

**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

27 Lodge Road, Havant, Hampshire PO9 3LL

**Local Planning Authority Reference:
APP/15/00317**

**Planning Inspectorate Reference:
APP/X1735/W/15/3129556**

HAVANT BOROUGH COUNCIL



TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL BY MR WRATH AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE TO GRANT A CERTIFICATE OF LAWFUL USE FOR THE PROPOSED SITING OF A CARAVAN FOR ANCILLARY RESIDENTIAL USE AT 27 LODGE ROAD, HAVANT, PO9 3LL.

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LPA REF: APP/15/00317

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 1.1 The site is located to the end of the cul-de-sac that is Lodge Road. The cul-de-sac consists of a mix of two storey detached and semi detached properties. The semi-detached properties dominate the road and are of a particular architectural style with a central ridge with hipped ends with the roof extending to ground floor level to either end of the pair of dwellings.
- 1.2 There is a footpath which runs adjacent to the eastern boundary of the site providing a link between Lodge Road and Bedhampton Hill.
- 1.3 There is a two storey detached dwelling located towards the front of the plot subject of this application in similar line to the general building line of the cul-de-sac as it curves around at the end of the road. This site currently has a vehicular access from the road and parking on a driveway leading to a single garage located to the north eastern corner of the plot. The dwelling has a front gable element incorporating a cat slide roof sympathetic with the architectural characteristics of the streetscene.
- 1.4 The rear garden is of an average depth of 11m (approx) with a further garden area to the eastern elevation of the dwelling house. The boundaries are treated with a 2m (approx) Close Boarded Fence and mature vegetation.
- 1.5 The area of the site is 574m² (approx).

2.0 PLANNING HISTORY

2.1 APP/14/01286

Mobile home with decking area to be sited in curtilage of dwelling house for ancillary use - Application was withdrawn following advice from case officer that the mobile home was considered to be too large to be acceptably accommodated within the curtilage of the existing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 is consistent with the proposed caravan/mobile home subject of this report.

3.0 PROPOSAL

- 3.1 Section 192 application for a Lawful Development Certificate to establish whether the proposed development for a caravan/mobile home is considered to be classed as permitted development under the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014. The application was made valid on 19 March 2015 and the application was refused under delegated powers on 14 May 2015 for the following reason:

1. It is considered that the caravan 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

- 3.2 The following documents were submitted as evidence to support the application;

Submitted Evidence

Cover Letter

Supporting Document

Location Plan and Block Plan

Floor Plan of Proposed type of Mobile Home

Photographs of the existing site

Exterior View of Proposed Mobile Home

Appeal Decision APP/K3605/X/12/2181651

Appeal Decision APP/T2215/X/11/2155415

Appeal Decision APP/J1915/X/11/2159970

Appeal Decision APP/P2365/X/12/2109940

House of Commons Debate 22 Nov 2005: Column 1487 Travellers (Middlewich)

- 3.2 Evidence submitted on the 8 May 2015 asserts that in this particular instance there will be sufficient linkage between the occupants of the caravan (Mr and Mrs Wrath), and the occupants of the main dwelling (Mr and Mrs Banting), such that there would be no material change in the use of the planning unit, and thus no development as defined by Section 55(1) of the Town and Country Planning Act 1990 would take place.
- 3.3 The application provided details of the scale and type of accommodation to be provided within the caravan/mobile home. The footprint of the dwelling house is 72.36 (approx, albeit two storey) and the footprint of the proposed caravan/mobile home is 66.8m² (approx) plus a raised decking area of 16.57m² (approx).
- 3.4 The accommodation provided within the caravan/ mobile home consists a lounge, dining area, kitchen, two double bedrooms, bathroom, ensuite and corridor area providing loft access. The dimensions are 6.09m in width and 10.97m in depth with a height of under 4 m.
- 3.5 It is noted that the application refers to the unit as both a caravan and mobile home throughout the documentation submitted. Under section 29 (1) of the Caravan Sites and Control of Development Act 1960 a caravan is defined as;

“... Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether 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 system, or

(B) Any tent”

Section 13 (1) of the Caravan Sites Act 1968, which deals with twin-unit caravans.

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”.

Amendment of the definition of Caravan (Permissible Additional Purposes) (England) Order 2006 [4]- Paragraph 3 of article 3 of the Social Landlords (Permissible

Additional Purposes) (England) Order 2006 (meaning of caravan)

(a) Length (exclusive of any drawbar) 20m (65.6FT)

(b) Width: 6.8m (22.3ft)

(c) Overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m (10ft)

- 3.6 This means is that the proposed mobile home/caravan which is 10.97 metres long and 6.09 metres wide, maybe classed as being a caravan, and may not, therefore, require planning permission if the use of same is ancillary to the use of the main house. The planning application states that the home is to be no higher than 4 metres high, but under the legislation, in order to satisfy the provisions of same, the home must be under 3.05m internal measurement to satisfy the measurements set out above.

4.0 PLANNING CONSIDERATIONS

- 4.1 In considering this application the views of the Solicitor to the council were sought. The Solicitor’s considerations on this application were;
- 4.2 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.
- 4.3 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.

- 4.4 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.)
- 4.5 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.
- 4.6 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 dwellinghouse as such.
- 4.7 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.
- 4.8 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.
- 4.9 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.

- 4.10 The key consideration in the case subject of this report is does the caravan/mobile home meet the test of Section 55 (2) (d) in that it must be incidental, *"the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such"*. The courts have held that the scale of the caravan/mobile homes compared to the site and existing dwelling is a factor when considering if such a unit can be incidental.
- 4.11 Appeal statements have been submitted by the agent to the application, all of which conclude that the caravans/mobile homes subject of the appeal do not constitute either operational development or a material change in the use of the land. However, the appeal cases all vary with regards to the fact and degree that the caravan/mobile homes subject of the appeal relate to the host site and host dwelling.
- 4.12 The caravan/mobile home subject of this report, a large two bedroom unit, provides full accommodation required to sustain independent living from the main dwelling house. This being lounge, dining area, kitchen, two double bedrooms, bathroom, and ensuite and corridor area providing loft access. It is noted that the caravan/mobile home is intended for the use by the parents of the occupiers of the dwelling house but the Supporting Document submitting with the application states that the proposal will enable the parents to be looked after whilst allowing them to *keep their own independence*. It is considered that the scale of the accommodation proposed would allow complete independence from the dwelling house.
- 4.13 The scale of the unit must also be considered in relation to it being accommodated within the site and its relationship with the main dwelling house. The footprint of the caravan/mobile home is only 5.5m² (approx) smaller than the ground floor of the existing dwelling house and it provides with only one less bedroom than the main dwelling. Therefore, it is concluded that this relationship along with the comprehensive level of accommodation offered means that such accommodation cannot be considered incidental to the enjoyment of the existing dwelling house.
- 4.14 There are appeal cases that support such an argument and indeed the appeal cases submitted by the agent state that the conclusions have been drawn as a matter of fact and degree. Relevant cases 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 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.

5.0 COMMENTS ON THE GROUNDS OF APPEAL

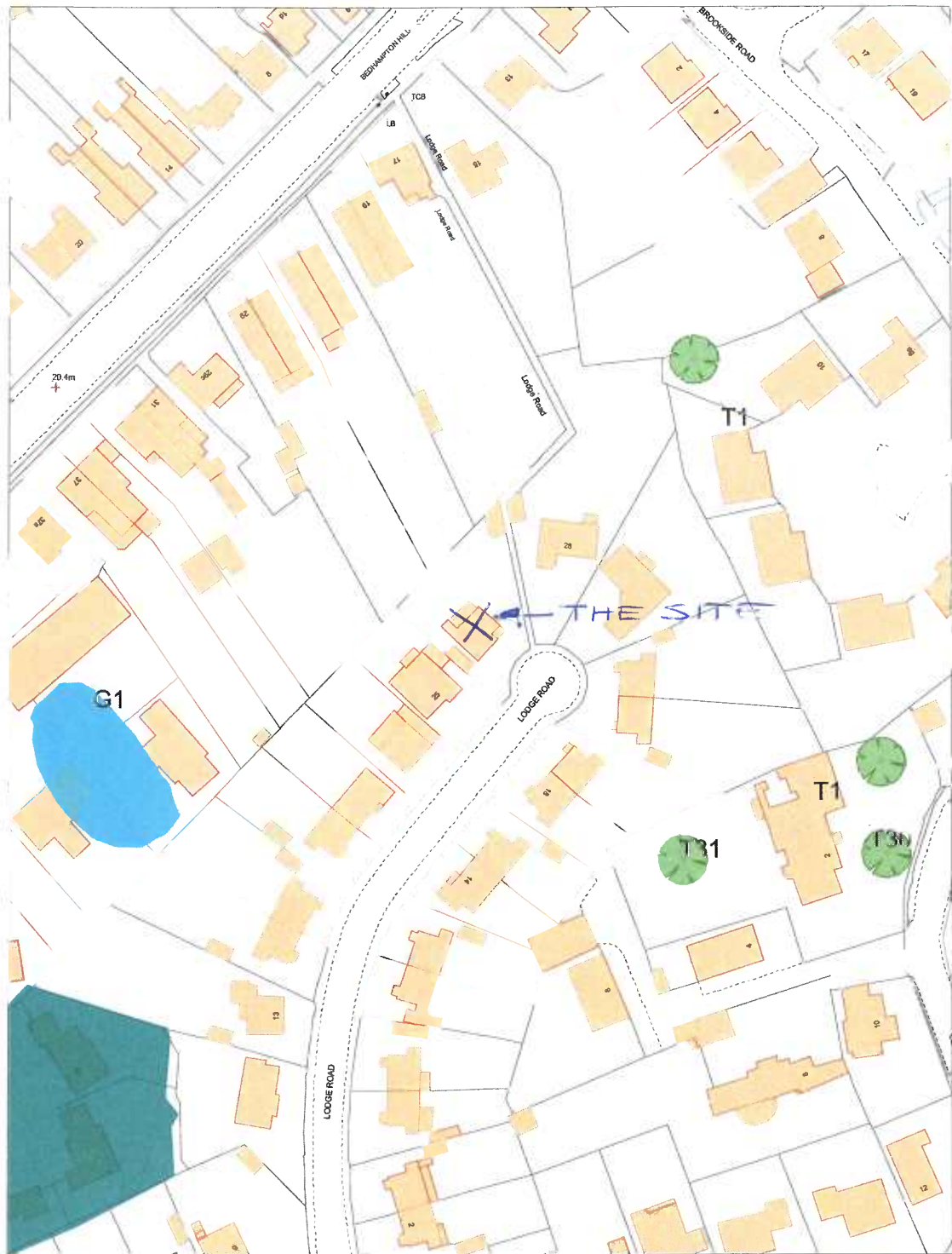
- 5.1 The issues raised within the appellants grounds of appeal have largely been covered within section 6 of this report.
- 5.2 It is not considered that the examples of appeal decisions as submitted by the applicant are relevant to the consideration of the application site subject of this appeal as the examples are within different contexts and differ in scale and nature from the circumstances of this case.

6.0 CONCLUSION

- 6.1 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.
- 6.2 However, irrespective of whether the caravan/mobile home is considered to be a structure or not, it is considered that the caravan/mobile home is too great in scale and provides too great a degree of independence from the main dwelling house to be considered as incidental to the main dwelling. As such, it is concluded that the proposal, as described within the submitted plans and Supporting Document, does represent a material change in the use of the land and as such the works constitute development requiring planning permission, (Section 55 (2) (d) of The Town and Country Planning Act 1990)
- 6.3 The Inspector is therefore respectfully requested to dismiss this appeal.

APPENDICES

- (A) Site location plan.



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Havant
BOROUGH COUNCIL

Title:

APP/15/00317
27 Lodge Road, Havant

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Borough of Havant



- Main Retail/Commercial/Office Areas
- Urban Areas
- Industrial Areas
- Open Space/Recreation
- Borough Boundary