APP 1

# Appeal Decision

Inquiry held on 9 April 2002

**by J G Roberts BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Transport, Local Government and the Regions**

Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date
23 JUN 2002

**Appeal Ref: APP/N1025/C/01/1074589**
**159 Victoria Avenue, Borrowash, Derbyshire.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr R Brentnall against an enforcement notice issued by Erewash Borough Council.
- The Council's reference is ENF/01/254 P2337.
- The notice was issued on 22 August 2001.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey building in the approximate position marked with a cross on the plan attached to the notice.
- The requirements of the notice are:
  (i) remove the building;
  (ii) remove from the land all building materials and rubble arising from compliance with requirement (i) above.
- The periods for compliance with these requirements are: (i) Requirement (i) – 12 weeks; Requirement (ii) – 16 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) (f) and (g) of the 1990 Act as amended. An appeal was made on ground (d) but withdrawn on 22 November 2001; after an exchange of correspondence which followed the inquiry the appeal on ground (d) was reinstated. As the appropriate fees were paid within the prescribed period the planning application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered also. Ground (g) was added during the inquiry.

**Summary of Decision: The appeal is allowed and the notice is quashed.**

## Procedural matters

1. I visited the site on the day of the inquiry. At the inquiry an application for an award of costs was made on behalf of Mr R Brentnall against Erewash Borough Council. This is the subject of a separate decision.

## The appeal on ground (b)

2. The notice alleges the erection of a building. The appellant contends that the Park Home is not a building and has not involved operational development of land, but falls within the definition of a caravan. This is found in section 29(1) of the Caravan Sites and Control of Development Act 1960. A caravan means 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) and any motor vehicle so designed or adapted, but does not include railway rolling stock in certain circumstances or tents.

3. Its application to twin-unit caravans is elaborated in section 13 of the Caravan Sites Act 1968. Such a structure, designed or adapted for human habitation and which is (a) composed of not more than 2 sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) 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), shall not be treated as not being a caravan for the purposes of part 1 of the 1960 Act by reason only that it cannot lawfully be so moved on a highway when assembled.

4. However, such a unit which when assembled exceeds 18.288m in length, 6.096m in width or 3.048m in overall height of the living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level) are specifically excluded from the expression 'caravan' by section 13(2) of the 1968 Act. Thus there are 3 tests to be applied to the Park Home before me: a construction test, a mobility test and a size test. All 3 are contested.

*The construction test*

5. The local planning authority draws my attention to the analysis of the meaning of the words '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' which was given in *Byrne v SSE and Arun DC, QBD 1997*. There is no requirement for the 2 sections to be each identifiable as caravans, or capable of habitation, before they are joined together. However, it was found that it was an 'essential part of the construction process in order to bring a structure which would not otherwise be a caravan, within the definition of that which is deemed to be a caravan, that there should be two sections separately constructed which are then designed to be assembled on a site..... If the process of construction was not by the creation of two separately constructed sections then joined together, the terms of the paragraph [section 13(1)(a) of the Caravan Sites Act 1968] are not satisfied'. They were not in that case because the log cabin concerned, composed of individual timbers clamped together as in that before me, had not at any time been composed of 2 separately constructed sections which were then joined together on the site.

6. That was not so in the case before me. Though the Park Home was delivered by lorry in many pieces I see no requirement in section 13(1)(a) that the process of creating the 2 separate sections must take place away from the site on which they are then joined together. It is necessary only that the act of joining the 2 sections together should be the final act of assembly. The appellant's evidence and photographs taken during the process of assembly demonstrate that the 2 sections, split at the base and ridge and each with a separate ridge beam, were constructed separately. The appellant was clear on this point. His evidence as to the facts of the matter was not disputed. In my opinion the process of construction fulfilled the test of section 13(1)(a).

*The mobility test*

7. Section 13(1)(b) of the Caravan Sites Act 1968 must be satisfied also. To fall within the definition the structure must be capable of being moved by road from one place to another in its assembled state. It may be moved by trailer, but is not excluded from the definition merely because it would be unlawful to move it in such a manner on a highway. The fact that the private drive to No 159 Victoria Avenue is too narrow to allow the passage of the Park Home in its assembled state along it is not the point. It seems to me that it is the structure that must possess the necessary qualities, not the means of access. It is not necessary for it to be capable of being towed, only that it is capable of being moved by road.

8. The appellant claims that it would be possible to lift the assembled structure, having first removed the terrace of timber decking and the porch which have been added to its western side, onto a lorry trailer which could then transport it from one place to another. The Council, however, argues that it has not been demonstrated that this could be done without serious significant damage to the structure – would the bolts hold? would it fall apart? – so that it cannot be regarded as transportable in a single piece.

9. I disagree. The manufacturer (Rural Accommodations) refers mainly to its movement in 2 sections, clearly the easier option here, but indicates that the reference to extra supports when shipping relate to extra safety and are not requirements. It would give a guarantee that 'the unit' is more than substantial enough to transport by road. Hewden Crane Hire indicates the method by which they would lift it, slew it round and lower it onto the ground or onto transport. The Park Home does not have a tiled roof or similar which would be liable to fall apart during the process. The fact that the cost estimate was based on an allowance of 8 hours does not exclude the Park Home from the definition of a twin-unit caravan.

10. The terrace and porch canopy are bolted to the unit and could be removed quickly and easily. The decking appears to have been attached to the remains of a caravan chassis and does not form an integral part of the structure. In my opinion neither affect the transportability of the assembled Park Home. In my opinion it meets the mobility criterion of the 1968 Act.

*The size test*

11. There is no dispute that the length and width of the assembled Park Home falls within the limits defined in section 13(2) of that Act, but Mr Thorp's measurements of internal height give a maximum of 3.060m, 12mm in excess of the maximum internal height measured from floor to ceiling of 10 feet (3.048m) specified in that section. The local planning authority's view is that either it falls within the size limits or it does not; there is no scope for the appellant's *de minimis* argument here.

12. However, Rural Accommodations states that the Park Home has been designed and built to a specification of a caravan to be used for permanent residence as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (BS 3632 : 1995). By implication it had been designed so that its maximum internal height would be no greater than 3.048m. The reason for the difference is not known, but it seems to me that 12mm discrepancy may be within the range of variation that might be expected from natural movement of timber. Further, the same structure could probably be brought within the strict definition of a twin-unit caravan very easily by the addition, for example, of strips of material 12mm thick added to the ceiling by the central ridge, or by plywood laid upon the floor. Its external dimensions would remain unchanged.

13. In these circumstances I agree with the appellant that the excess height is *de minimis*. To exclude the Park Home from the definition of a twin-unit caravan for this reason alone, or because the alterations necessary to bring it within the strict terms of the definition would now offend the construction test, would be verging on the unreasonable.

*Conclusion*

14. Therefore I regard the Park Home before me is a twin-unit caravan within the definition of the 1968 Caravan Sites Act and a caravan for the purposes of section 29(1) of the Caravan Sites and Control of Development Act 1960. It is clearly designed for and capable of use for

human habitation. The addition of the decking and porch canopy has not affected the integrity of the Park Home as such a twin unit.

15. It may look like a building at first sight. It may be a structure in the sense of something that has been constructed, but so are all caravans. The unit is not attached to the ground except by easily disconnected services. It rests on blocks, paving slabs and hardcore retained by railway sleepers, which have not resulted in a permanent change to the land on which it stands. Save for the 12mm in excessive internal height, which could be remedied easily, it falls within the definition of a twin-unit caravan, which sets it apart from other types of structure and is normally held to be a use of land. It has not become a building through permanence or its degree of physical attachment to the ground.

16. Therefore I conclude that the notice should have alleged the change of use of the land to use for stationing a residential caravan. The appeal on ground (b) succeeds. Whether its actual use is for the purpose of human habitation rests upon the relationship between occupation of the house and that of the caravan. This bears upon the appeal on ground (c). Both parties are fully aware that the notice is directed to the presence of the Park Home on the land. The difference is in their views on whether it should be treated as a caravan or as a building and in what consequences should flow from that determination, but the evidence of both parties covers both eventualities. As I am satisfied that the notice can be corrected without injustice to either I now turn to the appeal on ground (c).

**The appeal on ground (c)**

17. First, it is agreed by the parties that the whole of No 159 Victoria Avenue remains a single planning unit. I exclude the access track from the road to the gate which is shared with others. The main body of land contains a dwelling house, the Park Home, a swimming pool within a building (disused), a workshop used for the manufacture of picture and mirror frames by the appellant's parents who live in the Park Home, outbuildings, gardens and access, parking and turning areas shared between the house, the Park Home and the workshop.

18. The appellant retains ownership of the whole and there is no legal separation of the site into 2 parts. Both the house and the Park Home share an identical address, there is a common post box by the gate, the Park Home connects to the same foul water drainage system as the house, and single charges for the whole of the property are made for Council Tax, water and electricity. Only the telephone lines are separate. The Park Home is open to the remainder of the land on 3 sides. I agree that the whole of No 159 beyond the gate is a single planning unit and has been so at least since it was purchased by the appellant's parents in June 1978.

19. I turn now to the use of this planning unit. It includes use as a dwelling house, to which the gardens, garaging and pool are ancillary or incidental. This is not disputed. There is also the Park Home and the workshop. The implication of the appellant's argument is that the residential use of the Park Home is the same use as that of the dwelling house. There is said to be a degree of dependency, a separate planning unit has not been created, and 2 dwellings cannot occupy a single planning unit, so that there has been no material change of use.

20. Whether the Park Home accommodation is used for purposes ordinarily incidental to the primary use of the dwelling house as such is not the point here. That is relevant to the question of whether Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 applies, and that is concerned with the erection of buildings. In any event it is now widely accepted that use as living accommodation in connection with the dwelling house would be part and parcel of the main

use of that house and not therefore incidental to such (see the Secretary of State's decision reported in [1987] JPL 144 quoted in *Uttlesford DC v SSE and White, QBD 1991* and also *Michael Rambridge v SSE and East Hertfordshire DC, QBD 1996*. What is relevant is the use of the planning unit as a whole, which raises the question of the relationship between occupation of the house and that of the Park Home.

21. On this I have the unchallenged statement of the appellant and his supporting documents. There is certainly a close blood tie between the appellant, who now occupies the house, and his parents who now occupy the Park Home. They share utility services except the telephone. The parents work in the workshop, and also look after the appellant's son and nephew on occasions.

22. However, in explaining the reasons for the replacement of the former mobile home by the Park Home in May 2001 the appellant refers to the 'best place for them to reside'. Under cross-examination Mr Thorp referred to a 'lot of connectivity' but indicated that the appellant's parents received no daily assistance. The Park Home has and has specifically been designed to provide all the facilities necessary for day to day existence. There is no indication of shared meals and housekeeping arrangements any more than one might expect between friends and family living close by in separate dwellings.

23. On balance I consider that the occupation of the Park Home is sufficiently independent to amount to occupation by a separate household. That is not part of the primary use of the dwelling house but distinct, as the use of a caravan for the purposes of human habitation. It is functionally separate, but because it is not physically separate it has not resulted in the creation of a new planning unit. Nonetheless it represents the material change of use of the planning unit to a use which includes use as a residential caravan for one mobile home. Planning permission has not been granted for this change, which is in breach of planning control. The appeal on ground (c) fails.

**The appeal on ground (d)**

24. A caravan has been present on the site for many years. Owing to illness the appellant's grandparents, who had been living in a mobile home at Breedon-on-the-Hill, moved to a site alongside the poultry sheds, close to where the Park Home now stands, in early 1979 and, according to the appellant, 'assumed residence from then on'. His detailed personal recollections suggest to me that they lived essentially as a separate household independently of the appellant's parents who occupied the house. He would drop in frequently, as a visitor, for various reasons.

25. His grandfather died in 1988 but his grandmother remained there. She had coal delivered separately from the house. The coal merchant describes the caravan as 'the permanent home for Mrs Brentnall Snr.' There is no indication that she lived as part of her son's household. The aerial photograph taken about 1982 shows the substantial mobile home on the land. Mrs Brentnall Snr moved to a nursing home in about March 1998 and died in 2001, but the mobile home remained, available for occupation but vacant.

26. As his parents faced financial difficulties at the time the appellant bought the house from his parents in November 2000 but it seems that in anticipation of this they had already taken occupation of a touring caravan alongside pending replacement of the now deteriorating mobile home. The old mobile home was removed in April 2001 to make way for the new Park Home which was installed in May that year. In my opinion there is no material difference between the use of the Park Home before me and that of the mobile home which

occupied a site not identical to but overlapping the land on which the Park Home now stands.

27. The matter is complicated by the presence of the workshop, used by both the appellant's parents for the manufacture of picture and mirror frames. In September 1999 planning permission had been refused for the retention of a workshop and enforcement action to secure its removal was authorised, but planning permission was subsequently granted for the continuation of the use in a former egg production building. This is not regarded by the parties as a separate planning unit. Mr Thorp described it, in answer to questions from me, as having been granted only on the basis that it was "ancillary" to the dwelling (in which the appellant's parents then lived) and as "working from home".

28. On the balance of probability it seems to me that in 1979 a material change of use of the planning unit took place without planning permission, from use as a dwelling house to use as a dwelling house and as a caravan site for the stationing of one mobile home used for human habitation. This use continued until early 1998 and resumed, if not in the summer or autumn of 2000 when the touring caravan was occupied (with greater dependence on the house) and the mobile home remained present but vacant, in May 2001 when the Park Home was installed.

29. The circumstances suggest to me that this break in occupation of a mobile home was not sufficient to extinguish the use which by then had become immune from enforcement action by the passage of time and hence lawful. The use remained but was dormant until its point of resumption.

30. The workshop use, introduced in the late 1990s, is not ancillary to the residential use of either the dwelling house or the mobile home in the sense of serving it, nor is it incidental to it in the sense of ordinarily going together with it. It may be more than *de minimis* also. Even if so, its introduction did not result in a further *material* change to the character of the use of the planning unit as a whole, which is large, with a range of outbuildings only part of which is used for mirror and picture framing, and which at that time comprised both the dwelling house and caravan site uses (see *Beach v SSETR and Runnymede BC, QBD 2001).*

31. Hence the '10-year clock' did not start to run again at the point at which the workshop use began. The material change of use (to that including a mobile home) took place in 1979, more than 10 years before the date of the enforcement notice before me, and no further material change of use has taken place since. Therefore it was too late for enforcement action to be taken against the use of the land for stationing the Park Home before me. The appeal on ground (d) succeeds and the notice will be quashed. The deemed planning application and the appeals on ground (f) and (g) do not fall to be considered. The appellant may now wish to apply to the local planning authority for planning permission or a Certificate of Lawful Use or Development in order to obtain any site licence that may be required under the Caravan Sites and Control of Development Act 1960.

**Formal Decision**

32. In exercise of the powers transferred to me I direct that the notice be corrected by the deletion of the text of paragraph 3 of the notice and substitution therefor of the words 'without planning permission the material change in use of the land from use as a dwelling house to use as a caravan site for one mobile home for the purpose of human habitation'. Subject thereto I allow the appeal and quash the enforcement notice.

**Information**

33. Particulars of the right of appeal against my decision to the High Court are enclosed for those concerned.

**Inspector**

The Planning Inspectorate

# Appeal Decision

**by K R Saward Solicitor**

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

**Decision date: 2 November 2017**

**Appeal Ref: APP/A1530/X/17/3177321**
**Heathfield House, West End Road, Tiptree CO5 0QH**

- 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 Tamara Kelsey against the decision of Colchester Borough Council.
- The application Ref 170191, dated 26 January 2017, was refused by notice dated 13 April 2017.
- 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 caravan for ancillary use.

## Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

## Application for Costs

2. An application for costs was made by Mrs Tamara Kelsey against the Council. This application is the subject of a separate Decision.

## Procedural Matters

1. The appeal involves the consideration of relevant planning law and the facts which have not necessitated a site visit.

2. Since the date of the Council's refusal to issue a lawful development certificate (LDC) planning permission has been granted for the "siting of ancillary residential caravan" at Heathfield House, subject to conditions. This has no bearing on my consideration of the appeal which must be decided strictly on the application of the relevant law and judicial authority to the facts.

## Main Issue

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

## Reasons

4. The appellant seeks a LDC to site a caravan within the garden of her home at Heathfield House for "ancillary use". The appellant makes clear that what is meant by this is that she wishes to use the caravan as additional living

accommodation associated with the main house rather than use as a separate self-contained unit.

5. In order for an LDC to be granted under section 192 of the 1990 Act, the onus is firmly on the appellant to show that the development would be lawful at the time the application was made.

6. It is undisputed that provided the proposed park home style caravan remains a moveable structure that meets the definition of a "caravan" within the Caravan Sites and Control of Development Act 1960 as amended by the Caravan Sites Act 1968, then it would not constitute a building. Nor is it contested that the proposed siting of the caravan as shown in the submitted site plan would be within the residential curtilage of Heathfield House.

7. The Council proceeded to determine the application with reference to section 55(2)(d) of the 1990 Act. This provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development of the land. In following this approach, the Council analysed the meaning of the word "incidental" from various sources including with reference to an ordinary dictionary definition, online commentary and case law.

8. Specific mention is made of the case of *Emin v SSE*[1] where the Court considered the meaning of "incidental" in the context of permitted development rights for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. Similar provision is now contained within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015. 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 judgment in *Emin* do not assist in establishing whether residential use of the caravan would be lawful.

9. Moreover, a distinction is to be drawn between an incidental use and uses which are part and parcel of an existing lawful use.

10. 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.[2] Just because the proposed use goes beyond what would ordinarily be regarded 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.

11. In *Uttlesford DC v SSE & White*[3] the judge considered that, even if the accommodation provided facilities for independent day-to-day living it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. In that case the accommodation gave

[1] *Emin v Secretary of State for the Environment and Mid-Sussex County Council, QBD, 1989, 58 P&CR*
[2] For the purposes of section 55, "development" comprises either operations or the making of a change of use.
[3] [1992] JPL 171

the occupant the facilities of a self-contained unit although it was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. A fact and degree judgment has to be made on the specific circumstances of the case.

12. 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. Much depends on how the caravan would actually be used, as also set out in Appeal Decision ref: APP/Z3825/X/16/3151264 and commentary referenced in the Council Officer's delegated report.

13. The proposal is for a caravan to be occupied by the appellant's elderly mother who has health issues as outlined in the application. The intention is that care and assistance would be provided as needed whilst allowing the appellant's mother a degree of independence. Meals would be shared in the main house, as would laundry facilities, storage of domestic items and housekeeping. The water and electricity supply would be shared and the caravan would not have its own utility meters. There would be no separate postal address and so all bills would be sent to the house. The caravan would not be registered as a separate unit of occupation for Council Tax purposes.

14. It is clear that there would be a close family and functional link between the uses with the land also remaining in single ownership and control. 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. From the application, neither scenario is proposed. Accordingly, the proposal would not have required separate planning permission.

15. 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. If the caravan is not used in association with the dwelling, as described, and the functional link is severed, then it would not benefit from the LDC.

16. In the circumstances of this case, I find that the siting of a caravan in the garden of Heathfield House for the provision of additional living accommodation as described in the application would, as a matter of fact and degree, have been lawful at the time of the application. My findings in this regard are consistent with the approach taken to the application of the law in the other Appeal Decisions[4] brought to my attention by the parties.

## Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the

[4] APP/Z3825/X/16/3151264 dated 28 October 2016, APP/Y0435/X/15/3129568 dated 19 February 2016, APP/K2230/X/13/2190398 dated 18 June 2013, APP/K3605/X/12/2181651 dated 15 April 2013, APP/J1915/X/11/2159970 & APP/P2365/X/09/2109940 dated 6 November 2009.

Council's refusal to grant a certificate of lawful use or development in respect of the siting of a caravan for ancillary use 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.

*KR Saward*

INSPECTOR

The Planning Inspectorate

# 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 26 January 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 reason:

The proposed siting of the caravan and its use as additional residential accommodation associated with the main dwellinghouse at Heathfield House, as described in the statement accompanying the application, would be part and parcel of the residential use within the same planning unit and would not constitute development requiring planning permission.

Signed

*KR Saward*

INSPECTOR

Date 2 November 2017
Reference: APP/A1530/X/17/3177321

***First Schedule***

The siting of a caravan for ancillary use in accordance with application reference 170191 dated 26 January 2017 and the supporting statement and drawings submitted therewith.

***Second Schedule***

Land at Heathfield House, West End Road, Tiptree CO5 0QH

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.

The Planning Inspectorate

# Plan

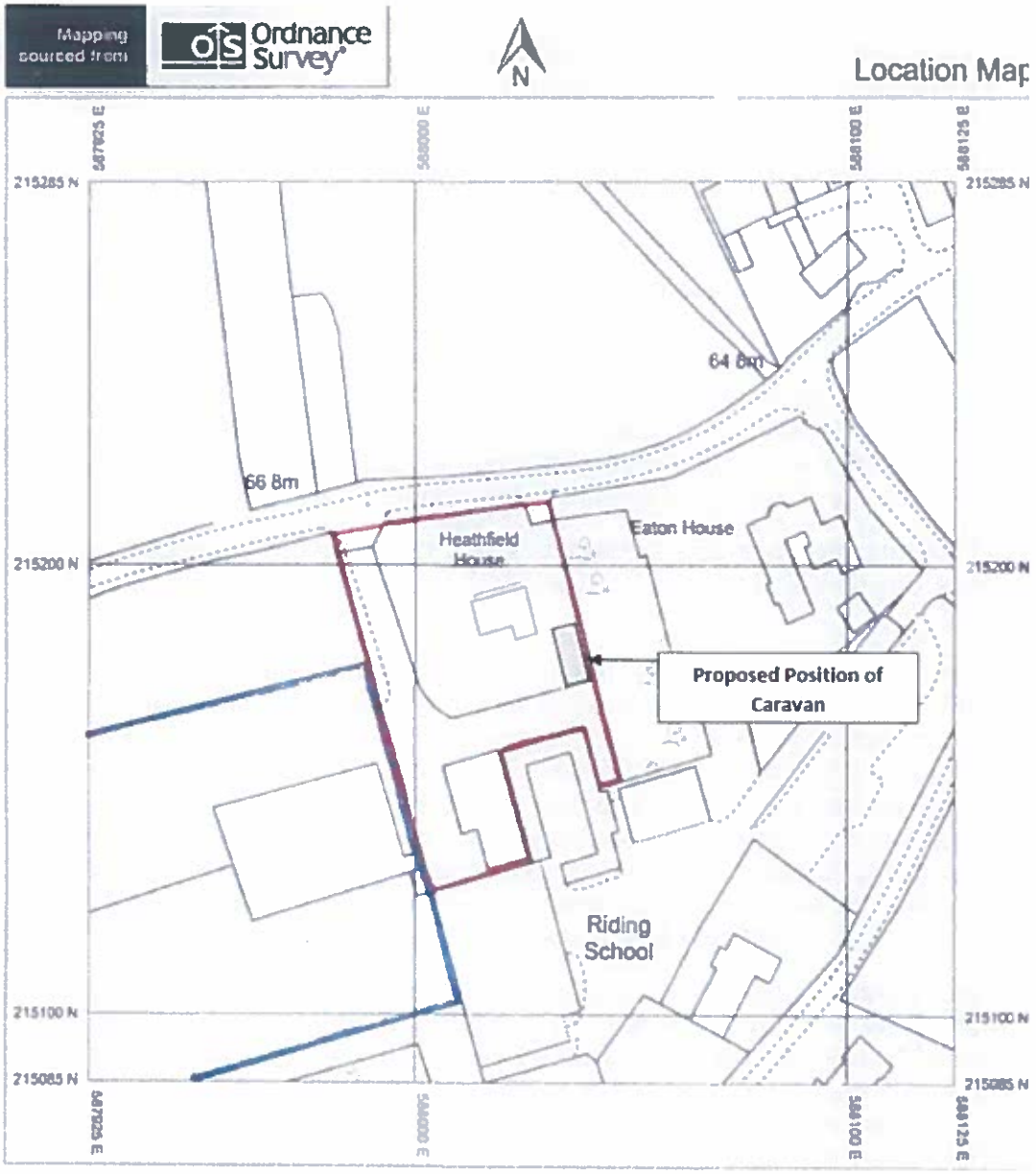
This is the plan referred to in the Lawful Development Certificate dated: 2 November 2017

**by K R Saward Solicitor**

**Land at: Heathfield House, West End Road, Tiptree CO5 0QH**

**Reference: APP/A1530/X/17/3177321**

Scale: NOT TO SCALE



The Planning Inspectorate

# Costs Decision

**by K R Saward Solicitor**

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

**Decision date: 2 November 2017**

**Costs application in relation to Appeal Ref: APP/A1530/X/17/3177321 Heathfield House, West End Road, Tiptree CO5 0QH**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mrs Tamara Kelsey for a full award of costs against Colchester Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development for the siting of a caravan for ancillary use.

## Decision

1. The application for an award of costs is allowed in the terms set out below.

## Reasons

2. Paragraph 030 of the *Appeals* section of the national Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The application is made on the basis that the appellant considers the Council to have erred in its approach to the law to be applied to the intended use of the land.

4. As set out in my Appeal Decision, the appellant applied for a lawful development certificate (LDC) to site a caravan within her garden for residential occupation by her mother as ancillary accommodation to the main house. The appellant considers the Council acted unreasonably by steadfastly maintaining that the proposed use was not "incidental" to the enjoyment of the dwellinghouse and giving precedence to the capability of the caravan for independent occupation over its stated intended use. In response, the Council says that the appellant has not fully understood the importance and relevance of the word "incidental" and ignored recent caselaw in relation to 'primary accommodation'.

5. 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[1] where LDC's were granted for uses of

[1] APP/Z3825/X/16/3151264 dated 28 October 2016, APP/Y0435/X/15/3129568 dated 19 February 2016.

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.

6. Despite being aware of all these decisions and having quoted passages of text that should have alerted the Council to the need to establish whether the proposal would form part of the primary use of the land, it did not undertake that exercise. Even where the circumstances differed in the Appeal Decisions they still provided a steer on the principles to apply. Indeed, it was plain from both Appeal Decision APP/Y0435/X/15/3129568 and the text recited by the Council itself that it is the actual use of a caravan that is determinative rather its potential to be occupied as a self-contained residential unit.

7. Had the Council properly applied the information available to it then it is difficult to see that it would have reached the same conclusion.

8. The appellant was absolutely clear in explaining that an ancillary use was sought with reliance placed on the main house for care, assistance and facilities. The intended manner of occupation was described along with details of the facilities to be shared with the main house. The combination of factors pointed clearly towards a use that would comprise additional living accommodation without creating a separate planning unit. Yet, the Council formed the view that there would be a material change of use having been influenced by what might occur as the caravan is "highly likely to be capable of independent occupation". That was the wrong approach which neglected to understand that a LDC can only be issued for what is actually applied for.

9. Throughout the course of the appeal the Council remained resolute that its stance was correct. That was so despite much of the reference material that it relied upon being concerned with different forms of development than that proposed. The persistence of the Council in its misdirected approach amounted to unreasonable behaviour which caused the appellant to incur costs in bringing the appeal.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

## Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Colchester Borough Council shall pay to Mrs Tamara Kelsey, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Colchester Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*KR Saward* INSPECTOR

APP/K3605/X/12/2181651 dated 15 April 2013, APP/U1315/X/11/2159970 & APP/P2365/X/09/2109940 dated 6 November 2009.

Deputy Judge is fully justified in holding that the Inspector erred in law by not giving full consideration to those policies. On the other hand, while it is true that the thrust of Circular 13/87 is that permission should only be refused on amenity considerations, another decision of Malcolm Spence in *Camden L.B.C.* v. *Secretary of State for the Environment* [1989] J.P.L. 613, emphasises that this cannot rule out regard being given to other material considerations such as the need to provide employment opportunities. So, to apply that principle to the present case, both the local planning authority and the Inspector on appeal can in law refuse permission for an estate agency on the grounds that although it would not directly have an impact on local amenity or the environment, it would be detrimental to the functioning and vitality of the shopping area.

*Barn conversion—accommodation for housekeeper to main house or independent dwelling—incidental use—redundant barn definition of—relevance of present owners needs.*

**Whitehead v. Secretary of State for the Environment and Mole Valley District Council** (Queen's Bench Division, Mr. Malcolm Spence, Q.C. sitting as Deputy Judge, July 10, 1991)[7]

The applicant owned a house with a 5 acre curtilage, within which stood a barn. He was refused planning permission to use the barn either as an annexe to the main house to accommodate a housekeeper or as an independent dwelling. The grounds for refusal included: "The building the subject of the proposed development is not considered to be genuinely redundant as it forms an ancillary building within the curtilage of Sloghterwyks incidental to the enjoyment of the dwellinghouse."

On appeal, the Inspector appointed to determine the appeals dismissed them. In her decision letter the Inspector wrote:

> Para. 6 "however, no common ground could be reached during the course of the inquiry as to whether or not this building is redundant, although it was accepted that this is a matter of fact and judgment rather than law.
>
> 7. The barn appears not to have been in agricultural use for some time. It no longer forms part of an agricultural holding, but has been subsumed into the residential curtilage of Sloghterwyks, where it may now have an established, although not necessarily lawful, use ancillary to the main dwelling.
>
> 8. Your client finds outbuildings, excluding the barn, sufficient for his present needs, although concedes that some items have been left in the building for many years. At the time of my visit I could see that the barn had been used as an animal shelter and was being used to store some items. It appears to be in good condition, and in my view could be more intensively used than the present owners choose to do. I am not therefore satisfied that it is a genuinely redundant building.
>
> Para. 10. In the absence of evidence to suggest that your client's proposal could be considered as falling within any of the categories specified as exempt from the general presumption against inappropriate development in the Green Belt, I intend to consider whether or not the proposals would cause harm to the Green Belt, were planning permission to be granted."

[7] *H. B. Sales* (Messrs. Ouvry Goodman & Co., Sutton). *D. J. Elvin* (the Treasury Solicitor).

The reference to the "categories specified" plainly included a reference to redundant buildings.

> Para. 13 "The barn is some distance from the main house and, to my mind, not in a definable residential grouping . . . In its present condition it could be used for purposes incidental to the enjoyment of the dwelling without a material change in the way it relates to the surrounding rural area. You have suggested that amendments to the submitted design could result in conversion works being undertaken to the building without development being involved. That may be the case. However, the use of the converted building as staff accommodation could not be considered as a purpose incidental to the enjoyment of the main dwelling as a new unit of living accommodation is being formed for which specific planning permission would be required.
>
> 14. I believe that the conversion of the building in the manner proposed would result in a material change in its appearance, by introducing a more urban form into a rural setting. Further, a dwelling could bring with it a requirement for a more orderly garden area and an assortment of domestic appurtenances and ancillary buildings associated with modern day living . . ."

The applicant appealed to the High Court under section 288 of the 1990 Act alleging that the Inspector had failed to determine whether the use of the barn for residential purposes ancillary to the use of the main dwelling constituted development requiring planning permission and that the Inspector had failed to determine whether the barn was redundant.

The DEPUTY JUDGE said that on the first point Mr. Sales submitted that in considering the relevant questions it was necessary to look at the whole of the area used for a particular purpose, including any part of the area incidental or ancillary to the achievement of that purpose. He referred to *Frith and Another* v. *Minister of Housing and Local Government* (1969) 210 *Estates Gazette* 212.

Secondly, if the use of the whole area was for residential purposes any part of the area could be used for any element of that purpose unless this was in breach of planning condition or amounted to a change of use.

He (the Deputy Judge) accepted that entirely.

Mr. Sales submitted that the last sentence of paragraph 13 of the decision letter was simply wrong. He further submitted that the use of a separate building for staff accommodation appurtenant to the main house was not a change of use needing permission whilst it remained so appurtenant.

He referred to a number of authorities, including the case of *Wakelin* v. *Secretary of State for the Environment and Another* (1983) 46 P. & C.R. 214, which was a case before the Court of Appeal in which the main matter for consideration was the division of a planning unit into two separate planning units. But there was an interesting passage at the beginning of the judgment of Lawton L.J. on page 218 where he said:

> "On the evidence in this case, in 1975 when the property Bourne Martyn was put on the market it could have been described by an old-fashioned estate agent as 'a gentleman's desirable residence with two acres of garden and outbuildings providing accommodation for staff and garaging for three cars.' Such a description in planning

> jargon is of a single unit of occupation; and that clearly was what it was when Mr. Wakelin entered into negotiations for its purchase."

Mr. Sales also referred to a decision of the Secretary of State [1987] J.P.L. 144 where at the bottom of page 145 the Secretary of State said:

> "The view is taken that the word 'incidental,' on the other hand, means something occurring together with something else and being subordinate to it. Accordingly, a purpose which is incidental to the enjoyment of a dwelling-house is distinct from activities which constitute actually living in a dwelling-house. Incidental purposes are regarded as being those connected with the running of the dwelling-house or with the domestic or leisure activities of the persons living in it, rather than with the use as ordinary living accommodation. Similarly, with regard to the earlier case cited in [1975] J.P.L. 104, the Department's present view is that the use of an existing building in the garden of a dwelling-house for the provision of additional bedroom accommodation is not now to be regarded as being 'incidental' to the enjoyment of the dwelling-house as such for the purposes of section 22(2)(*d*) [the Town and Country Planning Act 1971]: it merely constitutes an integral part of the main use of the planning unit as a single dwelling-house and, provided that the planning unit remains in single family occupation, does not therefore involve any material change of use of the land; in those circumstances it is now considered that there is therefore no need to rely on section 22(2)(*d*)."

Section 55(2)(d) of the Town and Country Planning Act 1990 provided:

> "(2) The following operations or uses of land shall not be taken for purposes of this Act to involve development of the land— . . .
>
> (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such."

In the light of those submissions Mr. Sales submitted that permission was not needed to use the barn for residential purposes in connection with the primary use of the main house and that planning permission for some alterations would not be needed.

He said that the Inspector had gone fundamentally wrong in not paying regard to this or rather and more especially erroneously determining in paragraph 13 the issue about it. Therefore she had fallen foul of the well established principle that a decision-maker when considering whether or not to grant planning permission must take into account the existence of another extant permission or of other changes that could be made without the grant of permission and all the potential consequences flowing therefrom. See, for example, *Spackman* v. *Secretary of State for the Environment* [1977] 1 All E.R. 257 as well as other High Court authorities.

Mr. Elvin, showed that the applicant and his advisers hardly took this line or pressed this point at all. Indeed their application was for a "change of use." That was the theme of their pre-inquiry statement and it ran throughout most of the expert's proof of evidence. All that was said about this point was a short passage at paragraphs 7.15 and 7.16 of his proof. 7.15:

> "If, as the council claim, it is correct to view the appeal building as an 'ancillary building . . . incidental to the enjoyment of the existing house' this suggests to me that planning

> permission should not be required for the change of use in the case of the ancillary proposal. In these circumstances planning permission would only be required (at all) for the ancillary proposal in circumstances in which the physical conversion works did not fall to be considered as permitted development."

Paragraph 7.16 was to like effect. Of course, that was merely a reference to the point in the proof of evidence of the planning witness and did not, of course, deal with the submissions that were made by counsel at the inquiry. It would be in the submissions that one would expect it and in this case submission was made about the point. First of all, it might well be that the form of the application and the pre-inquiry statement were somewhat inept in this respect, but that in no way bound the appellants as to the conduct of their case at the inquiry itself. It frequently happened that by the date of the inquiry the appellants found that they need to make more of a point than they had so far. If they took a point, even if they took it in not too forceful a fashion, in his judgment, they were entitled to have proper consideration given to it. He was in no doubt that the Inspector was under a duty in this case to give such consideration to this important principle, namely, whether or not it would have been possible to form almost the same type of unit as that for which planning permission was sought without the need for applying for permission at all.

Mr. Elvin pointed out that the Inspector had dealt with this matter in paragraph 13. It was true that she had. The question was whether she had got it right.

It was common ground that this barn was within the curtilage of the dwelling-house and there was apparently no discussion about the planning unit in the context of the first appeal before the Inspector, no reference to it in the decision letter and nothing to suggest that the planning unit was any different from the curtilage.

Mr. Elvin referred to *Emin* v. *Secretary of State for the Environment and Mid-Sussex District Council* [1989] J.P.L. 909 which was a decision of Sir Graham Eyre, Q.C. sitting as a Deputy Judge of this court. Sir Graham said this at page 912, referring to a case where one was concerned with the question of incidental use of buildings within the curtilage of a dwelling-house:

> "The arbiter of the facts in a case such as this would need to concern himself with the nature of the activities carried on in the proposed buildings so as to ensure that they were incidental or conducive to the very condition of living in the dwelling-house and, in that sense, further that condition. In that connection the scale of those activities was obviously an important matter because there had to be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling-house as such and constitute something greater than a requirement related solely to that purpose. In that context the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities.
>
> The fact that such a building had to be required for a purpose associated with the enjoyment of a dwellinghouse could not rest solely on the unrestrained whim of him who dwelt there but connoted some sense of reasonableness in all the circumstances of the particular case. That was not to say that the arbiter could impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they were sensibly related to his enjoyment of the dwelling. The

word 'incidental' connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse itself. He (the Deputy Judge) would endorse the general approach adopted by the Secretary of State in the present case. He was correct in stating that the overriding factor in deciding the question as to whether uses of the proposed buildings could properly be regarded as incidental to the enjoyment of the dwellinghouse had to concern the incidental use, which, in that context, had to be a use which occurred together with something else but nevertheless remained at all times subordinate to it. The view was also taken by the Secretary of State, and he agreed, that the test to be applied was whether the uses of the proposed buildings, when considered in the context of the planning unit, were intended and would remain ancillary or subordinate to the main use of the property as a dwellinghouse."

He (the Deputy Judge) gratefully followed the words of Sir Graham Eyre.

Mr. Elvin went on to deal with the decision letter of the Secretary of State, [1987] J.P.L. 144, referring to the distinction between a building which constituted an integral part of the main use of the planning unit as a single dwelling-house and the use of a building which may be incidental to the enjoyment of a dwelling-house within the meaning of section 55(2)(*d*).

He (the Deputy Judge) did not intend to decide this case upon any such fine distinction nor say whether or not, in his judgment, the language of the Secretary of State, was correct, although he was inclined to think that it was.

The general point for consideration by the Inspector was to almost the same effect upon either basis. It was apparent that the Inspector in paragraph 13 had had in mind much of the relevant material. She had referred to the fact that the barn was some distance from the main house. She had referred to the fact that it was suggested that amendments to the submitted design could result in conversion works being undertaken to the building without development being involved and accepted that that might be the case. That was because she was not shown actual drawings. She did not have to be shown actual drawings. It was good enough, provided she appreciated that so far as the physical works of conversion were concerned it might be that they could be carried out in a form which did not require the grant of planning permission.

One was left with the real point at issue, namely, the use to which the building would be put. Given that, the whole purpose of this application, as opposed to the second application, was to provide live-in accommodation for a housekeeper, it seemed impossible to hold that the use of the building thus converted would be otherwise than for a purpose incidental to the enjoyment of the main dwelling as a unit of living accommodation or, alternatively, having regard to the Secretary of State's language, would form an integral part of the main use of the planning unit as a single dwelling-house. It mattered not, whether this building, as converted, happened to include its own kitchen or bathroom. Nevertheless, the whole purpose of it was to provide somewhere to live for the housekeeper, who would doubtless be looking after the house at all relevant times, and walking to and fro the short distance to the house to cook meals in it and so on.

For that reason, that sentence was simply wrong, and the determination of what was an important point in the case, having regard to the facts, was one which the Inspector could not possibly have reached.

Mr. Elvin submitted that he (the Deputy Judge) ought not to exercise the discretion of the court to quash this decision. He could not accept that. The case needed to be reconsidered properly upon the basis as set out and having fully in mind that this building might be used for the purpose of providing living accommodation for a housekeeper without the need for planning permission for that use.

He returned to deal with the second point, namely, the redundant barns. He was satisfied that the Inspector had not made any error of law upon the point. Mr. Sales had produced the *Oxford Dictionary* definitions of the word "redundant." He said that the meaning of a word was a matter of law for the court and that the Inspector had erred in law.

However, on looking at the relevant paragraphs, 6 and 8 of the decision letter, there was nothing to suggest that the Inspector had misconstrued the word "redundant." The Inspector had in paragraph 8 properly approached the matter by taking the word "redundant" and considering it in the light of the relevant facts. First, she has acknowledged, that the other outbuildings are sufficient for Mr. Whitehead's present needs. On the other hand, she has paid regard, quite legitimately, to the fact that at the time of her visit it was being used to store some items. Moreover, it appeared to be in good condition and could be used more intensively.

It was manifest that a building such as this might well come in useful within a domestic curtilage such as this. It extended to five acres. Almost any use of five acres required maintenance with equipment of various kinds. Even though the building was little used at the time of the inquiry, it was perfectly legitimate to consider that "it could be more intensively used." In considering whether a building was redundant one was not confined to the present; none of the definitions in the *Oxford Dictionary* suggested that. The future might be just as relevant for consideration as the present, especially in the case of a building which was in good condition. He could detect no error of law and no incorrect approach to the matter in this Inspector's finding that the building was not redundant.

That was sufficient to deal with this second point, but it might assist to say that in order for a building to be redundant one was not confined by law or practice to a consideration of the present owner's means.

Mr. Sales referred to a decision of the Secretary of State on an appeal T/APP/C/88/L3625/32/P6 where there was a passage in the decision of the Inspector at paragraph 34 "I can find nothing in the policy statements or elsewhere to indicate that redundancy of an agricultural building . . . means anything other than redundant to the immediate needs of the landowner."

It was not completely clear what that sentence meant.

Mr. Elvin said if that meant that consideration had to be confined to the needs of the present owner, then the Secretary of State would not wish to follow what was said in that sentence.

He (the Deputy Judge) would agree with that. He accepted completely that a building might well not be redundant if it would or might be useful for a future owner's needs. Again, nothing in any of the *Oxford Dictionary* definitions caused him to hold that it could relate only to the present owner's needs. It might be entirely unused by the present owner but yet potentially useful to a future owner and so not be redundant. In practice much would depend upon the nature and condition of the building and the nature of the existing and potential use of the surrounding land, rather than upon the needs or intentions of the present owner.

For those reasons the application was upheld in respect of the first appeal and the decision on that appeal quashed. But the application in respect of the second appeal was dismissed.

**Comment.** This is quite an unusual decision because the Deputy Judge was not able to point to any explicit error of law in the approach of the Inspector and was holding it was a decision which the Inspector could not possibly reach. It would therefore seem to follow that the use of a building, reasonably near to a dwelling-house, for the live-in accommodation for a housekeeper to that dwelling-house cannot normally amount to a material change of use. To this commentator this is too rigid an approach and there could be situations where even though the occupier of one dwelling works in another nearby dwelling this does not automatically mean that both dwellings form one unit of occupation and that the occupation of one dwelling is ancillary or incidental to the other. The work relationship is just one factor to be considered and there could be other factors such as the comparative size of and distance between the two dwellings and the facilities for separate living.

However it does appear that where one property is owned by a family the courts are very reluctant to hold that two physically distinct parts of that property can be treated as being used as separate dwellings where the occupants are related or where there are ties of domestic employment. It will be recalled that in the very recent case of *Uttlesford* v. *Secretary of State for the Environment* [1992] J.P.L. 171 Lionel Read, Q.C. sitting as a Deputy Judge similarly took the view that the fact that a building has all the facilities for separate living does particularly mean that the use by a relative is a separate dwelling-house use.

*Compulsory purchase order—control order under Housing Act 1985—date of making the order—date of sealing—delay—allegation of criminal forgery—allegation of nullity.*

**Burke v. Secretary of State for the Environment and the London Borough of Camden** (Queen's Bench Division, Brooke J., May 10, 1991)[8]

The applicant applied to the High Court under section 23 of the Acquisition of Land Act 1981 for an order that the London Borough of Camden (43 Fitzroy Street, London W1) Compulsory Purchase Order 1987, be quashed. The grounds upon which the action was based were first, that the order was not made validly within 28 days of the making of a control order dated February 13, 1987, and was *ultra vires* the terms of Part IV of the Housing Act 1985, Sched. 13. Secondly, the purported order was a forgery within the meaning of section 9(1)(*b*) of the Forgery and Counterfeiting Act 1981, in that the date upon which the order was sealed was some three months after the date on the order itself. Thirdly, as a reason of this the order was a nullity and could not be validly confirmed by the Secretary of State. The delay incurred in sealing the order was apparently due to administrative difficulties within the authority.

Brooke J. said that Mr. Payton, on behalf of the applicant, submitted that the order was a forgery. He drew attention to section 9(1)(*g*) of the Forgery and Counterfeiting Act 1981, which was concerned with the identification of an instrument as false for the purpose of Part I of that Act. This subsection provided that an instrument was false if it purported to have been made on a date on which it was not in fact made. He submitted that the second respondents were, in effect, responsible for a forgery because a false instrument was made with the intention that the maker of it would use it or induce somebody to accept it as genuine and, by reason of so accepting it, to do or not to do some act to his own or any other person's prejudice within the meaning of the Forgery and Counterfeiting Act 1981, s.1.

[8] *B. Payton* (Messrs Iqbal & Co., London W2). *N. Plemung* (the Treasury Solicitor. *J. Burton* (the Solicitor to London Borough of Camden).

The Planning Inspectorate

APP 4

# Appeal Decision

Site visit made on 23 November 2011

**by Martin Joyce DipTP MRTPI**

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

**Decision date: 7 December 2011**

**Appeal Ref: APP/J1915/X/11/2159970**
**4 Waterworks Cottage, Redricks Lane, Sawbridgeworth, Hertfordshire CM21 0RL**

- 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.
- The appeal is made by Mrs K Green against the decision of the East Hertfordshire District Council.
- The application, Ref: 3/11/0954/CL, dated 27 May 2011, was refused by notice dated 18 July 2011.
- 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 use of part of the established residential curtilage on which to station a mobile home for purposes incidental to the existing dwelling.

**Summary of Decision: The appeal is allowed and a Certificate of Lawful Use or Development is issued, in the terms set out below in the Formal Decision.**

## Main Issue

1. The main issue in this appeal is whether the proposal would constitute operational development or a material change of use of the land.

## Reasoning and Appraisal

2. The appellant wishes to site a "Homelodge" mobile home within the residential curtilage of her house, as ancillary accommodation for her elderly parents. The unit would measure 8.45m in length, 3.85m in width and 2.2m/3.2m in height, to the eaves/ridge. It would be delivered to the site on a lorry and would be capable of removal in the same way. It would not be permanently fixed to the ground, but would be connected to services.

3. The Council accept that the dimensions of the structure could fall within those set out for a twin unit caravan in the statutory definition given in the Caravan Sites Act 1968 as amended[1] (CSA), but they consider that its size, permanence and physical attachment would be such that the siting of the unit would be operational development as defined in Section 55 of the Act, rather than a use of the land. In particular, they contend that the determining factor is whether or not the structure is of a design or size that would make it readily mobile around the site. In this context, its size, degree of permanence and impact on

[1] Sub section 13(2) as amended by The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006 (SI 2006/2374).

the character of the site lead to the conclusion that operational development would occur. Furthermore, the Council cite two items of case law, and refer to previous appeal decisions, to support their contentions in this respect.

4. In consideration of the above matters, I note at the outset that the Council do not dispute that the mobile home would be used for purposes incidental to the enjoyment of the dwellinghouse as such, notwithstanding that occupiers of the mobile home would have facilities that would enable a degree of independent living. The appellant's claim that it would be akin to a "granny annexe" is not therefore at issue, only the question of whether the proposal would be operational development or, as is normally the case, a use of the land.

5. Neither of the cases that the Council rely on relates to the siting of mobile homes or caravans, rather they concern other structures such as a wheeled coal hopper[2] and a tall mobile tower[3]. Similarly, the three appeal decisions referred to by them concern the siting of portacabins on land and whether that is operational development or a use of land. I can, therefore, give little weight to these cases and decisions in my determination of this appeal as they do not concern the siting of caravans or mobile homes and are, thus, materially different development. Additionally, I consider that the Council are misguided in their statement that the determining issue is whether the mobile home would be readily moveable around the site. That is not the correct test; rather the test is whether the unit, once fully assembled, is capable, as a whole, of being towed or transported by a single vehicle[4]. In this case, the appellant's statement that this would be the case has not been contradicted. A lack of intention to move the unit around the site is not relevant to the main issue, and would apply to most "static" caravans on any lawful caravan site.

6. The size of the proposed mobile home falls well within the dimensions set out for twin units in the CSA as amended, notwithstanding that it is not specified as a "twin unit", but it appears that the Council consider that its positioning would create a degree of permanence and impact on the character of the site. Impact on character is also of no relevance in a case where the lawfulness of a use is at issue, but the question of permanence is a matter of fact and degree that relates to physical attachment to the ground.

7. In this case, the mobile home would be placed on padstones and is likely to be attached to services such as water, drainage and electricity, although the precise services are not specified in the application. However, attachment to services is not the same as physical attachment to the land, as they can easily be disconnected in the event that the caravan needs to be moved. Additionally, the placing of the mobile home on padstones, or another sound and firm surface, is not, in itself, a building operation as suggested by the Council, notwithstanding that a degree of skill is required in such placement. I know of no support in legislation or case law for such a proposition and the provision of a hard surface within the residential curtilage would, subject to certain limitations, be permitted development under Class F of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995 as amended. The Council are, therefore, incorrect in this instance in their interpretation of the permanence of the mobile home as an indication of operational development rather than a use of the land.

[2] *Cheshire CC v Woodward* [1962] 2 QB 126
[3] *Barvis Ltd v Secretary of State for the Environment* [1971] 22 P&CR 710
[4] *Carter v Secretary of State* [1995] JPL 311

8. I conclude that the proposed development would not constitute operational development, rather it would involve a use of land. As that use would fall within the same use as the remainder of the planning unit, it would not involve a material change of use that requires planning permission.

**Other Matters**

9. All other matters raised in the written representations have been taken into account, but they do not outweigh the conclusions reached on the main issue of this appeal.

**Conclusions**

10. 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 use of part of the established residential curtilage for the stationing of a mobile home for purposes incidental to the existing dwelling 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.

**FORMAL DECISION**

11. 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.

*Martin Joyce*

INSPECTOR

The Planning Inspectorate

# 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 2010: ARTICLE 35

**IT IS HEREBY CERTIFIED** that on 27 May 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this Certificate, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would be incidental to the residential use of the planning unit and would not constitute operational development for which a grant of planning permission would be required.

Signed

*Martin Joyce*
Inspector

Date: 07.12.2011
Reference: APP/J1915/X/11/2159970

***First Schedule***

The use of part of the established residential curtilage on which to station a mobile home for purposes incidental to the existing dwelling.

***Second Schedule***

Land at 4 Waterworks Cottage, Redricks Lane, Sawbridgeworth, Hertfordshire CM21 0RL

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 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 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

The Planning Inspectorate

# Plan

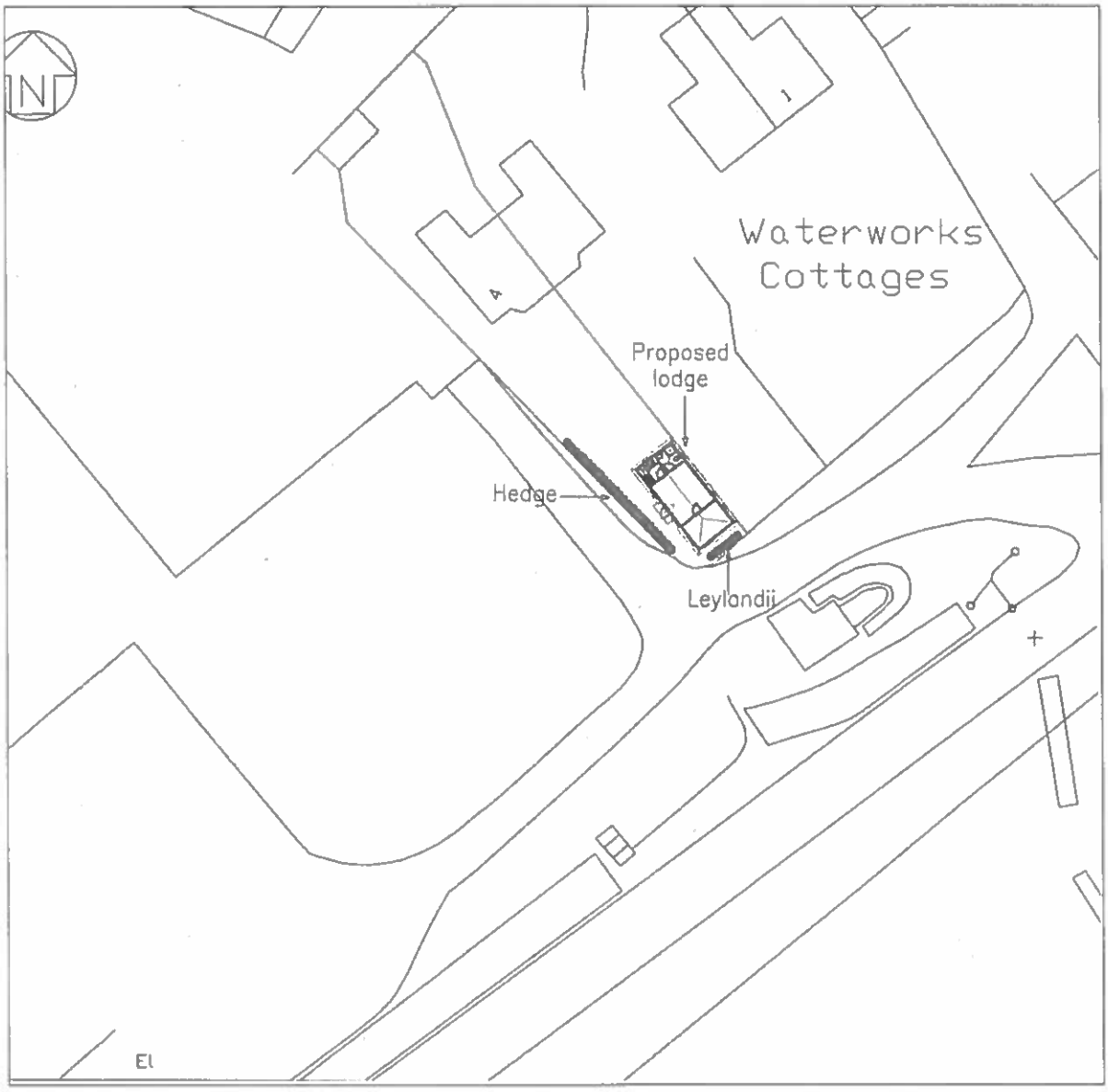
This is the plan referred to in the Lawful Development Certificate dated: 07.12.2011

**by Martin Joyce DipTP MRTPI**

**Land at: 4 Waterworks Cottage, Redricks Lane, Sawbridgeworth, Hertfordshire CM21 0RL**

**Reference: APP/J1915/X/11/2159970**

Scale: Not to scale



The Planning Inspectorate

APP 5 i

# Appeal Decision

Site visit made on 5 June 2013

**by David Harrison BA DipTP MRTPI**

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

**Decision date: 18 June 2013**

**Appeal Ref: APP/K2230/X/13/2190398**
**7 Haynes Road, Northfleet, Gravesend, Kent DA11 7HL**

- 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 Mr and Mrs Hawkes against the decision of Gravesham Borough Council.
- The application Ref: 20120792, dated 17 September 2012, was refused by notice dated 9 November 2012.
- The application was made under section 192(1) (b) 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 proposed stationing of a mobile home in the rear garden for use as a granny annex.

## Decision

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.

## Main Issue

1. The main issue is whether the proposal would constitute operational development or a material change of use of the land.

## Assessment

2. The appellants wish to site a "Homelodge" timber built mobile home[1] in the rear garden of their house to be used as ancillary accommodation for the elderly mother of one of the appellants, in the form of a "granny annex". The proposed unit measures 3908mm by 11316mm by 2091mm high (to the eaves) and 3027mm high (to the ridge) and is fitted out with living accommodation including a kitchen and shower room/WC.

3. The Council does not dispute that the dimensions of the structure would fall within those set out for a twin-unit caravan in the statutory definition in the Caravan Sites Act 1968 as amended[2], but they consider that the siting of the unit would amount to operational development as defined in Section 55 of the Act, rather than a use of land as contended by the appellants.

4. The Council's case is that the proposed development is of a sufficient size, permanency and degree of physical attachment to be operational development,

[1] Hereafter referred to as the "unit".
[2] Sub section 13(2) as amended by the Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (amendment) (England) Order 2006 (SI2006/2374).

as a dwelling which would not be incidental to the enjoyment of the main dwelling house. As an outbuilding it would not be permitted development under Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

5. The appellants originally suggested that the unit could be brought by lorry in two sections along the rear access lane, but this would involve removing the rear boundary fence and dismantling a concrete sectional garage. Although the lane appears to be wide enough to accommodate such a vehicle I agree with the Council that this would appear to be a difficult operation. However, the appellant subsequently submitted a letter from Tonhout Crane Hire Ltd confirming that "we can lift your building in one unit or two halves over the roof of the house from the road by obtaining a road closure and crane licence from Kent County Council. Alternatively we can access the site from the track road at the rear and crane over the garage in two halves if this is preferred". It would be lowered on to concrete pad stones and not bolted or fixed to them in any way. Services would be connected but this would not in itself amount to the fixing of the unit to the ground. The services could easily be disconnected and the unit could be removed by crane in one piece.

6. The Council maintains that the expert advice that the unit could be craned onto the site and removed in the same manner should have been provided with the original application. Furthermore, there is no stated intention to remove the unit and in that sense it should be regarded as a permanent feature. It is argued that once the unit has been located on the concrete pad stones there is no intention to move it around the site. I agree with the appellant that this is not a necessary requirement; "static" caravans often remain in one location (as the name suggests). If the unit is used as an annex during the proposed occupant's lifetime it would not be "permanent" and can reasonably be regarded as a use of land. The company providing the unit has confirmed that such units do have a second hand value and it seems to me that there is a reasonable prospect of the unit being removed when no longer needed.

7. I have taken account of the case law and the various LDC appeal decisions referred to by the parties. In *Carter v SSE* [1991] JPL 131 it was accepted that the stationing of a mobile home without wheels, which satisfied the definition of a caravan, would not amount to a building operation. In *Measor v SSETR* [1999] JPL 182 the Deputy Judge said that he would be wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a mobile home under S13 (1) of the 1968 Caravan Sites Act (as amended) could never be a building for the purpose of the 1990 Act but it would not generally satisfy the well established definition, having regard to factors of permanence and attachment. "Mobility" does not require the mobile home to be mobile in the sense of being moved on its own wheels. It is sufficient that the unit can be picked up intact and put on a lorry by crane or hoist. In the case of twin-unit mobile homes the whole unit must be transportable in this way.

8. In my view the closest parallel case referred to in the representations is Appeal Ref: APP/J1915/X/11/2159970 (December 2011) in which an LDC was granted for the stationing of a mobile home for purposes incidental to the existing dwelling. In that case the "Homelodge" unit was smaller (8.45m long 3.85m wide by 2.2m/3.2m high) and the access to the site appears to have been more straightforward, but the cases are very similar.

## Conclusion

9. My conclusion is that the proposed development would not constitute operational development. It would involve a use of land, and as that use would fall within the same use as the remainder of the planning unit there would be no material change of use requiring planning permission.

10. All the other matters raised in the representations have been taken into account, but they do not outweigh those factors which have led me to my conclusion. 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 stationing of a mobile home in the rear garden for use as a granny annex 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 and issue a Lawful Development Certificate.

*David Harrison*

INSPECTOR

APP 5 iii

The Planning Inspectorate

# Lawful Development Certificate

APPEAL REFERENCE APP/K2230/X/13/2190398
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

Date: 18.06.2013

**IT IS HEREBY CERTIFIED** that on 17 December 2012 the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this Certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed use would be incidental to the residential use of the planning unit and would not constitute operational development for which a grant of planning permission would be required.

*David Harrison*

INSPECTOR

***First Schedule***

The stationing of a mobile home in the rear garden for use as a granny annex.

***Second Schedule***

Land at 7 Haynes Road, Northfleet, Gravesend, Kent DA11 7HL

**NOTES**

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the use 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.
4. 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.

APP 5 ii

The Planning Inspectorate

# Plan

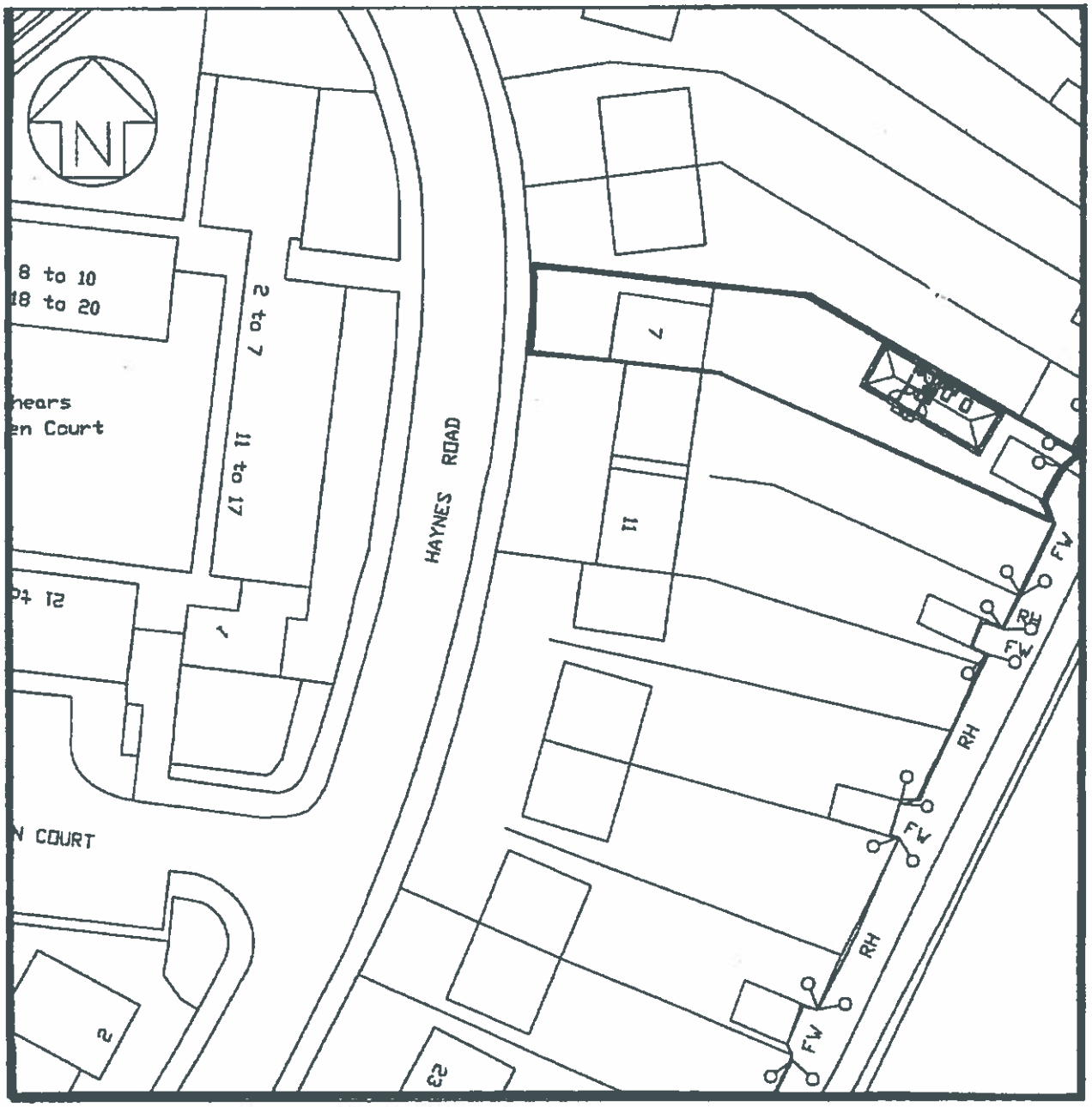
This is the plan referred to in the Lawful Development Certificate dated: 18 June 2013

by David Harrison BA DipTP MRTPI

**Land at Land at 7 Haynes Road, Northfleet, Gravesend, Kent DA11 7HL**

**Appeal ref: APP/K2230/X/13/2190398**

Not to scale



# Appeal Decision

Site visit made on 6 November 2009

**by Derek Thew** DipGS MRICS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

**Decision date:**
**12 November 2009**

**Appeal Ref: APP/P2365/X/09/2109940**
**Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT**

- 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 E & Messrs D, A and D Guest against the decision of West Lancashire District Council.
- The application ref 2009/0320/LDP, dated 24 March 2009, was refused by notice dated 9 July 2009.
- 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 proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as ancillary accommodation incidental and subordinate to the residential occupation of the dwelling house.

## Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use describing the proposed use which I consider to be lawful.

## Application for costs

2. An application for costs was made by Mrs D & Messrs E, A and D Guest against the decision of West Lancashire District Council. This application is the subject of a separate Decision.

## Reasons

3. When I made an unaccompanied visit to the site I noted, from the highway, there were two caravans on the land sited to the north west of the main dwelling. I do not know if they are the caravans the subject of this application. But, notwithstanding their presence, the application made on 24 March 2009 sought a certificate in respect of the proposed siting of two caravans on the land (rather than a certificate in respect of existing caravans) and I have determined the appeal upon that basis.

4. Planning permission is required for the carrying out of any development of land (section 57 of the 1990 Act) and, for the purposes of the Act, "development" means:

> *"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or land."* (section 55(1) of the Act).

5. The word "caravan" is not defined in the 1990 Act. That Act defines the term "caravan site" by reference to the Caravan Sites & Control of Development Act

1960; furthermore the Town & Country Planning (General Permitted Development) Order 1995 interprets the word "caravan" with reference to that same 1960 Act. Accordingly, it is reasonable to turn to the 1960 Act for a definition of the word "caravan" when considering matters relating to the control of development under the 1990 Act. Section 29(1) of the 1960 Act defines a "caravan" as:

> *" any structure, designed or adapted for human habitation, which is capable of being of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer....."*

As a caravan is capable of being moved from one place to another, then the placing of a caravan on land generally cannot be regarded as the carrying out of building, engineering, mining or other operations. In other words, the mere stationing of a caravan on land is not development. So it must follow that, for the siting of a caravan on land to amount to the carrying out of development (and thereby be subject to the provisions of section 57 of the 1990 Act) it has to result in the making of a material change in the use of the land (Guildford RDC v Fortescue [1959] 2 QB 112).

6. In considering whether or not there is a material change of use, it is appropriate to start by ascertaining what constitutes the primary use of the land and what is the planning unit to which that primary use is attached. In this case the caravans would be sited on land owned with Homefield and the primary use of that property is use as a dwelling. The supporting statement, submitted with the application, sets out that it is intended to site the caravans directly to the rear of the dwelling, within what is claimed to be the residential curtilage of the dwelling. The Council appears to accept that in such a position the caravans would be sited within the residential curtilage of Homefield. The caravans would, therefore, be sited within the same planning unit as the dwelling.

7. Homefield is lived-in by the 4 appellants – comprising mother, father and two adult sons – who all jointly own the property. The evidence for the appellants is that the caravans would be used by the two sons to provide their sleeping accommodation, "*and for social purposes and entertaining friends*". The supporting statement goes on to say that "*the sons will, as now, take all meals in the main house, use laundry facilities and generally inter-react with their parents in the normal manner associated with family occupancy.*" As such, I consider the proposal is to use the caravans solely as living accommodation additional to that which exists at Homefield. The stated intention is that the caravans will not be used as independent units of accommodation, but will remain very much part and parcel of the main dwelling. If the caravans were to be used as self-contained living accommodation then it is likely that would amount to a material change of use of the land. But, so long as the caravans are sited within the residential planning unit, and so long as use of the caravans remains ancillary to the main dwelling, I am satisfied their siting does not result in any material change of use of the land.

8. As a last point I would add that, as the caravans would be providing accommodation which adds to that in the main dwelling, it is inappropriate to describe their use as being "incidental and subordinate". I will therefore delete that wording from the description of the application.

9. For each of the above reasons I find that the proposed siting within the curtilage of Homefield of 2 static caravans for use as accommodation ancillary to that dwelling is not development. I draw support for this finding from the judgement in Restormel Borough Council v Secretary of State for the Environment [1982] JPL 785. The Council's refusal to grant a certificate of lawful use or development in respect of the proposed caravans was, therefore, not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*Derek Thew*
Inspector

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

# 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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

**IT IS HEREBY CERTIFIED** that on 24 March 2009 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 reason:

The proposed siting of two caravans to be used solely as additional living accommodation for the main dwelling on the land is not development for the purposes of the Act.

*Derek Thew*
Inspector

Date 12 November 2009
Reference: APP/P2365/X/09/2109940

***First Schedule***

The proposed siting of 2 static caravans, each of which will not exceed 10.67m x 3.66m in dimensions, for use as accommodation ancillary to the residential use of the dwelling.

***Second Schedule***

Land at Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

4. 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

# Plan

This is the plan referred to in my decision dated: 12 November 2009

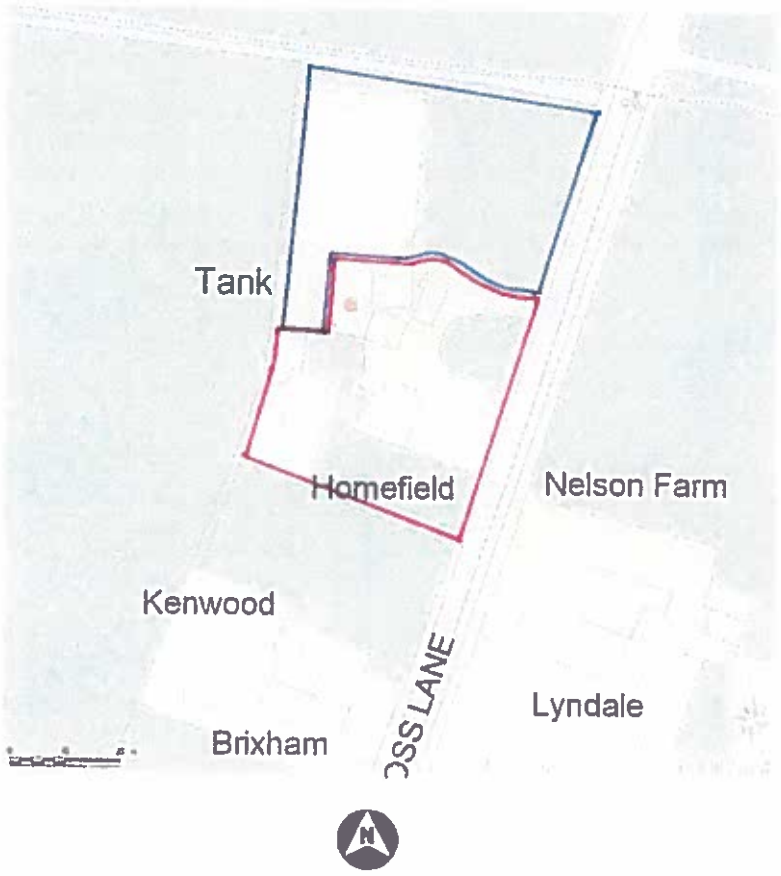
**by Derek Thew DipGS MRICS**

**Land at Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT**

**Ref: APP/P2365/X/09/2109940**

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk



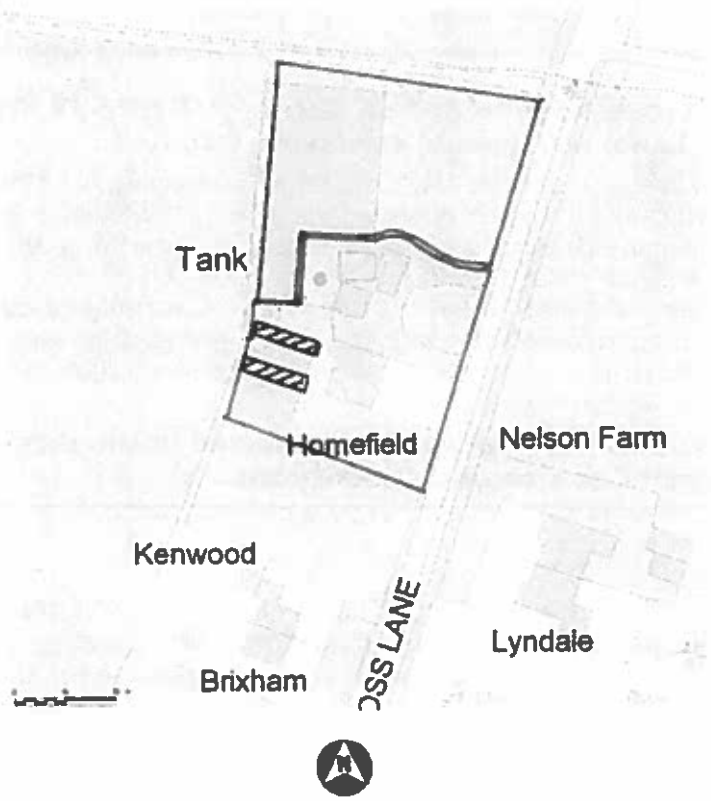
2009/0320/LDP

Streetwise

Enabled by OS Ordnance Survey

**AREA 2 HA**
**SCALE 1:1250**

**CENTRE COORDINATES: 345810, 414275**



# Costs Decision

Site visit made on 6 November 2009

**by Derek Thew** DipGS MRICS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

**Decision date:**
**12 November 2009**

**Costs application in relation to Appeal Ref: APP/P2365/X/09/2109940**
**Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT**

- The application is made under the Town and Country Planning Act 1990, sections 195, 196(8) and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mrs E & Messrs D, A and D Guest for a full award of costs against West Lancashire District Council.
- The appeal was against the refusal of the Council to issue a a certificate of lawful use or development for the proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as accommodation ancillary to the residential occupation of the dwelling house.

**Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.**

## Reasons

1. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

2. The Council's case is based principally upon the assertion that the siting of the caravans would not be lawful on the basis of the provisions of Class E in the Schedule to the Town & Country Planning (General Permitted Development) (Amendment)(No.2)(England) Order 2008. This unfortunately amounts to a very substantial misunderstanding of the nature of the proposal.

3. By considering the proposal primarily in the context set by the 2008 Order the Council failed to address whether or not the siting of 2 caravans amounted to development. It appears to have been assumed that development was involved. Then, as the caravans were to be sited within the curtilage of a dwellinghouse, the Council then seems to have simply looked at the proposal in the context of that Class in the 2008 Order thought to be the most relevant. This has resulted in the scheme being assessed in the context of Class E to the Order, which relates to the provision within the curtilage of a dwelling house of a building or enclosure. In other words this Class relates to operational development. In my decision on the appeal I make the following observations:

> *" As a caravan is capable of being moved from one place to another, then the placing of a caravan on land generally cannot be regarded as the carrying out of building, engineering, mining or other operations. In other words, the mere stationing of a caravan on land is not development. So it must follow that, for the siting of a caravan on*

*land to amount to the carrying out of development (and thereby be subject to the provisions of section 57 of the 1990 Act) it has to result in the making of a material change in the use of the land."*

There is nothing novel in these words; they do nothing more than set down the conventional planning approach to the siting of a caravan on land. I acknowledge there is evidence to show the Council did address the use to which the caravans might be put. But there is no substantial evidence to show that consideration was given to the question of whether the intended use of the caravans differed to any material extent from the current lawful use of the site.

4. Both the officer's report on the application and the Council's response to the application for costs display muddled thinking. The Council has failed to have regard to long-established planning principles and case law relating to the siting of caravans, and by so doing has acted unreasonably. Those unreasonable actions have caused the appellants to incur unnecessary expense, and so a full award of cost is justified.

**Formal Decision and Costs Order**

5. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that West Lancashire District Council shall pay to Mr David William Guest, Mrs Elaine Teresa Guest, Mr Allan Curtis and Mr David William Guest, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 195 of the Town and Country Planning Act 1990 as amended against the refusal of a certificate of lawful use or development for the proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as ancillary accommodation incidental and subordinate to the residential occupation of the dwelling house.

6. The applicants are now invited to submit to West Lancashire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

*Derek Thew*
Inspector

# Costs Decision

Site visit made on 6 November 2009

**by Derek Thew** DipGS MRICS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

**Decision date:**
**12 November 2009**

**Costs application in relation to Appeal Ref: APP/P2365/X/09/2109940**
**Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT**

- The application is made under the Town and Country Planning Act 1990, sections 195, 196(8) and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mrs E & Messrs D, A and D Guest for a full award of costs against West Lancashire District Council.
- The appeal was against the refusal of the Council to issue a a certificate of lawful use or development for the proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as accommodation ancillary to the residential occupation of the dwelling house.

**Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.**

## Reasons

1. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

2. The Council's case is based principally upon the assertion that the siting of the caravans would not be lawful on the basis of the provisions of Class E in the Schedule to the Town & Country Planning (General Permitted Development) (Amendment)(No.2)(England) Order 2008. This unfortunately amounts to a very substantial misunderstanding of the nature of the proposal.

3. By considering the proposal primarily in the context set by the 2008 Order the Council failed to address whether or not the siting of 2 caravans amounted to development. It appears to have been assumed that development was involved. Then, as the caravans were to be sited within the curtilage of a dwellinghouse, the Council then seems to have simply looked at the proposal in the context of that Class in the 2008 Order thought to be the most relevant. This has resulted in the scheme being assessed in the context of Class E to the Order, which relates to the provision within the curtilage of a dwelling house of a building or enclosure. In other words this Class relates to operational development. In my decision on the appeal I make the following observations:

> *" As a caravan is capable of being moved from one place to another, then the placing of a caravan on land generally cannot be regarded as the carrying out of building, engineering, mining or other operations. In other words, the mere stationing of a caravan on land is not development. So it must follow that, for the siting of a caravan on*

*land to amount to the carrying out of development (and thereby be subject to the provisions of section 57 of the 1990 Act) it has to result in the making of a material change in the use of the land."*

There is nothing novel in these words; they do nothing more than set down the conventional planning approach to the siting of a caravan on land. I acknowledge there is evidence to show the Council did address the use to which the caravans might be put. But there is no substantial evidence to show that consideration was given to the question of whether the intended use of the caravans differed to any material extent from the current lawful use of the site.

4. Both the officer's report on the application and the Council's response to the application for costs display muddled thinking. The Council has failed to have regard to long-established planning principles and case law relating to the siting of caravans, and by so doing has acted unreasonably. Those unreasonable actions have caused the appellants to incur unnecessary expense, and so a full award of cost is justified.

**Formal Decision and Costs Order**

5. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that West Lancashire District Council shall pay to Mr David William Guest, Mrs Elaine Teresa Guest, Mr Allan Curtis and Mr David William Guest, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 195 of the Town and Country Planning Act 1990 as amended against the refusal of a certificate of lawful use or development for the proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as ancillary accommodation incidental and subordinate to the residential occupation of the dwelling house.

6. The applicants are now invited to submit to West Lancashire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

*Derek Thew*
Inspector

# Appeal Decision

Site visit made on 8 April 2013

**by Sara Morgan LLB (Hons) MA Solicitor**

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

**Decision date: 15 April 2013**

**Appeal Ref: APP/K3605/X/12/2181651**
**Sandy Holt, 9 Blackhills, Esher KT10 9JP**

- 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 Mr A Lakhani against the decision of Elmbridge Borough Council.
- The application Ref 2012/1887, dated 23 May 2012, was refused by notice dated 2 August 2012.
- 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 provision of a mobile home within the curtilage of a dwelling house to provide ancillary staff accommodation.

## 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.

## Main Issue

2. The main issue is whether the provision of a mobile home within the curtilage of the dwelling house for ancillary staff accommodation as described in the application would amount to development requiring planning permission.

## Reasons

3. The description of the development set out in the heading above is taken from the appeal form. There is no clear description of the proposed use in the application. In its refusal notice the Council described the proposal as "Whether planning permission is required for the proposed use of a caravan ancillary to the main house". I consider that the description set out in the appeal form, which is the appellant's own description of what is proposed, should form the basis of my consideration of the appeal.

4. The mobile home would be sited within the curtilage of Sandy Holt, a detached dwelling in extensive grounds. No separate fenced garden area is proposed, and no separate access, so the access to the mobile home would be via the security controlled gates into the site off Blackhills, the estate road. The submitted drawing shows the mobile home containing two bedrooms, toilets and showers, and a living and eating area including hob, sink, fridge freezer and kitchen surfaces. The mobile home would not have its own separate electricity and water supply; these would be provided from the main house with no separate billing, and there would be no separate postal address.

5. According to the information provided with the application, the mobile home would provide staff accommodation for persons employed on the site as a chauffeur/handyman and or housekeeper with duties which require the staff to be available at various times of the day and evening. The occupiers of the mobile home would have to vacate it if the employment link to the main house ceased.

6. Staff duties would include chauffeuring, maintaining the family vehicles, maintaining the property itself, overseeing other staff, looking after the pool, providing day-to-day domestic support including cleaning and laundry and assistance in the kitchen. There would be no regular pattern of hours and days of employment; it would depend on the requirements of the family. The occupiers of the mobile home would continue with their duties in the house when the family were away and would provide an on-site presence for security purposes.

7. The appellant has referred to the decision of the High Court in *Whitehead v Secretary of State of the Environment and Mole Valley District Council*[1]. In that case, there was a proposal to use a building within the curtilage of that dwelling to provide living accommodation for a housekeeper. The Deputy Judge commented that -

> "it seemed impossible to hold that the use of the building thus converted would be otherwise than for a purpose incidental to the enjoyment of the main dwelling as a unit of living accommodation or, alternatively,... would form an integral part of the main use of the planning unit as a single dwelling house. It mattered not, whether this building, as converted, happened to include its own kitchen or bathroom. Nevertheless, the whole purpose of it was to provide somewhere to live for the housekeeper, who would doubtless be looking after the house at all relevant times, and walking to and fro the short distance to the house to cook meals in it and so on."

He concluded that planning permission would not be required for such a use.

8. The Council has argued that the mobile home would have all the facilities required for independent living, and that its occupiers would live a completely independent life from the occupiers of the principal dwelling. Consequently it is argued that the use of the mobile home would be for the enjoyment of its occupiers and not for the enjoyment of the occupiers of the dwelling. Nonetheless it is clear from the decision in *Whitehead* that it is possible for the provision of live-in staff accommodation not to amount to a material change of use.

9. In this case, the mobile home would be located a short distance from the main house, adjacent to the drive which would lead directly to the basement garage. It would also have easy access to the utility rooms of the house, either via the garage or through a side door. The dwelling house at Sandy Holt is large, and the mobile home would by comparison be small and provide only basic facilities for independent living. The description of the duties of the occupiers of the mobile home make it clear that there would be an essential link between the occupation of the mobile home and the use of the main house and gardens as a dwelling, and consequently a clear and integral functional link between the mobile home and the main dwelling.

[1] [1992] JPL 561

10. The whole of the appeal site would remain under one ownership and control, and as indicated there would be no functional separation of the main dwelling house use from the mobile home use. The siting of the mobile home would not, therefore, lead to the creation of a new planning unit. In addition, the proposal itself is for *ancillary staff accommodation*. There is nothing inconsistent between the use of *ancillary* here and the detail of what is actually proposed in the supporting information. Given the clear functional link between the mobile home and the dwelling, and the ancillary and subordinate nature of the accommodation to be provided, the siting of a mobile home for the purposes described would not amount to a material change of use.

11. The Council has referred to the case of *Rambridge v Secretary of State for the Environment*[2], but that case concerned the extent of rights under Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended to erect a building within a residential curtilage for a purpose incidental to the enjoyment of the dwelling house as such. The issues in that case were somewhat different from those arising here and it does not lead me to a different conclusion on the main issue.

12. The Council has also referred to a Secretary of State decision reported at [1987] JPL 144, referred to in the *Whitehead* judgment, concerning the meaning of *incidental*. In that case, the Secretary of State's view was that the use of an existing building in a residential garden as a bedroom was not *incidental* to the use of the dwelling, but an integral part of the main use of the planning unit. It is not inconsistent with my conclusions here.

13. Taking these factors into account, I conclude as a matter of fact and degree that the provision of a mobile home as proposed would not amount to development requiring planning permission.

14. 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 provision of a mobile home within the curtilage of the dwelling house to provide ancillary staff accommodation 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.

*Sara Morgan*

INSPECTOR

[2] (1997) 74 P. & C. R. 126

The Planning Inspectorate

# 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 2010: ARTICLE 35

**IT IS HEREBY CERTIFIED** that on 23 May 2012 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 reason:

The use as described in the statement accompanying the application would not constitute development requiring planning permission

Signed

*Sara Morgan*
INSPECTOR

Date: 15 April 2013
Reference: APP/K3605/X/12/2181651

***First Schedule***

The provision of a mobile home within the curtilage of the dwelling house to provide ancillary staff accommodation, in accordance with the information provided in the report by Bell Cornwell dated May 2012 accompanying the application.

***Second Schedule***

Land at Sandy Holt, 9 Blackhills, Esher KT10 9JP

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.

The Planning Inspectorate

# Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 April 2013

**by Sara Morgan LLB (Hons) MA Solicitor**

**Land at: Sandy Holt, 9 Blackhills, Esher KT10 9JP**

**Reference: APP/K3605/X/12/2181651**

Scale: DO NOT SCALE

**Location plan**
1 : 1250

The Planning Inspectorate

# Appeal Decision

Site visit made on 13 October 2016

**by Susan Wraith DipURP MRTPI**

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

**Decision date: 16 December 2016**

**Appeal ref: APP/Q1255/X/16/3142534**
**542 Blandford Road, Poole BH16 5EG**

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
- The appeal is made by Mr Nicholas Gray against the decision of Borough of Poole Council.
- The application no: APP/15/01398/K dated 2 October 2015 was refused by notice dated 1 December 2015.
- The application was made under s192(1)(a) of the Act.
- The development for which an LDC is sought is: To site a mobile home at the rear of the property and use it as a Granny annexe.

## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use comprising the siting of a mobile home at the rear of the property and its use as a Granny annexe which is considered to be lawful.

## Preliminary matters

2. The description of the proposed development given on the decision notice is "to locate a mobile home in place of existing garage and summerhouse". On the appeal form the proposal is described as "to site a mobile home at the rear of the property and use it as a Granny annexe". I shall adopt the appellant's description for the purposes of the appeal as I consider this to more fully reflect the matter applied for.

3. Explanation is given in the Planning Statement and other supporting information that, in a number of respects, the mobile home would be functionally linked to the main dwelling. The proposal does not involve use as a Granny annex independently from the main dwellinghouse.

4. The relevant date for the purposes of this determination of lawfulness is the date of the LDC application i.e. 2 October 2015. The matter to be decided upon is whether the activity proposed, if instigated or begun at that date, would have been lawful. For ease of reading, however, I shall write in the present tense.

5. In an LDC appeal the burden of proof to demonstrate lawfulness is upon the appellant. The planning merits of the matter applied for (including those concerning the extent to which the development affects outlook from

neighbouring properties and the accommodation needs of the applicant) do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law and judicial authority.

**Main issue**

6. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

**Reasons**

*Whether the caravan is a building*

7. The parties agree that the mobile home would be sited on land comprised within the curtilage of the main dwellinghouse. It is also agreed that the mobile home (which is designed for human habitation), would fall within the statutory definition of caravan[1] when taking into account its size, mobility and method of construction.

8. The appellant argues that, because the mobile home falls within the statutory definition, it follows that the proposal is for a use of land rather than for an operational development. The Council, on the other hand, considers that there is a further test to be applied. In the Council's opinion it is also necessary to consider whether the mobile home is a building as defined by s336(1) of the Act[2].

9. The stationing of a caravan usually constitutes a "use" of land. The legislation which defines "caravan" is primarily concerned with habitable accommodation that is mobile and, thus, in most cases a use. However, as a matter of law, the possibility of a caravan also being a building cannot be ruled out[3]. I therefore agree with the Council that this is a further matter to consider.

10. The term "building" is to be interpreted widely. Case law[4] has held that there are three primary factors that determine what is a building, those being "size", "permanence" and "physical attachment". It may be appropriate to give greater weight to one over another in reaching a conclusion. No one factor is decisive.

11. In terms of permanence, the mobile home is required by the appellant and his wife (who currently occupy the main dwelling together with their daughter and her family) for a duration of time sufficient for them to provide childcare to their grandchildren so that their daughter can return to work and train as a nurse and also so that they themselves can receive help from the family into their retirement years. The mobile home would have a considerable degree of permanence.

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[1] The term "caravan" is defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended).
[2] S336(1) of the Act defines "building" as including "any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building".
[3] In *Measor v SSETR* [1999] JPL 182, J.1007 the Deputy Judge said that he would be wary of holding, as a matter of law, that a structure which satisfies the definition under the 1968 Caravan Sites Act could never be a building for the purposes of the 1990 Planning Act but it would not generally satisfy the well established definition of a building having regard to factors of permanence and attachment.
[4] Cases which have examined the matter of what constitutes a "building" include *R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin) and *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2000] JPL 1025.

12. However, on the evidence, it appears that the mobile home would still remain mobile. It would be positioned upon the land (on a slab or pad stones for example) and be designed with the appropriate structural integrity to allow it to be lifted and placed on an HGV trailer and transported off the site[5]. This simple placement of the mobile home which could, at some point in the future, be removed in the manner described would not amount to a physical attachment to the land.

13. There would be attachments to services (such as water, drainage and electricity). However, detachment from such services is usually a simple matter which can be quickly achieved and, in any event, connection to services is not the same thing as physical attachment to the land.

14. The size of the mobile home is substantial. However, it falls well within the size limitations for a caravan as set out in the statutory definition. The statutory definition provides a strong indication that mobile homes of such size can be uses of land rather than buildings. Size is not a consideration which weighs heavily in my overall assessment of whether or not the mobile home is a building.

15. When considering all these three factors together, and taking into account the statutory definition of "caravan" which usually relates to uses rather than buildings, I conclude on balance that the siting of the mobile home for the use described would not amount to operational development as a matter of fact and degree.

*Consideration of the use of the land*

16. Turning now to the matter of use in more detail, the stationing of a caravan on land does not necessarily amount to a material change of use of the land[6]. It is necessary to consider how the caravan is to be used to determine whether a material change in use, and thus development, would be involved[7].

17. From the evidence and from what I saw at my site visit I am satisfied that the garden curtilage of the dwellinghouse defines the relevant planning unit for the purposes of assessing the materiality of any change of use. This is a physically distinct area with a clear functional purpose associated with the dwellinghouse. The primary use of the planning unit is that of a single dwellinghouse.

18. For the following reasons I consider that the siting of the mobile home within the planning unit, and its use as described in the application and appeal submissions, would not amount to a material change of use:

    (i) The mobile home would be positioned within the dwelling curtilage, sharing the access, parking, servicing and garden areas of the main dwellinghouse. It would have no separate curtilage.

    (ii) The overall planning unit would continue in occupation by the same family members as presently occupy the main dwelling.

[5] The mobility methodology for the mobile home is set out in the Mobile Home Report at Appendix B to the Planning Statement.
[6] Wealden DC v SSE & Day [1988] JPL 268
[7] The meaning of "development" is set out in s55(1) of the Act. It comprises two limbs – the carrying out of operations or the making of any material change in the use of the land.

(iii) The appellant and his wife, who would occupy the mobile home, would continue to play a part in family life including by providing childcare for their grandchildren within the main dwelling.

(iv) They would continue to use facilities in the main dwelling, including by taking their main meals with the family in the main kitchen/diner and undertaking laundry.

(v) The spare bedroom in the mobile home would be available for use by the family as a guest room.

(vi) There would be no separate postal address or separately metered services.

19. Whilst the mobile home would contain all the facilities for independent living it would not be used in a manner independent from the main dwelling. The use of the mobile home as described in the application would be a use comprised part and parcel within the primary dwellinghouse use which is already taking place within the planning unit, as a matter of fact and degree.

20. It has been argued that the use of the mobile home is a use "incidental" to the enjoyment of the dwellinghouse as such. However, "incidental" uses within the curtilage of a dwellinghouse are generally those which arise as an incidence of the dwellinghouse but which are not, in themselves, part and parcel of the existing dwellinghouse use[8]. The nature of use in this case, which would involve primary living space (for example sleeping and lounge areas) together with the functional linkages between the mobile home and the main dwelling, and the size of the mobile home, lead me to conclude that the use would be part of the primary use and not incidental to it. However, because there is no change to a different use, such use can take place without the need for planning permission.

21. I have considered whether the mobile home would result in a material change of use by reason of intensification, in particular when having regard to its size. However, when taking into account the suburban location, that the mobile home will replace an existing summerhouse and garage and that there will be no change in the level of occupation within the planning unit overall, I do not find that the mobile home will change the character of the primary use of the land to any material extent.

*Other matters*

22. The evidence indicates that the mobile home would sit upon pad foundations, a concrete slab or breezeblock pillars positioned on the slab[9] and that services (albeit taken from the main property) would be installed. This raises the question of whether these works would, in themselves, amount to development and, if so, whether or not they would be permitted

[8] Incidental uses are those which arise from the enjoyment of a dwellinghouse by an occupier, for example uses associated with a hobby, which are of a scale and nature which can reasonably be described as "incidental". The interpretation given at Class E to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) states that "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

[9] Paragraph 2.14 of the Planning Statement says that the mobile home would rest on a concrete slab. The Mobile Home Report, at page 3 "Ground Works" says that, instead of sitting directly on the groundwork slab, the mobile home would sit on pillars of breezeblocks. The appellant has said in correspondence dated 21 November 2016 that it is intended to install individual pads.

development. However, these works do not expressly form part of the matter which is before me and, insofar as the placing of the mobile home is concerned, the appellant says there is no dependency upon foundations as the mobile home can rest on blocks or pads placed on the ground. I am satisfied that any of the above preparatory works (if they amount to development) would be separate operational developments to be carried out prior to the placing of the mobile home. It is not within the scope of this LDC appeal for me to decide upon these matters which can be left for the appellant and the Council in the first instance.

23. I have been referred to a number of appeal decisions. Whilst taking these into account I have determined this appeal based on the facts and circumstances of this particular case.

24. Although the "Woolley Chickens" case explores points of law around the interpretation of "building" (and to that extent it is relevant) it is distinguishable from the appeal case as it concerns a different type of development (poultry units). There was no need, in that case, to consider the statutory definition of "caravan" whereas, in this current appeal, the statutory definition has bearing upon the conclusion as to whether or not the matter applied for is a "building". This case law therefore carries only limited weight in my decision.

**Conclusion**

25. I find that, had the mobile home been sited and its use instigated at the time of the LDC application, there would not have been a breach of planning control and the matter applied for would have been lawful as a matter of fact and degree. For all the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC for the siting of a mobile home at the rear of the property and its use as a Granny annexe (not used independently from the main house) was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under s195(2) of the Act.

*Susan Wraith*

INSPECTOR

The Planning Inspectorate

# Lawful Development Certificate

APPEAL REFERENCE APP/Q1255/X/16/3142534
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

**IT IS HEREBY CERTIFIED** that on 2 October 2015 the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended) for the following reason:

> The proposed siting of the mobile home at the rear of the property and its use as a Granny annexe (not used independently from the main house) would have been part and parcel of the primary use of the land as a single dwellinghouse and would not have given rise to a material change of use of the planning unit.

*Susan Wraith*

INSPECTOR

Date: **16 December 2016**

***First Schedule***

Siting of a mobile home at the rear of the property and its use as a Granny annexe (not used independently from the main house).

***Second Schedule***

542 Blandford Road, Poole BH16 5EG

IMPORTANT NOTES - SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.
4. 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.

The Planning Inspectorate

# Plan

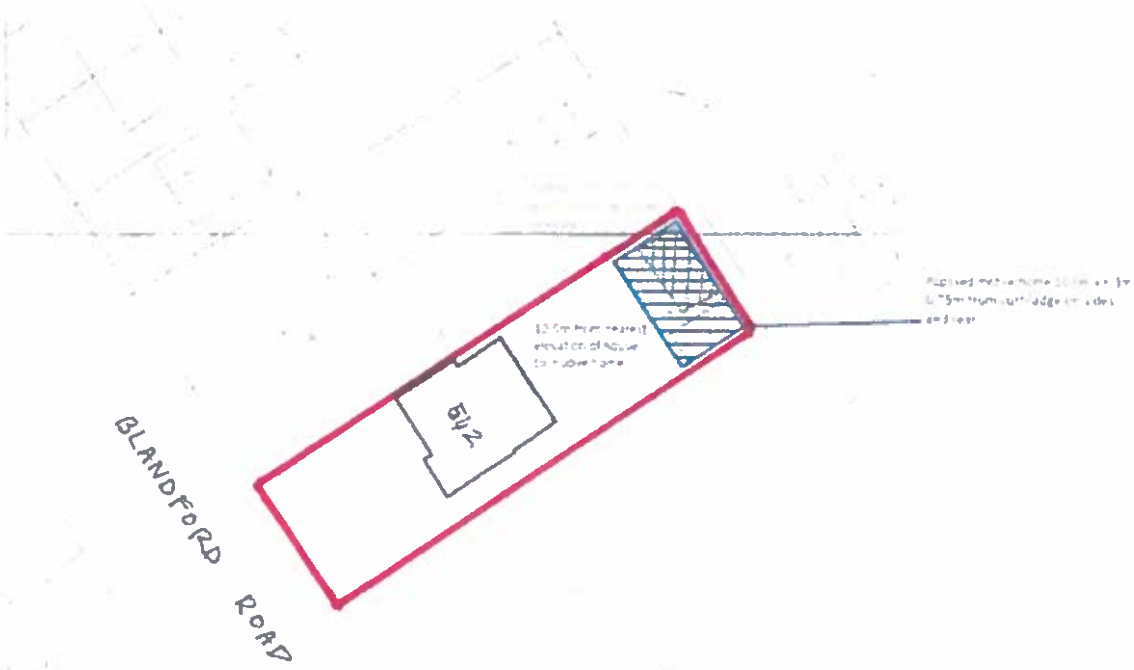
This is the plan referred to in the Lawful Development Certificate dated: **16 December 2016**

**by Susan Wraith DipURP MRTPI**

**542 Blandford Road, Poole, BH16 5EG**

**Appeal ref: APP/Q1255/X/16/3142534**

Scale: Not to scale



The Planning Inspectorate

# Appeal Decision

Site visit made on 30 January 2017

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 9 February 2017**

**Appeal Ref: APP/X1545/X/16/3151073**
**32 Wembley Avenue, Mayland, Chelmsford CM3 6AY**

- 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 Mr Chris Parker against the decision of Maldon District Council.
- The application Ref LPD/MAL/16/00236, dated 11 March 2016, was refused by notice dated 24 May 2016.
- 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 in the garden of a dwelling house for use as additional accommodation to the main house.

## Decision

1. The appeal is allowed and I attach to this decision a Certificate of Lawful Development (LDC) relating to the siting of a mobile home in the garden of the dwelling house at 32 Wembley Avenue, Mayland, Chelmsford CM3 6AY, for use as additional accommodation to the main house.

## Costs application

2. An application for an award of costs has been made by Mr Chris Parker against Maldon District Council. This is the subject of a separate decision.

## Background information and matters of clarification

3. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are, or are not, *'well-founded'*. The planning merits of the case do not fall to be considered. This LDC was applied for in order to establish whether the siting of a 'mobile home' (a twin unit) within the residential curtilage of the appeal property, to provide additional residential accommodation, would be lawful for planning purposes under section 192 (1) of the Town and Country Planning Act 1990.

4. The Local Planning Authority (LPA) refused the application on the basis that there was insufficient evidence submitted to prove that the proposal would meet the definition of *'caravan'* as defined by the Caravan Sites and Control of Development Act 1960 (CSCDA) and the Caravan Sites Act 1968 (CSA). In particular it is contended by the LPA that the information provided was not conclusive as to whether or not the structure has the structural integrity to withstand a lifting operation and thereby meet the 'portability' criterion of a caravan. In addition it was also contended that there was a lack of clarity about the relationship between the proposed occupiers of the 'twin-unit' and the main dwelling house and the permanency of the situation.

5. As indicated by the LPA, the National Planning Practice Guidance (PPG) indicates that an applicant for an LDC is responsible for providing sufficient information to support an application and, without sufficient or precise information, an LPA may be justified in refusing a certificate. However PPG also indicates that a refusal is not necessarily conclusive that something is not lawful in that, to date, insufficient evidence has been presented.

6. It is sometimes argued that only the evidence which was placed before the LPA at the time of application for a LDC should be considered. However, section 195 refers only to the refusal being *'well-founded'* or *'not well-founded'.* This relates to the decision itself and not to the reasons for it. In the case of *'Cottrell v SSE and Tonbridge and Malling BC [1982] JPL 443',* it was held that the Secretary of State (SOS) cannot be compelled to issue a certificate where he is of the opinion that one should not be granted. However, conversely it was also held that, for a LPA to argue that the only evidence to be considered was that placed before them as part of the application, denies the purpose of the LDC procedure.

7. The LDC procedure is aimed at the decision-maker arriving at an objective decision (on the balance of probabilities) based upon the best facts and evidence available. It is also the case that if subsequent information became available it would always be open to an applicant to re-apply. It would, therefore, serve no purpose to refuse a LDC on the basis only of the evidence submitted with the application. In this case, in reaching my decision, I have taken into account all of the application and appeal submissions from the LPA and the Appellant. This must include the additional information submitted shortly before the LPA made its decision as, in my view, this formed part of the application for the LDC.

**The issues**

8. The issues relate firstly, to whether or not the unit of accommodation meets all of the requirements of a 'twin-unit' as set out in the relevant legislation and, secondly, whether it has also been shown on the balance of probabilities that its occupation would be an ancillary residential use of the main house at No 32 Wembley Avenue.

**The gist of the LPA's case**

9. In the officer report (5.4) it appears to be accepted that the unit is a *'twin unit mobile home'* as defined by the CSA. This appears to be the case. Section 13 of the CSA states that twin-units are composed of not more than two sections, constructed or designed to be assembled on site by means of bolts, clamps or other devices , and should not exceed 60 feet in length, 20 feet in width and 10 feet in height overall. These figures were amended by the CSA 1968 and the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of a Caravan) (Amendment) (England) Order 2006 (AEO 2006) as follows: Length 20 metres; width 6.8 metres and internal height 3.05 metres.

10. There is no dispute that the 'twin-unit' structure falls within the maximum dimensions as set out above and comprises 'two sections', which would be constructed or designed to be assembled on site by means of bolts, clamps and other devices. However, the report then goes on to indicate (as set out in the Reason for Refusal), that that there was insufficient evidence provided to demonstrate that the unit had the structural integrity to be moved as one entity. The LPA refers in its statement to 'Permanence and Ancillary Use'. It is indicated that there has been no appraisal of the flexibility of the structure with regard to its structural integrity were it to be removed.

11. The LPA indicates that, although the submitted information included a statement from the installers indicating that the unit was capable of being moved 'as one', there

was no detailed structural report regarding the materials used, the type of framework or the loading that the structure would be subjected to if moved. It is further argued that any structure which falls outside of the portability (and/or the dimensional criteria) of the CSA and the AEO 2006, or has a sufficient degree of permanence through physical attachment to the ground or mains services, will constitute operational development and be judged as such under section 55 of the 1990 Act.

12. It is pointed out by the LPA that the structure is to be situated on a parcel of land within the residential curtilage of the existing dwelling and, in the authority's view, it is not clear that the unit would rely on the main house to function. Reference is made to the fact that the unit possesses all of the necessary elements (bedroom, sitting room, bathroom and kitchen) to provide a self-contained unit and as such this would require planning permission. Finally the LPA refers to the burden of proof being on the appellant to show that the use of the unit does not require planning permission.

**The gist of the Appellant's case**

13. In support of the application it is indicated that a 'Certificate of Conformity' from the supplier was submitted with the application, indicating that the unit could be moved as one. It is considered that this provided sufficient evidence to the LPA regarding the status of the unit. In addition case-law and other decisions which supported the Appellant's case had been submitted with the application. Prior to the LPA's decision being issued on 24 May 2016, information submitted (by e-mail of 19 May 2016) on behalf of the Appellant had included a signed statement from the Appellant's daughter (the proposed occupier); the signed Certificate of Conformity; a technical manufacturers notes relating to the method of lifting the unit and a structural analysis of lifting and trailering.

14. A letter dated 19 May 2016 to the LPA referred to and requested that this additional information be taken into account and that it be placed before the Planning Committee. An additional Appeal and Costs decision was submitted. The letter also included a reference to the case officer initially being mindful to recommend the issue of the LDC. This letter also indicated that that there was no physical attachment of the unit to the ground and that connection to services does not make it a permanent development.

15. It is stressed on behalf of the Appellant that the LPA's objections to the issuing of an LDC were only raised towards the very end of the statutory period, following a prior verbal indication that the recommendation would be in favour of the application. When the LPA's reasons for refusal became known (but prior to the decision being issued) the additional information referred to above was submitted. However, notwithstanding the provisions of S39 (9) of the Town and Country Planning (Development Management Procedure) (England) Order, the information was not accepted by the LPA. It is further indicated that The Planning Inspectorate's guidance on LDC Appeals, whereby LPA's are advised to have 'constructive discussions' with applicants before deciding an application, was not followed.

**Assessment**

16. Having considered all of the submissions and the full planning history/chronology relating to this LDC appeal, I consider that the Council's decision to refuse to issue a LDC was not *'well-founded'*. Whilst acknowledging that most of the information was only supplied to the LPA some two months after the application was made, it was submitted prior to a decision being made and with a specific request that all of the information be placed before the Planning Committee. If a LPA is in doubt about any information submitted it can request further information. In this case it chose not to

and initially indicated (by telephone) that, in any case,it was satisfied that a LDC could be issued.

17. On the basis of all of the evidence now before me, it is my view that, on the balance of probabilities, the siting of the 'twin-unit' for residential use as an ancillary use to that of the main house was lawful at the time of the application.

18. The LPA accepts that the dimensional requirements of a 'caravan' are met and only questioned the 'portability' or structural integrity of the unit, by not accepting that it could be moved 'as one'. The LPA did not provide any counter evidence either to disprove the original 'Certificate of Conformity' or the additional information submitted prior to the decision being made. The sequence of events, and particularly the fact that the case officer initially (albeit only verbally) indicated that the application would be recommended for approval, suggests that the initial information was considered to be acceptable.

19. With regard to the proposed occupants of the unit, the application made it quite clear that it was intended to be used as ancillary accommodation to the main house. The additional information confirmed that the proposed occupant would be the daughter of the Appellant. Unless the LPA had evidence to dispute this, the application should have been taken on its face. No attempt appears to have been made by the LPA to establish who was proposing to occupy the unit. After the application was submitted the Appellant's agent had contacted the LPA to establish whether the case officer was satisfied with the information. It was then established that the application was to go before the Planning Committee which was stated to be 'unusual' for LDC applications.

20. In my view, if the LPA had properly considered all of the information submitted, it would be inconceivable to think that they could withhold a LDC for what had been applied for; that is the siting of what was clearly a 'twin-unit' mobile home (or caravan) within the curtilage of the dwelling house for a use which was incidental to the residential use of the dwelling. It is also difficult to understand the apparent reversal in the case officer's recommendation. Even without the additional information it seems to me that, on the balance of probabilities, there should have been sufficient information before the LPA for it to issue a LDC. Again the apparent initial stance of the case officer reinforces my view in this respect. In conclusion, therefore and for the above reasons the appeal succeeds and I attach a LDC to this decision.

21. In reaching my decision I have taken into account all of the other matters raised by the Council. However, none of these carries sufficient weight to alter my conclusion that the siting of a mobile home in the garden of the dwelling house for use as additional accommodation to the main house was lawful at the time of the LDC application even though not all of the eventual information had been submitted on 11 March 2016.

*Anthony J Wharton*

Inspector

The Planning Inspectorate

# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

**IT IS HEREBY CERTIFIED** that on 11 March 2016 the development described in the First Schedule hereto in respect of the land/property specified in the Second Schedule hereto, was lawful within the meaning of section 191(1) of the Town and Country Planning Act 1990 (as amended), for the following reason:

*The proposal is incidental to the use of the dwelling house and does not constitute development under section 55 of The Town and Country Planning Act 1990 as amended.*

Signed

*Anthony J Wharton*
Inspector

Date: **9 February 2017**
Appeal Reference: APP/X1545/X/16/3151073

***First Schedule***

The siting of a mobile home in the garden of the dwelling house for use as additional accommodation to the main house.

***Second Schedule***

32 Wembley Avenue, Mayland, Chelmsford CM3 6AY

**Notes:**

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates to the siting of the mobile home only within the curtilage of the dwelling.

It certifies that the proposal described in the First Schedule on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of development described in the First Schedule and to the land/property specified in the Second Schedule. Any 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 Planning Inspectorate

# Costs Decision

Site visit made on 30 January 2016

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 9 February 2017**

**Costs Application in relation to Appeal Ref: APP/X1545/X/16/3151073**
**32 Wembley Avenue, Mayland, Chelmsford CM3 6AY**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Chris Parker against Maldon District Council.
- The appeal was against refusal of a Lawful Development Certificate relating to the siting of a mobile home in the garden of the dwelling house for use as additional accommodation to the main house.

## Decision

1. The application for a full award of costs is allowed. See formal decision and Costs Order below.

## Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. In support of the application for costs it is contended that the LPA had been provided with sufficient clear and unambiguous information at the time of the application. Initially the LPA had indicated that a LDC could be issued. It is then indicated that their objections had only been raised at the very end of the statutory period. It is stressed that if the LPA had considered that further information was required it should have had regard to section 39(9) of the 1990 Act. It is also contended that it failed to follow the Planning Inspectorate guidance with regard to LDC appeals by not having constructive discussions with the applicant prior to making a decision as to whether a LDC was justified.

4. In any case it is further contended that the LPA failed to take into account the further information submitted was unreasonable, particularly bearing in mind that it was the case officer's initial view that the LDC should be issued. The Council's reliance on such reasons relating to the weight and permanence of the unit is considered to fly in the face of established planning principles and the refusal on that basis was unreasonable. It is argued that the LPA failed to apply the test of 'on the balance of probabilities' thereby putting the Appellant to the unnecessary expense of an appeal.

5. In response the Council disputes that it has acted unreasonably and refers to PPG and, that parties generally meet their own expenses. The Council indicates that it did not consider that the submitted information was sufficient

to determine whether or not planning permission was required for the proposed unit of accommodation. In particular it is stressed that there was no indication that the unit had the structural integrity to be moved and, therefore, that it did not meet the 'portability' criterion of being a 'caravan'. It is contended therefore that, at the time of determining the application insufficient evidence had been submitted on which a decision could be made.

6. The Council indicates that it sympathises with the costs, staff time and travel expenses caused by the submission of the appeal but stresses that it has a duty to ensure that the proposal accorded with the legislation under section 192 of the 1990 Act. In this case it was considered that due to lack of information on the movability of the structure and how it would relate to the main dwelling it considered that it was unable to meet the requirements of the legislation. In referring to a previous appeal it is contended that the Appellant failed to quote a fundamental part of the decision which referred to the distance, in that case, of the caravan from the main house.

7. Having considered the full submissions of this costs application and taking into account my findings in the appeal against the refusal of the LDC, I consider that in general a Council is entitled to reach a decision on the basis of the application submissions. It could be argued that the additional information should have been submitted at that time. However, it is also evident that up until the very last minute, what had been indicated to be a recommendation of approval was then reversed. It was this reversal which then led to the need for further submissions to reinforce the then applicant's case.

8. In the overall circumstances of this case, therefore, I consider that the Council behaved unreasonably. That unreasonable behaviour related to the manner in which they dealt with the initial application and refused to take into account the later information. This latter submission was in response to the Council's then intended reasons for a recommendation against the issue of a LDC and, taking into account the chronology of the application, I find it difficult to understand why the Council did not take the further submissions into account. It may well be that this was due to pressures of time relating to statutory periods but the fact is that the information was submitted before the decision was made and with a specific request that it be placed before the Planning Committee.

9. If this had been the case then, based on the evidence, there would have been little doubt or reason as to why a LDC could not, or should not, have been granted. Whilst understanding the pressures that LPAs are under in having to reach decisions within the relevant periods, I find their actions, in this particular case, in not taking the later information into account to be unreasonable. It was this later action (non-action) that led to a refusal and the appeal being made by the Appellant and the start of the appeal process.

10. I conclude, therefore that the Council's unreasonable behaviour, in firstly seeming to indicate a a LDC would be issued and then, secondly, in not considering all of the information submitted was directly responsible for the appeal process. The Council's unreasonable actions clearly led to the need for the appeal and this resulted in unnecessary expense for the Appellant. The application for costs, therefore, succeeds and I set out the formal decision and costs order below.

**Formal Decision and Costs Order**

11. I allow the application for costs in full and, in exercise of the powers in section 250(5) of the Local Government Act 1972 and Schedule 6 to The Town and Country Planning Act 1990 and all other powers enabling me in this behalf, I order the Maldon District Council to pay to Mr Chris Parker the full costs of the appeal proceedings relating to this appeal.

    The costs are to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned the appeal described above.

    Mr Chris Parker is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. The enclosed guidance note describes how to apply for a detailed assessment by the Supreme Court Costs Office if the parties cannot agree the amounts.

*Anthony J Wharton*

Inspector