
Site Address: 47 Hazleton Way, Waterloo, PO8 9BP
Proposal: Application for Certificate of Lawfulness relating to the siting of a twin unit mobile home to provide additional living accommodation to the existing dwelling.
Application No: APP/17/01350 Expiry Date: 16/02/2018
Applicant: Mrs Gerrey
Agent: Mrs Lord Case Officer: Tina Pickup
 Rebecca Lord Planning
Ward: Cowplain

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

1 Site Description

- 1.1 The application site relates to a hipped roof detached bungalow that is visually linked to its neighbour to the south via adjacent side garages. The bungalow fronts Hazleton Way with a block paved frontage drive for the parking of 2 or 3 cars. To the northern side there is a side gate giving pedestrian access to the rear garden.
- 1.2 The rear garden is between 36m and 41m long and enclosed on the northern and western sides with new 2m high close boarded fencing. The southern boundary is a lower picket style fence, resulting in a more open aspect to the neighbouring garden. The site is relatively level. At the time of the site visit (24/01/2018) the rear half of the garden was cleared and levelled, with the approximate positioning of the proposed mobile home pegged out. The land was wet and muddy.

2 Planning History

None

3 Proposal

- 3.1 Application for Certificate of Lawfulness relating to the siting of a twin unit mobile home to provide additional living accommodation to the existing dwelling.
- 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 of the site is lawful. It is claimed that the proposed twin unit mobile home, whilst having the appearance of a log cabin, 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 Planning Assessment of case law appertaining to relevant caravan cases.
- 3.3 A Certification of Compliance with the Legal Definition of a Caravan has been submitted by the suppliers of the log cabin/mobile home. This states that the proposed mobile home would measure 6.8m wide x 20m long (exclusive of drawbar) and would have an internal floor to ceiling height of 3.05m. It also states that the structure is designed for human habitation; and a) is composed of not more than two sections and designed to be assembled on 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 by being towed, or by being transported on a motor vehicle or trailer.

- 3.4 The proposed plans show the external dimensions to be 20m x 6.8m, plus eaves overhang, with height to ridge of 3.54m. The layout would include 3 bedrooms, one bathroom, one ensuite, utility, kitchen, dining room and lounge. The mobile home would sit on padstones.
- 3.5 The application confirms that the applicant is 80 years of age and in need of care and support from the family. The proposed mobile home would be occupied by the applicants daughter and her family - her husband and 22 year old daughter ie the applicants granddaughter. 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

None relevant

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: 8

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 13

14 letters of objection from 13 addresses, have been received. It must be noted that the comments received generally refer to issues of planning merit and not points of law. As a Certificate of Lawfulness application the merits of the proposal are not valid considerations in the determination of this application.

Comment	Officer Comment
Of the 14 letters received the comments can be summarised under the following issues:	
Detrimental to area	Not relevant to LDC
Sets a precedent; cumulative effect would change character of area	Not relevant to LDC

Should need full planning consent and not simply a LDC	Merits of the LDC are discussed below
Impact on neighbours wellbeing	Not relevant to LDC
Going to be used as separate dwelling; capable of being separate dwelling as has all primary functions - bedrooms, kitchen/utility & bathrooms; no need for occupiers to use facilities of main house; size of kitchen and dining area indicate main meals will be prepared and taken in mobile home not main bungalow; kitchen size indicates fully fitted kitchen with sink, cooker, hob, fridge, freezer, microwave etc will be provided	See Use considerations below
excessive size - 20m x 6.5m not incidental to main dwelling - larger in floorspace than main house; disproportionate	Size complies with relevant Caravan Acts and relative size not relevant to LDC
less than 2m from boundary and height over 2.5m; would be like having a 12' fence along the boundary	Siting not relevant to LDC and height complies with relevant Caravan Acts
shocked that law potentially allows properties up to 20m to be built	Noted
impacts privacy of neighbours - increased noise; opening doors face adjacent gardens - quiet area of our garden will be adjacent their lounge with TV/radio noise nuisance;	Not relevant to LDC
planned siting shows main entrance up against fence; realistically siting likely to be more central in garden further affecting views;	Precise siting not relevant to LDC
eyesore to neighbours; outlook to bungalow at end of garden will devalue properties; building obstructive; compensation for devaluation will be sought	Not relevant to LDC
not in keeping with stylistic context or scale of local area	Not relevant to LDC
loss of sunlight to bottom of garden	Not relevant to LDC
ground is heavy clay which does not drain well; will force surface water into adjacent gardens; water from roof/guttering - where will it be	Proposed to be erected on padstones which are de-minimis

collected? garden slopes from Hazleton Way into Cotwell Av and gardens flooded previously - proposal will compromise soakability of land and gardens will flood more frequently; substantial raised bed required, probably concrete causing more flooding;	Drainage matters not relevant to LDC
concerns re route of plumbing and sewage pipework adequate for number of residents;	Drainage matters not relevant to LDC
more vehicles need to be accommodated on drive; potentially hazardous parking on main access and bus route	Highways matters not relevant to LDC
increase in traffic to already busy road	Highways matters not relevant to LDC
difficulty in access for emergency services a concern; will fire risk be assessed? where will rubbish be stored?	Not relevant to LDC
Planning Regulations require that if an outbuilding >30sqm it must be >1m from boundary; and if for sleeping accommodation then permission required	These are Building Regulations requirements, not Planning
to describe as a "caravan" is stretching facts to fiction; if has plumbing, electric, gas etc surely a static home not a mobile home?	Noted - see considerations below
Block Plan inaccurate - available rear garden 33m x 11m but plan implies building will occupy approx half the length and width - but reality will occupy two thirds of length and width; misrepresentation of scale of development poor practice	Disagree - block plan accurate
small step to create a boundary to separate it from main residence in future and establish an independent dwelling for sale; kitchen only for snacks and drinks but in future if sold this would be forgotten	see LDC assessment below
proposal unreasonable and subject to professional investigation potentially unlawful	Noted - lawful assessment of application below
when no longer required for its proposed usage what will happen to it?	Not relevant to LDC

understood outbuildings should not cover more than half the garden area	That is a criteria if being considered permitted development - GDPO legislation not relevant in this case
could be used for business in future if change of use approved with further impacts from noise etc	Speculation not relevant and any future change of use likely to require planning permission and impacts assessed then
original covenants to this estate would not allow for such a dwelling to be allowed	Not relevant to LDC - separate matter for third parties to pursue
classifying as twin unit mobile home incorrect - not transportable without breaking up;	Certificate of Conformity confirms capable of being moved
will this additional dwelling be assessed for its own council tax?	Not relevant to LDC
<u>comments on submitted planning statement & case law:</u> size and weight of building suggests permanency; interpretation of close physical and functional association open to interpretation - is 60' close?; statements re limited kitchenette for hot drinks and snacks/meals taken in main house/socialise in living room/use of bathroom/washing machine of main house - all not true given size of proposed kitchen and dining room and facilities of log cabin home inc utility room;	See Use considerations below

8 **Planning 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 The PPG 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. 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 was further amended in 2006 and 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 ii) 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 Applicant has submitted a "Certification of Compliance with Legal Definition of a Caravan" signed by the supplier confirming that the proposed mobile home "is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices". In addition, the supporting Planning Statement at para 2.13 confirms that "the twin unit mobile home unit will be assembled in two parts on site with the joining of these as the final act of assembly".
- 8.12 The proposed construction process for the mobile home satisfies the construction test of Section 13 (1) (a) of the Caravan Sites Act 1968.

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 "Certification of Compliance with Legal Definition of a Caravan" confirms that the proposed mobile home 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)". This is reiterated by paragraph 2.13 of the supporting Planning Statement stating that the proposed mobile home would be capable of being moved as one unit with the usual method of transportation being to lift the mobile home unit onto a flatbed lorry using a crane for onward transportation by road.
- 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 proposed siting of the mobile would make it difficult to reach a road.
- 8.15 It is also noted that the proposed twin unit mobile home would sit on padstones with connection 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 Wooley Chickens Case had no need to consider the statutory definition of a caravan which has a greater weight for determination.

Size test

- 8.17 In terms of size the proposed twin unit mobile home would measure 6.8m wide x 20m long with maximum internal floor to ceiling height of 2.98m. It is noted that these dimensions relate to the footprint or 'wall to wall' dimensions of the mobile home and with the eaves overhang the maximum external dimensions would be 20.7m x 7.5m. The maximum dimensions allowed under the 2006 amendment to the Caravan Act is 20m x 6.8m with internal floor to ceiling being 3.05m.
- 8.18 However past Inspectors have noted that the correct interpretation of the size criterion should not include eaves, guttering and porches. The common-sense view was noted that anyone measuring a caravan would do so from surface to surface and not eave to eave. Therefore, whilst the proposed mobile home would be the maximum allowable, the proposed dimensions do meet the size test in the definition.
- 8.19 As the proposed mobile home has satisfied the above 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 established whether a material change of use will occur through the proposed siting of the caravan on the site.
- 8.21 The existing planning unit comprises a single C3 residential dwelling, which is currently occupied by the applicant alone. It is asserted that the proposed mobile home would provide additional accommodation as part of the primary residential use of the site. The applicant's daughter, her son in law and adult granddaughter would occupy the proposed mobile home to provide every day assistance to the elderly applicant.
- 8.22 It is noted that the proposed caravan is of substantial proportions, providing 3 bedrooms, with an ensuite facility to the main bedroom, a full sized family bathroom, together with a full kitchen, dining room, lounge, utility and storage. The proportions are such that it would effectively double the existing living accommodations provided within the existing planning unit.
- 8.23 Whilst the presence of facilities capable of independent occupation is not key in establishing a material change of use, regard must be given in these circumstances to the substantial nature of the available facilities, which are akin to a dwellinghouse. The occupants of the mobile unit would have no requirements to use any of the facilities of the main dwellinghouse. Although parking and the garden areas of the main dwellinghouse would be shared, access to the mobile home can be achieved separately to that of the dwellinghouse via a side access to the site. All of the occupants of the mobile home could live independently from the main dwelling with little functional link.
- 8.24 The proposed occupants of the mobile home would have a close blood tie to the applicant and would share meals and some housekeeping arrangements with the applicant. Such activity does not appear to be anything more than what would be expected between friends and family living close by in a separate dwelling. The

essential link that was demonstrated in the PINS appeal decision APP/K3605/2181651 where the siting of a mobile home for staff accommodation was allowed appears lacking in this application. Whilst care and assistance may be provided to the applicant this does not indicate a clear and integral functional link between the use by the occupants of the mobile home with the main dwellinghouse. As was held in the PINS appeal decision APP/N1025/C/1074589 blood tie and connectivity does not prevent a material change of use from taking place and such independent occupation was not considered part of the primary use of the main dwelling but a distinct use of a caravan for the purposes of human habitation.

- 8.25 Further to the above, the proposal would result in the introduction of a completely new household and family unit to the site in addition to the applicant's residence within the planning unit. This intensification of the use of the site would be tantamount to materially changing it from a single household site to a dual household site. The occupation of the caravan for independent use without sufficient functional links to the main dwelling would result in a material change of use. The planning unit would change from a single- family dwelling to a single C3 dwelling use with the addition of the mobile home for occupation by a separate household.
- 8.26 The intended position for the siting of the mobile home would be within the rear garden of the dwellinghouse. The proposal would significantly increase the current level of residential activity within the existing planning unit. In particular the nature of the activities would differ from the use of the garden for recreational purposes to include activities that would normally be contained within the dwellinghouse. This intensification of activity is considered sufficient to result in a material change to the character of the primary use of the land.
- 8.27 On balance it is considered that the proposed occupation of the mobile home unit would be sufficiently independent to amount to occupation by a separate household. This is not part of the primary use of the dwellinghouse but distinct as the use of a caravan for the purposes of human habitation. The siting of the proposed mobile home would be functionally separate but not physically separate due to the shared connection with services and parking arrangements. Because it is not physically separate it would not result in the creation of a new planning unit. However, the proposal would result in a material change of use of the existing single family planning unit to a dual use which would additionally include the use of a mobile home as a residential caravan.
- 8.28 The Council's Legal Department concurs with this view.

CIL

- 8.29 Since it is concluded at paragraph 8.14 above that the 'caravan' is a 'structure' and not a 'building' or built development, then it is exempt from CIL. The Planning Practice Guidance states that "structures which are not buildings, such as pylons and wind turbines" do not pay the levy. Therefore, in this instance CIL is not applicable.

9 Conclusion

- 9.1 The proposed twin unit mobile home is considered to meet the 3 tests in terms of the definition of a caravan i.e. 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 it is not a building and does not constitute operational development.
- 9.2 However, the use of the mobile home by the applicant's family who do not currently reside on the site would introduce a second household to the site. The occupation of the

mobile home is likely to be sufficiently independent with limited functional link to materially change the use of the site from a single family dwelling to a single dwelling with land for the siting of a mobile home for the purposes of human habitation.

9.3 As such the use of the site would not be lawful and the Certificate of Proposed Lawfulness cannot be issued in this instance.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/17/01350

Havant Borough Council, as Local Planning Authority, **REFUSES** to certify that on 22nd December 2017 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) It is considered that the siting of a twin unit mobile home in the rear garden of the site for use as additional living accommodation would result in a material change of use by reason of intensification. This conclusion has been reached, having regard to the size and facilities contained within the proposed mobile home allowing sufficiently independent occupation and the introduction of a second household to the planning unit. Further to this, there would be a lack of a clear and integral link between the use of the occupants of the mobile home with the main dwelling. Accordingly, it is considered that this proposal would result in a material change of use from a single C3 dwelling to a single C3 dwelling with the addition of land used for the siting of a mobile home for occupation for a separate household. As such the proposal is not considered lawful in accordance with section 192 of the Town and Country Planning Act 1990.

FIRST SCHEDULE:

This Decision relates to the following development:

The siting of a twin unit mobile home in the rear garden 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:

RL/157/1 Location Plan scale 1:1250 dated 15/12/2017
RL/157/2 Block Plan scale 1:500 dated 15/12/2017
Floor Plan & Elevations Drg No. 217102/02 dated Dec. 2017
Certification of Compliance with the Legal Definition of a Caravan by NorwegianLog dated 14 Dec 2017

SECOND SCHEDULE:

This Decision relates to land at 47 Hazleton Way, Waterlooville, PO8 9BP, as shown edged red on the submitted Location Plan (scale 1:1250) received 19th December 2017.

