded area comprised fruit trees and I accept there is no reason in principle why such an area could not be considered part of the curtilage of a dwelling or within residential use. However, whilst it appears that the land is currently used for residential purposes, as evidenced by residential paraphernalia, including washing, the presence of a fence points towards the land having previously been separated from the residential garden.
30. There is limited evidence to show how the area has been used over time. Even if the land was conveyed together with the cottage, this is not an indication that entirety of the site has been in residential use for the requisite period<sup>3</sup>. Consequently, the appellant has not shown, on the balance of probabilities, that the land within which the lodge would be sited has been used continuously for residential use for more than 10 years prior to 15 December 2021, the date of the LDC application.

### **Conclusion**

31. Although I have found that the proposed use of the lodge would be part and parcel of the residential use of the main dwelling, I have found that the lodge would not fall within the definition of a caravan and would be a building, for the purposes of the Act. Furthermore, it has not been demonstrated that the area where the lodge would be sited has a lawful residential use.
32. Thus, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed siting of a residential lodge built to caravan specifications, ancillary to the main house was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*M Savage*

INSPECTOR

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<sup>3</sup> As set out in 171B(3) of the Act.