

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

3.2 The mobile home would be sited to the rear of the dwelling. The submitted application states that the mobile home would not be attached to the ground or hardstanding in any way. The submitted section shows the use of padstones set into the ground with metal bridging shoes supporting the base of the mobile home. The metal shoes would rest on the padstones and not be bolted or fixed to the padstones. A timber strip forming a 'skirt' for aesthetic purposes would also not be fixed to the ground. There would be service connections to the unit. To facilitate the siting of the mobile home it would appear that 2no. trees and other vegetation would need to be removed, however hedges and other trees could remain. The trees on site are not subject to Tree Preservation Orders and the site is not located within a Conservation Area. The trees can therefore be removed without consent from the Council. The trees are not of significant public amenity value being set well back from public vantage points.

- 3.3 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. The application provides details of manufacture, delivery, provision on site and use.
- 3.4 Details have been submitted for the mobile home. These show that the mobile home would be in two parts joined together. The dimensions of the unit would be 11.314m x 6.306m (plus eaves overhang) and with a height of 3.570m.
- 3.5 The application documents and plans confirm that the mobile home would have an internal layout with a kitchen/lounge, bedroom, cloak room/storage and shower room. It is stated that the unit would be used by the applicants elderly mother so that she can live with her son and daughter in law for practical support and companionship. The unit would share the existing dwellings utility services and would be jointly billed. Laundry would be provided in the main dwelling and the outside amenity space would be shared.

4 Policy Considerations

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

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5. Legislation

- 5.1 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

6 Statutory and Non Statutory Consultations

Councillor David Jenner

No comments received

Councillor E Shimbart - Hart Plain

No comments received

Councillor P Bains - Hart Plain Ward

No comments received

Portsmouth Water Company

Thank you for consulting Portsmouth Water on the above planning application, we have no adverse comments to make.

Community Infrastructure

Not CIL liable, see Developers Guide 2.10:

<https://www.havant.gov.uk/sites/defaultfiles/documents/Update%20Sep%202020%20V2.pdf>

No SRMS and no Nutrient Mitigation provided this is found to be lawful and not a material change of use of the site into two planning units.

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 agent has included a manufactures letter which provides the following information:

I confirm that the Homelodge Ltd have visited the above site. The proposed Homelodge at the above site would be a twin unit and is for use as ancillary annexe accommodation. Our Homelodge accommodation range are engineered and constructed so that they could be lifted as two bays and as a single volumetric unit for instance by lorry or low loader fitted with 'crane assist'. The options for installing the unit proposed at the above property are as follows:

Option 1- would be to assemble Bay 1 and Bay 2 units (sections) in our factory and deliver them to site as two separate bays (sections) by lorry or low loader. The two bays (sections) would be craned in to the rear garden with the final act of assembly being to bolt the two bays (sections) together. Please see the photographs of one of our units being loaded and unloaded in this way. Once assembled the unit can be lifted in one piece or as a single volumetric unit.

Option 2 - would be the preferred method which would be to deliver Bay 1 and Bay 2 to the site in sectional form by lorry and assemble each bay (section) on site independently of each other with the final action being to bolt the two bays (sections) together. This is in line with well-established case law and appeal cases such as the West Devon, Erewash and Poole appeal decisions attached.

Once the two bays (sections) are joined together the unit proposed can be lifted in one piece or unbolted and lifted in two separate sections. The unit proposed will be connected to the same electricity supply and foul drainage serving the dwelling using quick release fittings. The twin bay units are each structurally capable of being lifted as a single volumetric unit and this can be confirmed by an independent structural engineer.

- 8.12 The options above show that the preferred method is delivery in a sectional form with each bay assembled independently on site with the final action bolting the two bays together. The Caravan Sites Act 1968 defines, at Section 13, a twin unit caravan as 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 or other devices; and*
 - b) *is, 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).*

- 8.13 The proposed construction process for the mobile home therefore 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 submitted details show that the accommodation is engineered and constructed so that it can be lifted as two bays and a single volumetric unit for instance by lorry or low loader fitted with 'crane assist'.

- 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 even though the restricted access of the mobile home would make it difficult to reach a road.
- 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.

Size test

- 8.18 In terms of size the proposed twin unit mobile home would measure 11.314m long x 6.306m wide (6.7m including eaves overhang) with maximum internal floor to ceiling height of 3.022m. 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.
- 8.19 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 It is asserted that the intended use would be as set out below:

The mobile home would be incidental to the main dwelling and used for the same purpose as an integral residential annexe had there been one. The elderly mother would occupy the mobile home as her living accommodation and her son and his family would be close at hand to support her. The elderly mother would share the residential occupation and enjoyment of the principal dwelling and spend time with her family in the main house each day including for meals and socialising.

Other facilities would also be provided by the main dwelling including laundry. The elderly mother would also share the outside amenity space with her son and his family occupying the main dwelling and, if they so choose, they could socialise together there as well. There would be no subdivision of the curtilage and the mobile home would not be rented out or sold off separately.

8.22 The provision of residential accommodation cannot be considered incidental but rather ancillary to the main dwelling. The proposed use would also share parking and access would be either through the existing dwelling or to the side of the dwelling. The garden is substantial with services linked to the main house. Therefore, based on the information provided, the occupiers would be physically related and integrated with the main house.

8.23 Given how it is intended to use the caravan, it is considered, on the balance of probability, that there would be a clear and integral functional link and dependency upon the residential dwellinghouse. As such it is considered that there would not be a material change of use of the land, nor the creation of a separate planning unit.

Other Operational Development

8.24 The application submission also states that the proposed mobile home would be sited on padstone foundations. The submitted details state that *It is proposed to bring the mobile home to the site by lorry and to station it directly onto padstones with no fixing thereto*. The padstones are shown on the section drawing and are shown at ground level.

8.25 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. The hard surfacing proposed for the padstones is considered permitted development, and would not require planning permission.

CIL

8.26 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/20/00816

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.