Site Address:	220 Dunsbury Way, Havant, PO9 5BQ		
Proposal:	Application for Certificate of Lawfulness relating to siting of log cabin in rear garden.		
Application No:	APP/17/00740	Expiry Date:	10/10/2017
Applicant:	Ms M Owens		
Agent:		Case Officer:	Tina Pickup
Ward:	Battins		

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

1 Site Description

The application site relates to an end of terrace two storey dwelling located on the east side of Dunsbury Way, immediately south of Riders Stream. The site is at an elevated position relative the road and stream - to the northern boundary is a wooded embankment with a footpath running along the side of the stream. The dwelling is set back from the road with the frontage being a sloped block paved area for parking for 2/3 cars. The rear garden is long, some 35m, and enclosed with 1.8m high close boarded fencing. It is relatively flat and simply grassed. There are no trees within the site, but some large conifers against the southern boundary.

2 Planning History

None

3 Proposal

The application is submitted as a Section 192 application for a Lawful Development Certificate to establish whether the proposed siting of a log cabin in the rear garden is lawful. In this instance it is claimed that the proposed log cabin constitutes a mobile caravan unit under The Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968.

A Certificate of Legal Conformity has been submitted by the suppliers of the log cabin. The proposed log cabin would measure 6m wide x 10m long (plus roof overhang of additional 1m) and would have eaves height of 2.3m and ridge height of 3.32m. The layout would include a lounge, 2 bedrooms and kitchen.

Information from the applicant states that the cabin would be used by family members - children and grandchildren when visiting which appears to be most weekends and some mid-week stays. The cabin would have an electric supply and be fitted with a fridge, cooker and microwave for refreshments and snacks. It is stated that all main meals would be supplied at the main dwelling; and there will be no bathing or toilet facilities provided.

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: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None received	

8 Planning Considerations

8.1 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.

8.2 The determination of this application therefore turns on the facts of the case and interpretation of the relevant planning law. The Certificate is sought under Section 192 of the Town and Country Planning Act and the relevant tests are whether the proposed log cabin would constitute operational development and whether there is a material change in use of the site . It is argued in the submission that the proposed building constitutes a 'caravan' under The Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968.

Operational Development

8.3 Section 55 (1) of the TCPA 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.

8.4 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 expands the definition of a caravan. Section 13 (1) of the Caravan Sites Act 1968, deals with twin-unit caravans and Section 13 (1) 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".

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

8.5 The proposal must therefore meet 3 tests in terms of construction, mobility and size in order to fall within the definition of a caravan.

8.6 In terms of the construction test, in this instance the applicant has confirmed that the log cabin would arrive in parts and be constructed within the rear garden. It is understood that the assembly process would be relatively traditional and the final construction process would not be by piecing together two halves with bolts, clamps and other devices. This suggests that the caravan is to be delivered in many parts and constructed as more than two sections and therefore cannot be considered a twin-unit.

8.7 If the proposed log cabin is not a 'twin' unit and does not meet the tests of Section 13 (1) then it must be a 'single' unit. The Certificate of Legal Conformity clearly states within its title that the proposal is for a 'Single Unit'. But the 1960 Section 29 definition of a caravan is based on a caravan being capable of being moved as a complete structure and does not allow for any on site construction. Since in this case the proposed cabin is not arriving as a pre-built structure, but being constructed on site, then neither does it meet the Section 29 definition of a caravan as set out in the 1960 Act. Accordingly the proposed log cabin does not meet the construction test of a caravan.

8.8 It is noted that within the emails from the suppliers of the log cabin to the applicant, it is suggested that for an additional fee the cabin could be supplied and constructed as two sections. But this has at no time been made the formal submission and remains a

background suggestion only. As a LDC application, the onus is on the applicant to describe the proposal with sufficient clarity and precision and the facts of the case to be determined are set out in the Certificate of Legal Conformity and have at no time been amended. Therefore the determination of this application is based on this Certificate of Legal Conformity.

8.9 In terms of the mobility test, the proposed cabin would sit on a concrete base and is to be supplied with electricity taken from the main house. Whilst this electricity supply indicates a degree of permanency, case law has indicated that detachment from such services is a simple and quick matter and is not a physical attachment to the land. It is understood that the proposed cabin would not have wheels, but it is intended to have a chassis which would mean that once constructed, it would in theory be mobile - the inclusion of the chassis means that it could be capable of being moved as one unit by road. Therefore this capability means that it would meet the definition of mobility.

8.10 In terms of size the proposed log cabin would measure 6m wide x 10m long (plus roof overhang of additional 1m) with maximum internal floor to ceiling height of 2.994m. The mobile home would thus meet the size test in the definition, being smaller than the maximum permitted dimensions of 20 metres (l) x 6.8 metres (w) x 3.05 metres (h).

8.11 Furthermore, if the proposed structure is not a caravan, then consideration must be made as to whether it is a building that could be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Class E would be the relevant part, but the proposed height would exceed 2.5m within 2m of the boundary of the curtilage of the dwellinghouse. As such, neither is the proposed log cabin permitted development under Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Material change of use

8.12 The intended use of the proposed cabin must also be considered to ascertain whether there would be a material change of use of the site. The existing planning unit comprises a C3 residential dwelling. It is asserted that the intended use would be for family visits including children and grandchildren, and the frequency would appear to be most weekends and some mid-week stays. The cabin would have an electric supply and be fitted with a fridge, cooker and microwave for refreshments and snacks. It is stated that all main meals would be supplied at the main dwelling; and there will be no bathing or toilet facilities provided.

8.13 The lack of any toilet or bathing facilities would indicate a genuine reliance on the main house for everyday functions. The rear garden is enclosed on two sides by other residential gardens and the wooded embankment to the river on the other side. Realistically there would be no alternative access to the site other than via the main house. This would further suggest the use of the proposed mobile home would have a tight relationship and dependency on the main house which is considered would remain incidental to the main house. As such it is considered that there would not be a material change of use of the land, nor creation of a separate planning unit.

8.14 The Council's Legal Department concurs with this recommendation.

9 Conclusion

It is considered that the use of the proposed log cabin would be incidental to the main house and not result in a material change of use. The proposal is also considered to meet the mobility and size test in terms of the definition of a caravan. However, it is

considered that the construction test is not met in so far as the mobile home would be delivered to site in pieces and assembled as a single unit. Since the construction process is not as a twin unit with the final bolting together of two halves, then the proposed cabin is not considered to comply with Section 13 (1) of the Caravan Sites Act 1968. Furthermore the cabin would not arrive on site as a complete structure and hence is also not considered to met the mobile definition of Section 29(1) of the Caravan Sites and Control of Development Act 1960. As such the process of constructing this log cabin on site would amount to operational development that is not permitted development. The proposed cabin is also not permitted development under Class E of Part 1 of the Schedule of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) by virtue of its height exceeding 2.5m within 2m of the boundary of the curtilage of the dwellinghouse.

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9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** to grant a Lawful Development Certificate for application APP/17/00740

(A) for the following reasons

1 The proposed mobile home does not accord with the definition of a caravan as defined in Section 29(1) of the Caravan Sites and Control of Development Act 1960 as it would be delivered to the site in kit form and assembled as a single unit and would thus comprise of more than two sections. It has been indicated that the means of assembly would be built in the conventional sense as opposed to by means of bolts, clamps and other devices. Section 13 (1) of the Caravan Sites Act 1968 is therefore not satisfied and the proposal would thus amount to operational development requiring planning permission. The proposal would further not fall within Class E of Part 1 of the Schedule of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) by virtue of its height exceeding 2.5m within 2 metres of the boundary of the curtilage of the dwellinghouse.