



Memorandum

To: Head of Planning and Transportation Services
cc: Holli Fielden
From: Head of Legal, Estates and Member Services

Date: 2nd June 2010
Ext: 3703
Ref: KG

Application for Lawful Development Certificate for s.191 application at Meadow View, Durham Road, Rochford, Essex, SS4 3AE

Ref: 10/00184/LDC

With reference to the above application I have now determined the matter and enclose a copy of my decision letter together with the planning file for your information.

This was sent to the applicant by first class post on 2nd June 2010.

If you have any further questions please do not hesitate to contact me.

A handwritten signature in black ink, appearing to be "N. K. H.", is written over the printed name of the Head of Legal, Estates and Member Services.

Head of Legal, Estates and Member Services

Enc.

Mr Stewart Rowe
The Planning and Design Bureau
45 Hart Road
Thundersley
Benfleet
Essex
SS7 3PB

Ask for: Kelly Gymer

Ext: 3703

Telephone: 01702 546366

Email: kelly.gymer@rochford.gov.uk

My Ref:

KG/planning/LDC/Meadow View

Your Ref:

Date: 3rd June 2010

Dear Mr Rowe

Town and Country Planning Act 1990 – S191 Application for a Certificate of Lawful Development**Application Site Reference: 10/00184/LDC****Site: Meadow View, Durham Road, Rochford, Essex, SS4 3AE**

1. I refer to your application for a Certificate of Lawful Development made on behalf of your clients Mr and Mrs Hayes in respect of the above site.
2. The site to which this application relates is shown on the submitted location plan to be an area of land approximately 17.5 metres by 7.9 metres located to the south-east of the dwellinghouse known as Meadow View. The dwellinghouse is a bungalow, and this, together with the application site is situated on a much larger site of approximately 0.94 hectares.
3. The submitted application form seeks a Certificate of Lawful Development on the following terms:

"Use of land as domestic garden and for the stationing of a caravan for purposes ancillary to the enjoyment of the dwellinghouse 'Meadow View'"
4. This application is made under Section 191 of the Town and Country Planning Act 1990 which provides that if on application under that section the Local Planning

Authority is provided with information satisfying it of the lawfulness at the time of the application of the use described in the application, it shall issue a certificate to that effect and in any other case it shall refuse the application.

5. Section 191(2) further provides that uses and operations are lawful at any time if no enforcement action may be taken in respect of them and they do not constitute a contravention of the requirements of any enforcement notice then in force.
6. An enforcement notice was served by the Council on 19th October 2009 for which the time to comply has passed. However, although the notice relates to a mobile home on the site, I do not consider that the notice is enforced against the caravan which is the subject of this application.
7. Where there has been a breach of planning control consisting of the change of use of land, no enforcement action may be taken after a period of ten years beginning with the date of the breach.
8. The basis of your application is that the use of land as a domestic garden and for the stationing of a caravan for purposes ancillary to the enjoyment of the dwellinghouse 'Meadow View' cannot be subject to enforcement action as such use has occurred for more than 10 years prior to the application date. The material period against which I shall determine this application is from 23/03/00 to 23/03/10.
9. I have taken into consideration the following documents submitted with your application:
 - a) Statutory Declaration of Mr Ian Hayes dated 19th March 2010
 - b) Statutory Declaration of Mr Mark Ian Hayes dated 9th March 2010
 - c) Letter from Mrs Kay Duncombe dated 17th March 2010
 - d) Letter from Ms Tricia Stanford date 8th March 2010
 - e) Letter from D R Swanson dated 10th March 2010
 - f) Letter from the Planning and Design Bureau dated 24th March 2010

I have also had sight of the appropriate planning files and other relevant information available to the Council in reference to this site. The onus of proof in an application for a lawful development certificate is on the applicant.

10. In order to grant a certificate of lawful development for the use of land as a domestic garden and for the stationing of a caravan for purposes ancillary to the enjoyment of the dwellinghouse, the applicant must prove on the balance of probabilities that the area in question has been used for a continuous period of 10 years, for this use. The area in question is outlined in red on the site location plan submitted with the application.

11. In your application, you refer to the use of land in question being for 'the stationing of a caravan for use for purposes *ancillary* to the enjoyment of the dwellinghouse known as 'Meadow View'.
12. Whilst a use of land can be considered to be ancillary to another use, 'ancillary use' is a legal concept which arises either in consideration under Class E of the General Permitted Development Order 2008, or when considering whether a change of use or building work amounts to development and is not a description of a use of land.
13. In this instance, the grounds for application for a s.191 Lawful Development Certificate are that 'the use began more than 10 years before the date of this application', as indicated on the form submitted.
14. As this application relates to neither a Class E General Permitted Development Order, or to the question of whether a change of use of land amounts to development, the applicant has to show that **a particular use of land** has continued for 10 years. The description of the use of the land (caravan) for 'purposes ancillary to' does not specify a particular use of the land (caravan) which is required to enable the authority to determine the Section 191(2) LDC application submitted i.e. to assess whether a particular use has taken place for the 10 year period. The use has to be continuous, and there should be no material change in use over the 10 years.
15. According to the letter from Mr Rowe, dated 24th March 2010 a Certificate of Lawful Development is sought for the 'use of land...as part of the domestic garden to the dwelling Meadow View' and 'for the stationing of a mobile home upon it that has been used for purposes ancillary to the use of the dwellinghouse'. I will deal with both issues separately.
16. The applicant needs to show that the land immediately surrounding the mobile home has been used as a garden from 23rd March 2000 to 23rd March 2010. In the statutory declaration of Ian John Hayes, at para 1.9 he states that 'since 2000 the land between the mobile home and the surrounding fences was used as a sitting out area for Mark and Kelly, and since 2003 as a small garden area for Courtney'. However, in the statutory declaration of Mark Ian Hayes, at para 1.8 it is written that 'In January 2003 my daughter Courtney was born and lived in the mobile home with Kelly and I. The land between the mobile home and the surrounding fences was used as a secure garden area for Courtney and a sitting out area for Kelly and I'. There is no mention in Mark Hayes' statutory declaration of the use of land prior to 2003, which you would expect as he had been living in the caravan permanently from 1994. The inconsistency in the statutory declarations implies that the land wasn't used as a garden until Mark Hayes' daughter was born in 2003.
17. Whether a domestic garden use had occurred would need to take into consideration how and how often the land was used and the appearance of the land. No evidence has been submitted which indicates how often the area of land was used, or what it looked like since 2000 i.e. whether there was garden furniture, or a mown lawn. A

photograph taken between 1999 and 2000 does not appear to show any separation of the land in terms of fencing, and there are no garden items around. It is possible this photo was taken before the land was being used as a domestic garden, but there is no evidence to show at what point in 2000 it started being used as one.

18. An aerial photograph dated in 2005 shows the area of land to be enclosed with fencing, with a mown lawn and what looks like a paddling pool on the site. A photo taken on 2nd July 2009 however shows that part of the area of land has been hard-surfaced to the north of the mobile home, and the land does not appear to have the characteristics of a garden as was present in 2005. Rather, it seems that the land is being used for the storage of a horse box. A photograph taken in July 2009 shows a horsebox situated approximately outside the front door of the mobile home, with a set of ladders propped up along the front. This is further evidenced by the statutory declaration of Ian John Hayes where it is mentioned at 1.11 that 'since 2006 I used the lounge area (of the mobile home) for domestic storage' which included personal fishing equipment and papers associated with tax returns. If the mobile home itself was being used for storage, there would be no need for the land surrounding the mobile home to be used as a domestic garden. Mark Hayes and his family had moved out of the mobile home due to it being too small for them, sometime in 2006. All of this is evidence that the use of land as a domestic garden had ceased to be used as such since at least July 2009. As this is the case, the use of land as a domestic garden falls short of the 10 year period.
19. With regard to the stationing of the caravan on the land, the applicant will need to show on the balance of probabilities that the caravan has been on the land between 23rd March 2000 and 23rd March 2010, and that there has been a particular, continuous use during this time as discussed at point 14 above.
20. There is no issue regarding the caravan being on the land during this time, as this is evidenced by a photograph taken between 1999 and 2000. However, there is an inconsistency in the evidence as to whether, and from what time the caravan has been positioned in the same place. The applicant states that the current mobile home on the site has not been re-positioned since 1990/1991, but the aerial photo from 2005 shows the mobile home to be in a different position than in the aerial photo from 1999, shifted approximately 8 metres to the east.
21. Based on the evidence, there seems to have been multiple uses for the mobile home over the 10 year period and prior to this. The statutory declarations of both Ian John Hayes and Mark Ian Hayes state that from about 1993, Mark and his friends used the caravan to stay overnight on an occasional basis, with Mark moving into the mobile home permanently from 1994 with his then girlfriend staying most nights. The statutory declaration of Ian John Hayes goes on to state that Mark continued to stay in the mobile home when his relationship with Linda ended, and he did not return to his bedroom in the main dwellinghouse.

22. In 2000, Mark met his current partner Kelly, who after a few weeks moved into the mobile home with him. They continued to live in the mobile home, and in 2003 Mark Hayes' daughter was born, followed by his son in 2006. From the evidence, Mark and his family remained living in the mobile home from 2000 to 2006, but maintained a close link with the main dwellinghouse in that the family shared meals at Meadow View, and Mark took showers there to avoid waking his small children in the mornings. In 2006, the family outgrew the mobile home, and moved into another mobile home located elsewhere on the larger site (this being the subject of an enforcement notice referred to at point 6 above). There is a discrepancy with the date on which Mark and his family moved out of the mobile home. The statutory declarations from both Ian and Mark Hayes state that the family moved into the newer mobile home in 2006. However, an aerial photo taken sometime in 2007 does not show a second mobile home located on the site where it was later indicated on the plan attached to the enforcement notice dated 19th October 2009. Also, on the Planning Contravention Notice dated 15th July 2009 (in relation to the caravan marked 'A' on the attached map to the Notice), the applicant has stated that the mobile home has been on the site since 1st August 2003. This is not evidenced however in the aerial photo taken in 2005.
23. Since 2006, the mobile home has been used for storage, as referred to at point 18 above, for things including fishing equipment, paperwork and for Christmas presents for the grandchildren. This is supported by the applicants answers to the Planning Contravention Notice, dated 15th July 2009 (in relation to the caravan marked 'B' on the attached map to the Notice), where it is stated at 4(j) and (o) that the current use of the mobile home is for storage.
24. In conclusion, I consider that based on all the evidence available, the applicant has not proved on the balance of probabilities, that the land contained within the application site has been used as a domestic garden continuously for the period 23rd March 2000 to 23rd March 2010. Further, I consider that the use of the mobile home stationed on the land contained within the application site has materially changed throughout the period 23rd March 2000 to 23rd March 2010, and therefore the applicant has not proved on the balance of probabilities that there has been a continuous use.
25. Accordingly, this application for a Lawful Development Certificate under s.191 of the Town and Country Planning Act 1990 is refused.
26. If you are aggrieved by this determination you have the right of appeal under Section 195 of the Town and Country Planning Act 1990 to the Secretary of State for the Environment.
27. If you have any queries in relation to this application or decision, please call the planning officer on 01702 546366 and ask for Katie Rodgers.

Yours sincerely,



**Head of Legal, Estates
& Member Services**

- 22 In 2000, Mark met his current partner Kelly, who after a few weeks, moved into the mobile home with him. They continued to live in the mobile home, and in 2006, Mark's daughter was born, followed by his son in 2007. The family remained living in the mobile home from 2000 to 2007, maintaining a close link with the main dwelling house in the area. In 2008, the family moved out of the mobile home to a new mobile home in 2008. However, an aerial photo taken sometime in 2007 does not show a second mobile home located on the site where it was later indicated on the plan attached to the enforcement notice dated 12th October 2009. Also, on the Planning Contravention Notice dated 15th July 2009 (in relation to the caravan marked 'A' on the attached map to the Notice), the applicant has stated that the mobile home has been on the site since 1st August 2003. This is not evidenced however in the aerial photo taken in 2005.
- 23 Since 2009, the mobile home has been used for storage, as referred to at point 18 above, for things including fishing equipment, garden furniture and for Christmas presents for the grandchildren. This is supported by the applicant's answers to the Planning Contravention Notice dated 15th July 2009 (in relation to the caravan marked 'B' on the attached map to the Notice), where it is stated at (4) and (5) that the current use of the mobile home is for storage.
- 24 In conclusion, I consider that based on all the evidence available, the applicant has not proved on the balance of probabilities that the land contained within the application site has been used as a domestic garden continuously for the period 23rd March 2000 to 23rd March 2010. Further, I consider that the use of the mobile home situated on the land contained within the application site has materially changed throughout the period 23rd March 2000 to 23rd March 2010, and therefore the applicant has not proved on the balance of probabilities that there has been a continuous use.
- 25 Accordingly, this application for a Lawful Development Certificate under s.191 of the Town and Country Planning Act 1990 is refused.
- 26 If you are aggrieved by this determination you have the right of appeal under Section 195 of the Town and Country Planning Act 1990 to the Secretary of State for the Environment.
- 27 If you have any queries in relation to this application or decision, please call the planning officer on 01702 546886 and ask for Katie Rodgers.