
Site Address: 43 St Catherines Road, Hayling Island, PO11 0HF
Proposal: Application for proposed certificate of lawfulness relating to siting of a caravan.
Application Type: Certificate of Lawfulness
Application No: APP/23/00338 Expiry Date: 07/06/2023
Applicant: Mr Mark Ripley
Agent: Case Officer: Lesley Wells
Ward: Hayling West

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

43 St Catherines Road is a detached property, siting within a large plot, on the south side of the road. The vehicular access to the site is from St Catherines Road in the north east corner

The proposal seeks to site a caravan in the garden to the rear of the site.

2 Planning History

05/68675/000 - Demolition of existing dwelling. Construction of 2No. 4/5 bedroom detached houses with separate double garages., WD,02/12/2005

06/68675/001 - Ground floor front extension and first floor side extension., REF,04/07/2006

APP/18/01279 - Reduce top and all sides to 7No. Holm Oak trees by 1-1.5m, subject to TPO 1388 within G1.

, PERM,30/01/2019

APP/19/01060 - Group of Holm Oaks - cut back to old level (kept as a hedge), within G1; 1No.Turkey Oak - reduce by 1-2m south sector, 2-3m north sector, 2.5m east sector and 1-2m west sector to reshape, reduce height by 2.5m to leave approx 9m standing height and crown width of approx 7.5m; 1No. Pine remove 3 x lower limbs on east side of main stem at approx 5-6m and deadwood remainder of tree. Remove any dead, crossing or epicormic branches from all above trees as necessary. All trees subject to TPO 1388.

, PERM,05/12/2019

APP/23/00055 - Reduce top and sides back to old pruning points on 7No. Holm Oaks within Group G1, subject to TPO 1388. Remove lower limb situated at 0.5m from ground level on southern sector of 1No. Holm Oak (T4) subject to TPO 1388., PERM,29/03/2023

APP/23/00409 - 1 x Turkey Oak - Remove Tree is infected with Phytophthora with large bleeds visible on main stem. Replant 3 x suitable trees just to the side of infected tree. Subject to TPO1388, DEL,

3 Proposal

Application for proposed certificate of lawfulness relating to siting of a caravan.

3 Proposal

- 3.1 This application for a Certificate of Lawfulness relates to the siting of a twin unit mobile home measuring 13.71m long x 3.35m wide (each) with a maximum internal floor to ceiling height of 2.88m), to be used as additional accommodation to the main house, sited on a concrete base of 13.71m x 7.7m, the size of the unit. The depth of the concrete will be 0.15m (likely over some hardcore of a similar depth).
- 3.2 This is a Section 192 application for a Lawful Development Certificate to establish whether the proposed siting of a twin unit mobile home in the rear garden is lawful. It is claimed that the proposed mobile home, whilst having all the attributes of a dwellinghouse, constitutes a mobile caravan unit under The Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968. The submission includes supporting documents from the log cabin manufacturer (ie a Certificate of Legal Conformity) together with information detailing the intended future occupiers. Further information advises that the caravan will be used by family members to care for aging parents.
- 3.3 The application documents confirm that the mobile home would be twin unit and have an internal maximum height of 2.88m. The layout would include two bedrooms, 2 en-suites, hall, cloakroom a kitchen and lounge. Following clarification, it is stated that *"The unit is expected to be used by family members (as it provides additional bedrooms) as an integral part of the overall use of the property as a single dwelling."* The additional accommodation is to be used in conjunction with looking after aged parents in the main house."
- 3.4 The applicant also advises that:
- "It would share services, facilities and access with the house; The mobile home would not be used as a separate dwelling;"*
- 3.5 The applicant goes on to advise that:
- "a) the use would be an integral part of the main use of the planning unit as a single dwelling house in single family occupation and, therefore, would not involve a material change of use."*
- b) the use would be a use of land within the curtilage of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as such."*

4 Legislation

- 4.1 Relevant legislation and guidance:
Town and Country Planning Act 1990
The Caravan Sites and Control of Development Act 1960
The Caravan Sites Act 1968.
Planning Practice Guidance, 2021

5 Policy Considerations

None - Not relevant to Certificate of Lawful Use applications

6 Statutory and Non Statutory Consultations

None relevant

7 Community Involvement

None - not relevant to S192 Certificate of Lawful Use or Development applications

8 Legal Considerations

- 8.1 The application is a Section 192 application for a Lawful Development Certificate which seeks to determine whether the proposed siting of a twin mobile home unit to provide additional residential living accommodation as part and parcel of the existing use as a single dwellinghouse is lawful.

- 8.2 Planning Policy Guidance in relation to Lawful Development Certificates advises that the applicant is responsible for providing sufficient information to support an application and the PPG states:

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

It goes on to state:

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

- 8.3 The determination of this application therefore turns on the facts of the case and interpretation of the relevant planning law legislation and case law. The Certificate is sought under Section 192 of the Town and Country Planning Act 1990 and the relevant tests are whether the proposed twin unit mobile home would constitute operational development and whether there is a material change to the use of the site. The Applicant submits that the proposed mobile home constitutes a 'caravan' within the meaning of the Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968 and it is therefore not development subject to planning control.

Operational Development

- 8.4 Section 55 (1) of the Town and Country Planning Act 1990 provides the definition of what constitutes development, and this includes the carrying out of 'building' or other operations. Whether a 'caravan' can be considered a 'building' is key to whether the proposal involves operational development.

- 8.5 The legal definition of a caravan is established by Section 29(1) of the Caravan Sites and Control of Development Act 1960 which defines caravans as:

“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—

(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or

(b) any tent;”

- 8.6 The Caravan Sites Act 1968 expanded the definition of a caravan to include twin-unit caravans. Section 13 (1) of the Caravan Sites Act 1968, provides that:

“A structure designed or adapted for human habitation which:

(a) Is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps and other devices; and

(b) Is, when assembled, physically capable of being moved by road from one place to another (whether being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or have been) a caravan within the means of Part 1 of the Caravan Sites Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled”.

- 8.7 The definition of a caravan as amended in the 1968 Act states that such a structure does not fall within the definition of 'caravan' if:
- (a) the length exceed 20 metres
 - (b) the width exceeds 6.8 metres
 - (c) the overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) exceeds 3.05 metres

- 8.8 Therefore to fall within the definition of a caravan, the proposal must meet 3 tests: i) construction ii) mobility and iii) size.

Construction test

- 8.9 In Byrne v Secretary of State for the Environment (1997) 74 P. & C.R. 420 it was held that 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 to be deemed a caravan, that there should be two sections separately constructed which are then designed to be assembled on a site by means of bolts, clamps or other devices. If the process of construction was not by the creation of two separately constructed sections then joined together, the terms of the paragraph are not satisfied.”

- 8.10 This was followed by the Planning Inspector in the appeal APP/N1025/C/01/1074589 which concluded *“that whilst the Park Home was delivered by lorry in many pieces there was no requirement in s.13(1)(a) of the 1968 Act 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 the joining the 2 sections together should be the final act of assembly”.*
- 8.11 The submission documents advise that this particular mobile home would be a twin unit which would be connected on site, which satisfies the construction test of Section 13 (1) (a) of the Caravan Sites Act 1968.

Mobility Test

- 8.14 To satisfy the mobility test the courts have held that the structure must be one that is *“capable of being moved as a single unit”* this applies to the *“whole single structure and not to the component parts of it”*. (Carter and Another v Secretary of State for the

Environment and Another 1994 1 W.L.R 1212). The details submitted advised the twin unit could be moved by a suitable vehicle using the tow bar that is attached to the unit.

- 8.15 Consideration has also been given to the judgement in Brightlingsea Haven Limited, Hammerton Leisure Limited v Jacqueline Morris, Stephen Foster, Richard Clark [2008] EWHC 1928 (QB) which provides that the mobility test does not **require** the structure to be moved from where it is sited to another place rather *“it must either be physically capable of being towed on a road, or of being carried on a road, not momentarily but enough to say that it is taken from one place to another. It is irrelevant to the test where the structure actually is, and whether it may have difficulty in reaching a road.”* As such the mobility test is satisfied.
- 8.16 It is also noted that the proposed twin unit mobile home would be connected to utility services linked to the main house. Case law has indicated that detachment from such services is a simple and quick matter and is not a physical attachment to the land. In the case of Measor v SSETR & Tunbridge Wells Borough Council [1999] JPL 182 the Court held that generally a mobile home would not satisfy the definition of a building, due to its lack of permanence and attachment to the ground. This proposed mobile home would similarly not be permanently fixed to the ground and as such the proposal would meet the mobility test.
- 8.17 Further to this consideration has been given to the judgement in R. (on the application of Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin); (“Woolley Chickens Case”) which concerned whether the local planning authority had correctly concluded that the prefabricated mobile poultry units on the land was not “development”. The court concluded that the assembly and siting of the mobile poultry units were operational development for the purposes of section 55 of the Town and Country Planning Act 1990. This was considered by the Planning Inspectorate in the appeal decision APP/Q1255/X/16/3142534, who held that this case is distinguished from the consideration of a certificate of lawfulness for the siting of a caravan as the Woolley Chickens Case had no need to consider the statutory definition of a caravan which has a greater weight for determination.
- 8.18 In this case the applicant has advised that the two halves of the unit will be connected together on site. Then the unit could be moved by a suitable vehicle using the tow-bar that is attached to the chassis. This satisfies the mobility test of Section 13 (1) (b) of the Caravan Sites Act 1968.

Size test

- 8.19 In terms of size the proposed twin unit mobile home would measure 13.71m long x 3.35m wide (each) with a maximum internal floor to ceiling height of 2.88m. The Caravan Sites Act 1968 provides maximum dimensions for caravans of 20m length, 6.8m wide and overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m. Therefore the proposed mobile home would be within the maximum allowable size, and the proposed dimensions do meet the size test in the definition.
- 8.20 As the proposed mobile home has satisfied the above three tests it is concluded that the proposed structure is a caravan as defined by section 29 of the Caravan Sites and Control of Development Act 1960 and section 13 of the Caravan Sites Act 1968 and is not a building. As such, the siting of the proposed mobile home unit would not be operational development.

Material Change of Use

- 8.21 The meaning of “development” under Section 55 (1) of the Town and Country Planning Act 1990 not only includes operational development but also includes “*any material change in the use of any buildings or other land.*” As such the Council must also establish whether a material change of use will occur through the proposed siting of the caravan on the site.

- 8.22 As to the proposed use of the twin unit the applicant has advised that :

"The unit is expected to be used by family members (as it provides additional bedrooms) as an integral part of the overall use of the property as a single dwelling. It will share services (electricity, internet, etc.), facilities and access with the house (via existing doors to house lounge, house hallway/toilet, house kitchen, house front-door, and house storage/drying room/garage). In particular, shared meals for family members will benefit from being prepared in the larger kitchen of the house, and storage and drying areas sited in the house are absolutely essential. No new entrances will be created and all occupants will share the whole site.

My aging parents are expected to benefit from the care and support which family members provide. This includes taking shared meals together in the house, which affords important support, social interaction and cohesion.

I can confirm that I have no plans to move my parents into the unit, as we prefer they remain comfortable in the house for as long as we can care for them. As previously communicated, we have recently installed a chair-lift in the house for my Father to be able to continue to access the upstairs bedroom of the house.

I can confirm that I have no plans to accommodate non-family carers in the unit."

"...I wish to highlight the above social / caring / support elements enabled by the siting of the unit in close proximity to the house using the existing entrances."

- 8.23 On the basis of the information provided, it is considered that the occupation of the mobile home by family members of the main house, would constitute an ancillary use with a clear and integral functional link and dependency upon the residential dwellinghouse. The use would not be independent, and hence there would not be any subdivision of the site into two planning units. It is considered, on the balance of probability, that the site would remain a single family dwelling and as such no material change of use would have occurred.

Other Operational Development

- 8.24 The covering letter states "The mobile home would be placed on the land and would not be fixed to the ground;" Following further information it was confirmed that the twin unit would be positioned on a concrete base. The base would be 13.71m x 7.70m, with a depth of 0.15m. Under Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) a hard surface incidental to the enjoyment of a dwellinghouse can be considered permitted development. A hardsurfaced concrete base is proposed to site the twin unit on, which is considered to be permitted development.

CIL

- 8.25 The development is a mobile home. Mobile homes are not normally buildings as defined by law therefore no CIL will be charged on them unless the proposal is considered to be a building. In this case the proposal is considered a caravan.

9 Conclusion

- 9.1 It is considered that the use of the proposed twin unit mobile home would be an integral part of the main use of the planning unit as a single residential dwellinghouse and would not result in a material change of use. The twin unit proposal is also considered to meet the 3 tests in terms of the definition of a caravan ie construction, mobility and size and can therefore be considered to comply with Section 13 (1) of the Caravan Sites Act 1968 and Section 29(1) of the Caravan Sites and Control of Development Act 1960. As such the Certificate of Proposed Lawfulness can be issued in this instance.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/22/00424

Information for decision notice

Havant Borough Council, as Local Planning Authority, certifies that on 3 May 2023 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and edged in red on the submitted Location Plan would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

- 1) The proposed twin unit mobile home falls within the definition of a caravan as set out in Section 13 (1) of the Caravan Sites Act 1968 and Section 29(1) of the Caravan Sites and Control of Development Act 1960.
- 2) The siting of the twin unit mobile home would not result in a material change of use as the proposed use of the mobile home would form an integral part of the existing use of the land as a single dwellinghouse and would not result in a material change of use of the planning unit.

FIRST SCHEDULE:

This certificate relates to the following development:

The siting of a twin unit mobile home within the curtilage for use as additional living accommodation as part and parcel of the existing use of the land as a single dwellinghouse, as shown on submitted drawing numbers:

- 1:1250 Location Plan received 3.5.23
- Proposed Block Plan received 3.5.23
- Proposed Elevations & Floor Plan received 3.5.23
- Letter dated 11/4/23
- Certificate of Legal Conformity

Emails dated 20/6/23 & 5/7/23
Caravan Brochure
Photograph of twin unit

SECOND SCHEDULE

This certificate relates to land at 43 St Catherines Road, Hayling Island, PO11 0HF as shown edged red on the submitted Location Plan (scale 1:1250) received 03 May 2023.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described 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 matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.