

Site Address: 40 Jubilee Road, Waterloo, PO7 7RD

Proposal: Application for Lawful Development Certificate relating to the provision of a mobile home (not built development) for use as additional family accommodation by one household (not a material change of use).

Application Type: Certificate of Lawfulness

Application No: APP/22/01060

Expiry Date: 19/01/2023

Applicant: Mr & Mrs Palmer

Agent: Mrs Lord

Case Officer: Selina Donophy

Rebecca Lord Planning

Ward: Waterloo

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

1 Site Description

This application site is a two storey, semi-detached dwellinghouse located on the North East side of Jubilee Road, Waterloo. This property is of brick construction, with a tiled pitched roof and brick extension to the side, as well as a two storey rear extension. To the side is a hard standing driveway and the property is sited in a generous plot with a long rear garden.

2 Planning History

APP/19/01224 - Two storey rear extension and new front porch., PERM,20/02/2020

3 Proposal

Application for Lawful Development Certificate relating to the siting of a mobile home within the curtilage of a dwelling.

- 3.1 This application for a Certificate of Lawfulness relates to the siting of a mobile home measuring 9.75 m long x 4.3 m wide x 2.54 m high (internally floor to ceiling), sited on a timber chassis set on top of an existing hard surface and supported above the ground by metal jacks .
- 3.2 The application is made under Section 191 of the Town & Country Planning Act 1990 as amended and relates to the lawfulness of an existing use. The planning merits of the use, and policies, are not relevant to the determination of this application. 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. It is noted the submission does not include manufacturers details of the supplier as the applicant states they are no longer in business however the application includes photographs , as well as a letter from Elliotts , details of case law appertaining to relevant caravan cases, together with a Personal Statement detailing the intended future occupier.
- 3.3 The application documents confirm the dimensions . The layout includes 1 bedroom, a bathroom, a living space with cooking facilities . There is also an added on internal

dog kennel section. It is stated that the mobile home would be used as an annexe / separate living accommodation for the mother of the applicant, who requires some level of care and who has meals in the main house with family. There would be no separate address/post box, utility meter, services etc. The garden would be shared by all occupants.

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

Councillor Gwen Robinson

No comment received

Councillor Mike Sceal

No comment received

Councillor Peter Wade

No comment received

7 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

Comment	Officer Comment
This building is not a mobile home & has been constructed on a concrete foundation with timber studded walls, plasterboard & timber cladding on the externals with felt roof. I had observed this building through all of its construction at all stages & at no time	Please see the assessment of the tests below.

had this building been built on any subframe, including wheels.

They are trying to imply by taking off a section of cladding at the base perimeter & installing a jack, would imply its suspended off the base giving impression of a removable home & it isn't.

The plans show a rectangular building which it is not, as there is an extended part of the northeast corner projecting out making it bigger than indicated. Google earth clearly highlights this. I recommend the Planning Committee visit (as it sometimes does), this will clearly highlight the plan is incorrectly submitted. The photography on the north side, disguises the correct property dimensions and construction.

Previous objections in the past to your Planning Officer, then made a visit to inspect this building & I received an email dated 4/5/22 and the response was - 'I have informed the owner that due to the lack of presence of wheels/frame on the underside of the building I believe it is more an outbuilding than caravan. With the height over 2.5M I suggest that planning permission would be required for it to remain'.

In conclusion, this is not a mobile home which is also supported by the email from your Planning Officer at HBC planning department & it should not be used as a residential home or subsequent mobile home that may be put in place of it. So, the lawful development certificate should be objected/denied.

8 Legal Considerations

8.1 This 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 of

the site as a single dwellinghouse is lawful.

8.2 The PPG advises that the applicant is responsible for providing sufficient information to support an application and the PPG states:

8.3 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. 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.

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;”

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 As a proposed mobile home the consideration is simply whether it falls within section 29(1) of the Caravan Sites and Control of Development Act 1960. In this case it is considered the proposed mobile unit is clearly designed for human habitation, it would be assembled on site and could then be moved as one unit as confirmed by the letter

received from Elliotts. Accordingly the proposal is considered to conform to Section 29(1).

8.8 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

8.9 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 *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.”

8.11 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”.

8.12 The submission documents do not state that this would be joined in two parts however the applicant has confirmed this is not a twin unit mobile home.

Mobility Test

8.13 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 submitted details state that the mobile home is capable of being moved as one unit and it is supported by jacks .

8.14 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 even though the restricted access of the mobile

home would make it difficult to reach a road.

- 8.15 It is also noted that the proposed 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.
- 8.16 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.
- 8.17 In this case the supporting information confirms that the mobile home would be moveable via crane . A letter has been attached with the submitted documents from Elliotts which states that the mobile home would be capable for moving via crane with steel supports beneath - tis method of transportation is considered to satisfy the mobility test of Section 13 (1) (b) of the Caravan Sites Act 1968.

Size test

- 8.18 In terms of size the mobile home measures 9.75 m long x 4.3 m wide with maximum internal floor to ceiling height of 2.54 m. It also includes an added on internal dog kennel which measures 1.78 metres width and depth and 2.15 metres height . 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. In terms of the added on dog kennel , this meets the size requirements and therefore would be considered to form part of the main unit.
- 8.19 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

- 8.20 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.

- 8.21 The site is currently a single family dwelling. It is stated that the mobile home would be used as an annexe by a parent of the applicant. The parent would rely on the main household for some level of care and support with the occupier regularly taking meals in the main house and socialising with the main household. The utilities would not be separate, and post would be via the main house. The existing access and parking area to the front of 40 Jubilee Road would remain and be shared, and the existing large garden would also be shared.
- 8.22 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.

Other Operational Development

- 8.23 The planning agent's Statement indicates that the mobile home partially rests on a pre-existing concrete surface. At the time of the site visit the applicant confirmed that the concrete surface was already in place prior to the siting of the mobile home due to a previous structure being in place in this siting. The concrete surface is set at ground level. The metal jacks support the mobile home due to changes in land levels.

Under Class F of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) a hardsurface incidental to the enjoyment of a dwellinghouse can be considered permitted development. This is considered to fall within the parameters of permitted development for hard surfacing, and has been in place for some time and therefore would not require planning permission.

- 8.24 It is noted that there is an area of decking surrounding the caravan to the rear as well as steps leading up to the caravan. There is also a separate dog kennel outbuilding which has been confirmed to meet Class E outbuilding criteria as stipulated in the GPDO. The raised platforms have been noted in the Planning Statement submitted with this application and are deemed to be a separate planning matter as they do not form part of the mobile home unit - no measurements have been provided for these.

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 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 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/22/01060

(A) subject to the following conditions

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Lawful Development Certificate relating to the provision of a mobile home (not built development) for use as additional family accommodation by one household (not a material change of use). as described in the written particulars, plans and other documents submitted with your application received on 03 November 2022.

SECOND SCHEDULE:

This certificate relates to land at 40 Jubilee Road, Waterloooville, PO7 7RD as shown edged red on the submitted Location Plan received 03 November 2022.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 191 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) 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.