
Site Address: 21 Eastoke Avenue, Hayling Island, PO11 9QW
Proposal: Application for Proposed Lawful Development Certificate in relation to positioning of mobile home.
Application Type: Certificate of Lawfulness
Application No: APP/23/00639 Expiry Date: 18/09/2023
Applicant: Mrs Lander
Agent: Mr Clayden-Smith Case Officer: Tina Pickup
 Mobile Annexe
Ward: Hayling East

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

1 Site Description

The application site relates to a detached bungalow located on the north-east side of Eastoke Avenue. The site has a long rear garden extending down to the sea at Fishery Creek, and has a landing slipway. There are already several outbuildings within the rear garden, all assumed to be ancillary, though none entered or checked during the site visit. At the time of the site visit (29/09/23) the mobile home the subject of this application was already sited on the land. It has been positioned as indicated on the plans, on a concrete base and power has been provided via the main bungalow.

2 Planning History

02/61526/001 - Retrospective application for concrete slipway from rear garden to Fishery Creek., PERM,13/08/2002
97/61526/000 - Erection of landing stage to rear of property, REF,11/03/1997

3 Proposal

Application for Proposed Lawful Development Certificate in relation to positioning of mobile home.

- 3.1 This application for a Certificate of Lawfulness relates to the proposed siting of a mobile home measuring 8.63m long (plus bay and drawbar making maximum length 9.25m) x 3.05m wide x 3.0m high (externally), to be used as additional accommodation to the main house, sited on a concrete pad.
- 3.2 This is a Section 192 application for a Lawful Development Certificate to establish whether the proposed siting of the mobile home in the rear garden is lawful. It is claimed that the proposed mobile home constitutes a mobile caravan unit under The Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968. The submission includes a Supporting Statement detailing case law appertaining to relevant caravan cases; an Evidence statement; a covering letter from the applicant detailing the grounds for making the application; as well as plans and elevations.

- 3.3 The application documents and plans show the layout would include two bedrooms, 1 shower-room, a kitchen area and lounge. It is stated that the mobile home would be used as an annexe for the son and daughter-in-law of the applicant, to provide assistance with her health issues. It is stated that they would sleep and wash in the caravan but all meals would be prepared and taken in the main house. The caravans occupants would vitally depend on all cooking, laundry and storage in the main dwelling. The caravan will depend on the use of the utilities of the main house, electricity, gas and water with no new entrance, address or postbox created.

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, 2014

5 Policy Considerations

None - Not relevant to Certificate of Lawful Use applications

6 Statutory and Non Statutory Consultations

None relevant

7 Community Involvement

Neighbour notification is not necessary to the determination of S192 Certificate of Lawful Use or Development applications, but in this instance discretionary neighbour notification was carried out.

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None received	

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 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 To be classified as a 'proposed' development, the operations as described must not occur until after the application is made. In this instance, the LPA received the Section 192 application on 23 July 2023, and it was valid from 24 July 2023. Evidence has since been provided in the form of the invoice for the delivery of the mobile home, that demonstrates the mobile home arrived on site on 20th August 2023. Since this was after the Section 192 application was made, then the application can proceed as a 'proposed' development.
- 8.3 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.

- 8.4 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 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

- 8.5 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.
- 8.6 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;”

- 8.7 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”.

- 8.8 Section 13 (2) of the Caravan Sites Act 1968 also states that a structure does not fall within the definition of 'caravan' if:
- (a) the length exceeds 20 metres (exclusive of any drawbar)
 - (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
- 8.9 Therefore to fall within the definition of a caravan, the proposal must meet 3 tests: i) construction ii) mobility and iii) size.

Construction test

- 8.10 In this instance the mobile home is composed of just one section, i.e. a 'single unit' and does not constitute a 'twin unit' as defined by the 1968 Act. Therefore there is no requirement to comply with the construction test of last act of assembly being the joining together of two halves.
- 8.11 It is known that the particular mobile home now on site was constructed off site (it is understood to be a second-hand unit) and brought to site as a ready made single unit. The mobile home on site is designed for human habitation and, subject to the mobility and size tests considered below, is capable of being moved from one place to another with wheels and chassis intact. Therefore it is likely (subject to further assessment below) that it does constitute a caravan structure according to section 29(1) of the 1960 Act and does not therefore constitute a 'building' comprising operational development under Section 55(1) of the Town and Country Planning Act 1990.

Mobility Test

- 8.12 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). 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.”*

- 8.13 The mobile home on site is a single unit complete with wheels and chassis. It was recently brought to site as a second-hand unit, proving it is capable of being moved as a single unit. It was then crane lifted over the main house and into the garden, as shown on the invoice dated 20/8/2023. As such the mobility test is satisfied.
- 8.14 It is also noted that the 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 is similarly not be permanently fixed to the ground and as such the proposal would meet the mobility test of Section 13 (1) (b) of the Caravan Sites Act 1968.

Size test

- 8.15 In terms of size the plans provided indicate the mobile home measures 8.63m long (plus bay and drawbar making maximum length 9.25m) x 3.05m wide x 3.0m high (externally). The internal floor to ceiling height cannot be greater than the external height, so by default must be less than 3.05m. 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 mobile home would be within the maximum allowable size, and the proposed dimensions do meet the size test in the definition.
- 8.16 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

- 8.17 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.
- 8.18 The site is currently a single family dwelling. It is stated that the mobile home would be sited within the curtilage of the host dwelling and occupied by direct family members and not as a separate dwelling. The mobile home would be functionally connected to the main house with occupiers dependent on the main dwelling for laundry facilities and most meals. All utilities would be via the main house, with no separate entrance or post box. The garden would remain shared by all occupiers. It is also noted that the scale of the accommodation provided would be subordinate to the host dwelling being relatively modest in size and facilities provided.

- 8.19 On this basis, it is considered that the occupation of the mobile home by a family relative of the occupiers 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. Any future breach of this ancillary occupation would be a matter for enforcement to investigate.

Other Operational Development

- 8.20 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 concrete base has been laid for the siting of the mobile home which exceeds 5 sqm with direct water run-off to a permeable area of the garden. Since the site is flat, the concrete base is flush with the ground and does not constitute a raised platform over 0.3m. This operational development is therefore considered to be permitted development.

CIL

- 8.21 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 single unit mobile home would be an integral part of the main planning unit as a single residential dwellinghouse and would not result in a material change of use or subdivision of the site to form a new planning unit. The mobile home proposed 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.

10 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/23/00639

Havant Borough Council, as Local Planning Authority, certifies that on 23 July 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 is lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

- 1) The proposed single unit mobile home falls within the definition of a caravan as set out in Section 29(1) of the Caravan Sites and Control of Development Act 1960 and Section 13 (1) of the Caravan Sites Act 1968.

2) The siting of the single unit 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:

Application for Proposed Lawful Development Certificate in relation to positioning of mobile home, as described in the written particulars, plans and other documents submitted with your application received on 23 July 2023.

1:1250 Site Location Plan, Unique plan ref: #00835991-84EE02 dated 22nd July 2023
1:500 Block Plan, Unique plan ref: #00835992-4A8982 dated 22nd July 2023
Floor Plan Drawing: P003
Elevations Drawing A2001
Covering Letter by Mrs Clair Lander dated 22nd July 2023
Proposal and Evidence document
Supporting Statement
Invoice for Crane Hire from GSM dated 20/08/2023

SECOND SCHEDULE

This certificate relates to land at 21 Eastoke Avenue, Hayling Island, PO11 9QW, as shown edged red on the submitted Location Plan (scale 1:1250) received 23rd July 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.