
Site Address:	27 Lodge Road, Havant, PO9 3LL		
Proposal:	Application for Lawful Development Certificate relating to the siting of a caravan for ancillary residential use.		
Application No:	APP/15/00689	Expiry Date:	21/08/2015
Applicant:	Mr Wrath	Team:	Team 1
Agent:	Mr Hyde	Case Officer:	Richard Nash
	MH Planning Associates		
Ward:	Bedhampton		

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

1 Site Description

The application site comprises a two storey dwelling of traditional character and brick and tile finish, located within an irregularly shaped plot at the northern end of Lodge Road, a cul-de-sac accessed from the north side of Lower Road. The boundaries of the site are treated with a combination of fencing and mature planting, and a public footpath linking Lodge Road with Bedhampton Hill runs adjacent to the eastern boundary. The area is predominantly characterised by medium density residential land use.

2 Planning History

APP/14/01286: Planning application for a mobile home with decking area for use ancillary to dwelling house. Withdrawn following advice from the case officer that the mobile home was considered to be too large to be acceptably accommodated within the curtilage of the existing dwelling house. The general scale and form of the proposal was consistent with the proposed caravan/mobile home subject of the current application.

APP/15/00317: Application for Lawful Development Certificate for proposed stationing of a caravan with decking area within curtilage of dwelling house. Refused for the following reason:

It is considered that the caravan would not be incidental to the enjoyment of the dwelling house by reason of its scale in comparison to the existing dwelling house and degree of independence from the existing dwelling house. It is considered that the proposal would represent a material change in the use of the land as defined by Section 55 (2) (d) of The Town and Country Planning Act 1990 and therefore that the caravan would not be lawful without planning approval.

An appeal has subsequently been lodged against this decision. The general scale and form of the proposal was again consistent with the proposed caravan/mobile home subject of the current application. The differences between the two applications are discussed below.

3 Proposal

The current application is for a Lawful Development Certificate relating to the proposed siting of a caravan for ancillary residential use.

Submitted Evidence: Application Form; Covering Letter; Supporting Statement; Location Plan; Block Plan; Elevations; Floor Plan; House of Commons Debate 22 November 2005: Column 1487 Travellers (Middlewich); Appeal and Costs Decision APP/P2365/X/12/2109940; Appeal Decision APP/K3605/X/12/2181651; Appeal Decision APP/T2215/X/11/2155415; Appeal Decision APP/J1915/X/11/2159970; Appeal Decision APP/K2230/X/13/2190398; Appeal Decision APP/K3605/X/12/2181651.

4 Policy Considerations

There are no policy considerations with regard to determining the lawfulness of the proposal.

5 Statutory and Non Statutory Consultations

Fresh consultation was not carried out on this application,. The views of the Solicitor to the Council were however sought on the previous application and are considered to remain pertinent:

In R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin)), the Council was judicially reviewed for deeming that mobile chicken houses were not deemed to be development under Section 55 of The Town and Country Planning Act. In that case, the Council considered that factors weighing against the sheds being buildings were their lack of attachment to the ground and ability to be moved around the site. However weighing in favour of them being buildings were their sheer size, weight and bulk.

Mrs Justice Lang held that the Council erred in law in taking too narrow an approach to the meaning of 'development' under Section 55. The term 'building' in Section 336(1) of the Act has a wide definition which includes 'any structure or erection'. This definition has been interpreted by the courts to include structures which would not ordinarily be described as buildings. In Skerritts, an Inspector held that the erection of a 40 metre x 17 metre x 5 metre high marquee for an eight month period was the erection of a building. In Hall Hunter v First Secretary of State [2007] 2 P. & C.R. 5 the erection of polytunnels was also the erection of a building. Both decisions were upheld by the Courts.

In the light of these authorities, it was held that the Council should have carefully considered whether a poultry unit was an 'erection' or 'structure' within the meaning of section 336(1), particularly bearing in mind the substantial size and weight of each unit. Furthermore, the Council did not have regard to the relevant authorities when it concluded that the units were chattels, not buildings, by reason of the fact that they were capable of being moved around the site. In Barvis Ltd v Secretary of State for the Environment (1971) 22 P & CR 710, a tower crane on a steel track was held to be a 'structure' or 'erection' and thus a 'building', even though it was moved around the site and, at the end of the contract, it would be dismantled and removed to another site. Moreover, an object may be a building in planning law without being incorporated into the land, as part of the realty (see R v Swansea City Council ex p Elitestone (1993) 66 P. & C.R. 422.)

Certainly, therefore, there is a persuasive argument that following the Woolley Chickens case, it is not just whether or not the structure satisfies the tests set out in the legislation relating to caravans and mobile homes, but that regard must be had to

Section 336 and whether or not the home is a 'structure' or 'erection'. On the basis of the case law it appears that in this instance, in addition to the matters in your report as to fact and degree, and the fact that the use of the home will not be ancillary to the use of the main residence, the home may well therefore constitute a structure and as such development for which planning permission is required.

6 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: 15

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: Nil

7 Planning Considerations

Evidence and commentary submitted with the previously refused application has been resubmitted in support of the current application.

This evidence asserts that in this instance there will be sufficient linkage between the occupants of the caravan and the occupants of the main dwelling, such that there would be no material change in the use of the planning unit, and thus no development as defined by Section 55 of the Town and Country Planning Act 1990 (The Act) would take place.

The application provides details of the scale and type of accommodation to be provided within the caravan/mobile home. The footprint of the dwelling house is approximately 72 square metres (but two storey) and the footprint of the proposed caravan/mobile home would be approximately 55.5 square metres. The accommodation provided within the caravan/ mobile home would comprise a lounge and kitchen, a dining room, a double bedroom, a bathroom, and en-suite shower room.

It was previously acknowledged that, for the purposes of Section 29 (1) of the Caravan Sites and Control of Development Act 1960, the scale and construction of the unit was such that it would meet the definition of a caravan. Its siting would not, therefore, require planning permission if its use were ancillary to that of the main dwelling.

Having regard to the advice from the Solicitor to the Council, it could be argued by virtue of its size that the caravan/mobile home could be considered to be a structure and, therefore, to accord with Schedule 2 Part 1 Class E of the General Permitted Development Order, it would need to be demonstrated to be incidental to the enjoyment of the occupiers of the dwelling house.

Notwithstanding this, it is in any event the case that for the proposal to be lawful it must accord with the criteria as outlined in Section 55(2) (d) and (3) (a) of the Town and Country Planning Act 1990. The primary concern in both cases relevant to this application is whether the proposed caravan/mobile home would be incidental to the

enjoyment of the dwelling house as such.

The information contained within the Development Control Practice Manual Volume 5 Part 24 para 24.611) would indicate that the siting of a caravan on land does not normally involve development, provided that it is not judged that a material change of use has taken place. However, as soon as a caravan is inhabited as a dwelling unit, development will occur in terms of a material change in use, except where permitted development rights operate within the curtilage of a dwelling house.

This position alters if a garden-sited caravan becomes a self-contained dwelling, providing all the normal facilities for day-to-day living. In this case it is normally upheld that two residential planning units have been created and planning permission is required. However, in the case of caravans there is no specific mention in planning law justifying a conclusion, as Section 55(3)(a) of the Act only specifies that 'the use as two or more separate dwellinghouses' is a material change of use. Therefore the contention that a material change of use has occurred if a caravan, used as a self contained living unit, is placed within the curtilage of an existing house, relies on the thrust of 'planning unit' court judgements and/or an assessment that the change has in fact made a material change in the character of the land, albeit that residential remains the basic land use.

The key consideration in the previous case was whether or not the caravan/mobile home met the test of Section 55(2)(d) of the Act in terms of its being 'incidental to the enjoyment of the dwelling house as such'. The courts have held that the scale of caravans/mobile homes compared to their host site and dwelling is a factor when considering if such a unit can be incidental.

Appeal decisions were submitted in support of the previous application, all of which concluded that the caravans/mobile homes subject of the appeal did not constitute either operational development or a material change in the use of the land. However, the appeal cases all varied with regards to the fact and degree that the caravan/mobile homes subject of the appeal related to the host site and host dwelling.

The caravan/mobile home subject of the previous application was a two bedroom unit, providing all the accommodation required to sustain independent living from the main dwelling house. It was noted that the caravan/mobile home was intended for use by the parents of the occupiers of the dwelling house. However, the intention was that the occupiers could be cared for but would retain a degree of independence. It was considered that the scale of the accommodation proposed would allow complete independence from the dwelling house.

The scale of the unit was also considered in relation to its being accommodated within the site and its relationship with the main dwelling house. The footprint of the caravan/mobile home was only approximately 5.5 square metres smaller than the ground floor of the existing dwelling house and it provided only one less bedroom than the main dwelling. It was therefore concluded that this relationship, along with the comprehensive level of accommodation offered meant that such accommodation could not be considered incidental to the enjoyment of the existing dwelling house.

There is case law that supports such an argument and indeed the appeal cases submitted by the agent stated that conclusions had been drawn as a matter of fact and degree.

Relevant case law includes:

Ashford 2/12/08 DCSNo.100-059-030: A mobile home used as additional living space in the curtilage of a rural dwelling was found to not be permitted development due to its substantial size which the Inspector considered to be tantamount to a separate dwelling.

Medway 3/5/07 DCS No.100-048-615: Although occupation was by an elderly relative with all meals being prepared in the main house, the excessive size of the accommodation went beyond what was considered as incidental.

South Bedfordshire 19/11/1990 DCS No.056-472-135: An inspector observed that the mobile home had its own water and electricity and was well equipped with cooking washing and toilet facilities. It could not be regarded as incidental or ancillary to the enjoyment of the dwelling house.

All the above issues have been reviewed during consideration of the current application, and the same conclusions have been reached.

Additional evidence

The refusal of the previous application for a Lawful Development Certificate centred on two issues:

The scale of the caravan in comparison to the existing dwelling house and;
The degree of independence from the existing dwelling house.

In the application form and covering letter submitted with the current application, reference is made to advice offered by the case officer following the previous refusal, and concerning the scale, layout and siting of the unit. Such advice is generally offered without prejudice to any decision made by the Council in the event of an application being submitted. Furthermore, in this case the advice was offered in relation to what might be material planning considerations in the event of a planning application being submitted, as opposed to a revised application for a Lawful Development Certificate.

A block plan has been submitted suggesting an alternative location for the mobile home/caravan, approximately central to the rear boundary, rather than adjacent to the footpath towards the north eastern corner of the site. Whilst this might render the unit less visible within the public domain, it has no bearing on whether its siting and/or use would be lawful.

A revised floor plan suggests proposed overall dimensions of approximately 9.1 x 6.1 metres (i.e. 55.5 square metres) as opposed to the previously suggested 11 x 6.1 metres (i.e. 67 square metres). The unit would however still be of a large scale in comparison to the main dwelling house (in excess of 75% of its ground floor footprint). The suggested range of accommodation would have one less bedroom than previously proposed, but would still provide a full range of facilities to allow independence from the dwelling house, notwithstanding that a degree of care would be afforded to the currently intended occupiers.

Two additional appeal decisions have been submitted in support of the appeal. APP/K2230/X/13/2190398 relates to a smaller proposed unit (approximately 44 square metres) and the Local Authority case appears to have revolved around its mobility and physical attachment. In the case of APP/K3605/X/12/2181651 the proposed unit was

approximately 51 square metres in footprint, but served a substantial dwelling within extensive grounds. In each case the Inspector's reasoning was based on fact and degree and the context of the proposed unit in relation to its host dwelling and curtilage.

8 Conclusion

Having regard to the advice and evidence summarised above, it could be argued by virtue of its size that the caravan/mobile home could be considered to be a structure. Therefore, in order to accord with Schedule 2 Part 1 Class E of the General Permitted Development Order, it would need to be demonstrated to be incidental to the enjoyment of the occupiers of the dwelling house.

Notwithstanding whether the caravan/mobile home is considered to be a structure or not, it is considered that it is too great in scale and provides too great a degree of independence from the main dwelling house to be considered as incidental to that dwelling. As such, it is concluded that the proposal, as described within the submitted plans and supporting documents, would represent a material change in the use of the land and as such would constitute development requiring planning permission under Section 55 (2) (d) of The Town and Country Planning Act 1990).

9 RECOMMENDATION:

That the Executive Head of Planning and Built Environment be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/15/00689, for the following reason:

It is considered that the caravan/mobile home would not be incidental to the enjoyment of the dwellinghouse by reason of its scale in comparison to the existing dwellinghouse and degree of independence from the existing dwellinghouse. It is considered that the proposal would represent a material change in the use of the land as defined by Section 55 (2) (d) of The Town and Country Planning Act 1990 and therefore that the caravan would not be lawful without planning approval.