The Planning Inspectorate

Appeal Decision

Site visit on 8 January 2015

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 January 2015

Certificate of Lawful Development appeal ref: APP/B1930/X/14/2216233
9 Mayflower Road, Park Street, St Albans AL2 2QP

The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by St Albans City Council to grant a certificate of lawful development.

The appeal was made [redacted]

The application, No. 5/13/2815, dated 16 October 2013, was refused by a notice dated 20 December 2013.

The application was made under s.192(1)(a) of the Town and Country Planning Act 1990 as amended.

The development for which a certificate of lawful development, (LDC), is sought is the siting of a mobile home for use incidental to the main dwelling at 9 Mayflower Road, Park Street, St Albans AL2 2QP.

Summary of decision: The appeal succeeds. An LDC is attached

Appeal proposal

1. Mr and Mrs Wernham intend to site a prefabricated mobile home at the end of the rear garden of their home at No. 9 Mayflower Road, Park Street. The mobile home would be 5.76m long, 3.908m wide and have a hipped pitched roof to a maximum overall height of 3.373m. The unit would have a bed/sitting room of 16m^2 floor area and a shower/wc room of 2.6m^2. The mobile home would accommodate Mr and Mrs Wernham's son to use in association with the main house at No. 9.

2. The mobile home could be craned into position having been assembled elsewhere as one unit. Alternatively, it was said it could be craned into position as 2 units for bolting together on site in a similar fashion as for a typical twin unit caravan.

Considerations

3. I need to consider, in the first instance, whether or not, on the evidence, the mobile home would constitute "development" within the meaning of s.55 of the Act. It is an evaluative matter, dependent upon fact and degree. S.55 of the Act - Meaning of "development" and "new development" says: (extracts below)

   (1) Subject to the following provisions of this section, in this Act,

except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A) For the purposes of this Act "building operations" includes …

(d) other operations normally undertaken by a person carrying on business as a builder.

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land —

(d) 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.

4. It is therefore necessary to examine whether the proposed mobile home would be considered to be a building and, or, whether its siting would amount to building operations or operational development.

5. S.336(1) of the Act says a "building" includes any structure or erection, and any part of a building, as so defined, … ." The Courts have decided that includes a range of structures, including a marquee, (Skerritts of Nottingham Limited v SSETR [2000] 2 PLR 102), and the erection of polytunnels, (Hall Hunter v FSS [2007] 2 P & CR 5).

6. The Appellants said a mobile home, (or caravan), was not a building as it had to be lawfully transportable; it would not be attached to the ground by permanent works; it would be a temporary structure that could be moved when no longer needed.

7. The Council accepted that the structure, (as they described it), was designed for human habitation. It would come within the definition of a caravan as set out in the Caravan Sites Act 1968 and meet the size limitations of that Act. However, they said it did not necessarily mean its siting at No. 9 would not be a building operation simply because it came within the definition of a caravan.

8. I agree with the parties' conclusion that the unit proposed to be sited in the rear garden of No. 9 was correctly described as a mobile home. It would meet the definition as set out in the Caravan Sites and Control of Development Act 1960 – " … any structure designed or adapted for human habitation which is capable of being moved from one place to another … ." The definition was modified by the Caravan Sites Act 1968 which defined twin unit caravans. There was no disagreement between the parties that the proposed mobile home would satisfy the dimensional limits set out the Caravan Sites Act 1968. The unit would have the appearance of a domestic shed or outbuilding, but having met the Caravan Sites Act definition of a mobile home, it would not, in my view, be a building, having been fully constructed elsewhere and brought to the site at No. 9 complete, or at most, in 2 parts to be bolted together.

9. Having so concluded, it is necessary to decide whether the siting of the appeal mobile home would constitute building or other operations amounting to development requiring planning permission.

10. I deal firstly with the Council's reasons for their decision to refuse to issue an LDC. The Council said the proposed mobile home should be seen to be

operational development and should therefore be assessed against the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended. They said the Court's decision in the case of Skerritts of Nottingham Ltd v SSETR & Harrow LBC [2000] JPL 1025 was relevant. In that instance, 3 factors were to be addressed. They were: the size of the structure in question; its permanence and the degree of physical attachment to the ground. The Council said size here was not a concern. They were more troubled about physical attachment of the mobile home and its permanence. They noted that the unit would be set up on pads and not bolted down or fixed in place. But it would not have wheels or skids. Whilst there was no requirement that the mobile home had to be readily moveable, being hard to move suggested a degree of permanence, thus meeting one of the Skerritts tests. The unit would be connected to mains services, making it less likely to be moved. The small rear garden would also indicate that the unit would not be moved around. The Council said that to all intents and purposes, the unit would be a permanent structure.

11. The Appellants said the mobile home could be craned into place as a single unit, or in 2 sections to be bolted together. I note that if it arrived on site as 2 units, each unit would, as for a single unit, have been prefabricated elsewhere. It would have been designed for easy assembly. Therefore its construction would not be an operation "normally undertaken by a person carrying on business as a builder", (s.55(1A)(d)). It follows that constructing the units would not be a "building operation" within the meaning of s.55 of the Act.

12. The mobile home would be placed on pads at the far end of the rear garden of No. 9. I consider that merely placing it on the ground would not, itself, amount to a building operation. The mobile home would then be connected to mains water, electricity and drainage. But that would not be a physical attachment of the mobile home to the ground. Nor would the connection to services affect its mobility, in that such connections could be quickly detached and the mobile home craned off site with a minimum of work. That work would not amount to building operations, (s.55(1) of the Act).

13. S.55(1) of the Act also refers to "other operations". That category is not limited to building, engineering or mining operations, (Coleshill and District Investment Co Ltd v. Minister of Housing and Local Government [1969] 1 WLR 746). At first sight, that would seem to allow for a wide range of disparate activities, although it seems to me that such "operations" in this context should only be those activities affecting the land. It may be reasonable to conclude that "other operations" in this instance should be governed by the ejusdem generis rule, which means that where a statue lists specific classes of items and then refers to them in general, the general statements apply only to the same kind of items to those specifically listed, (Ewen Developments Ltd v SSE and North Norfolk District Council [1980] JPL 404).

14. As to the question of permanence, I agree with the Appellants that the Skerritts case is not relevant or applicable to the appeal proposal. That point arose in Skerritts only on a consideration of whether the marquee should be regarded as a building. Where the siting of a mobile home does

not constitute operational development, (Guildford RDC v Fortescue [1959] QB 112), its stationing is a use of land.

15. Having decided that the proposed stationing of the mobile home at No. 9 Mayflower Road would not involve the carrying out of building, engineering, mining or other operations on the land, I turn to its proposed use. The stationing of a mobile home is not a material change of use in itself, (Wealden DC v SSE and Day [1988] JPL 2268). It is necessary to look at the purpose for which it is stationed. Where it is incidental to the to use as a dwelling, (s.55(2)(d) of the Act), no development is involved. The application for an LDC says; "the siting of a mobile home for use incidental to the main dwelling at 9 Mayflower Road, … .". It was said the Appellants teenage son would be accommodated in the mobile home using it as annexe accommodation incidental to the use of the main house. He would remain dependent on the support and protection of his parents. As described in the application, the proposed use would not be a material change of use of the residential planning unit at No. 9, (Uttlesford DC v White [1992] JPL 171).

16. My conclusion is that the appeal proposal would not require planning permission and that an LDC should be issued.

FORMAL DECISION

17. The refusal by St Albans City Council to issue a Certificate of Lawfulness for the siting of a mobile home for use incidental to the main dwelling at No. 9 Mayflower Road, Park Street, St Albans AL2 2QP was not justified. I exercise the powers transferred to me by s.195(2)(a) accordingly and I issue a Certificate of Lawful Development for the use as applied for. It is attached to this decision, as are the relevant plans.

[redacted]

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 16 October 2013 the use of land and buildings described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 192(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The siting of a mobile home for use incidental to the residential use of the dwelling would not constitute development as set out in section 55(1) or section 55(2) of the Town and Country Planning Act 1990 as amended.

[redacted]

INSPECTOR

Date: 15.01.2015

Reference: APP/B1930/X/14/2216233

First Schedule

The siting of a mobile home for use incidental to the main dwelling.

Second Schedule

Land at No. 9 Mayflower Road, Park Street, St Albans AL2 2QP.

IMPORTANT NOTES OVERLEAF

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the use of the mobile home described in the First Schedule and specified in the Second Schedule would have been lawful, on the certified date and, thus would not have been not liable to enforcement action, under section 172 of the 1990 Act, on that date.

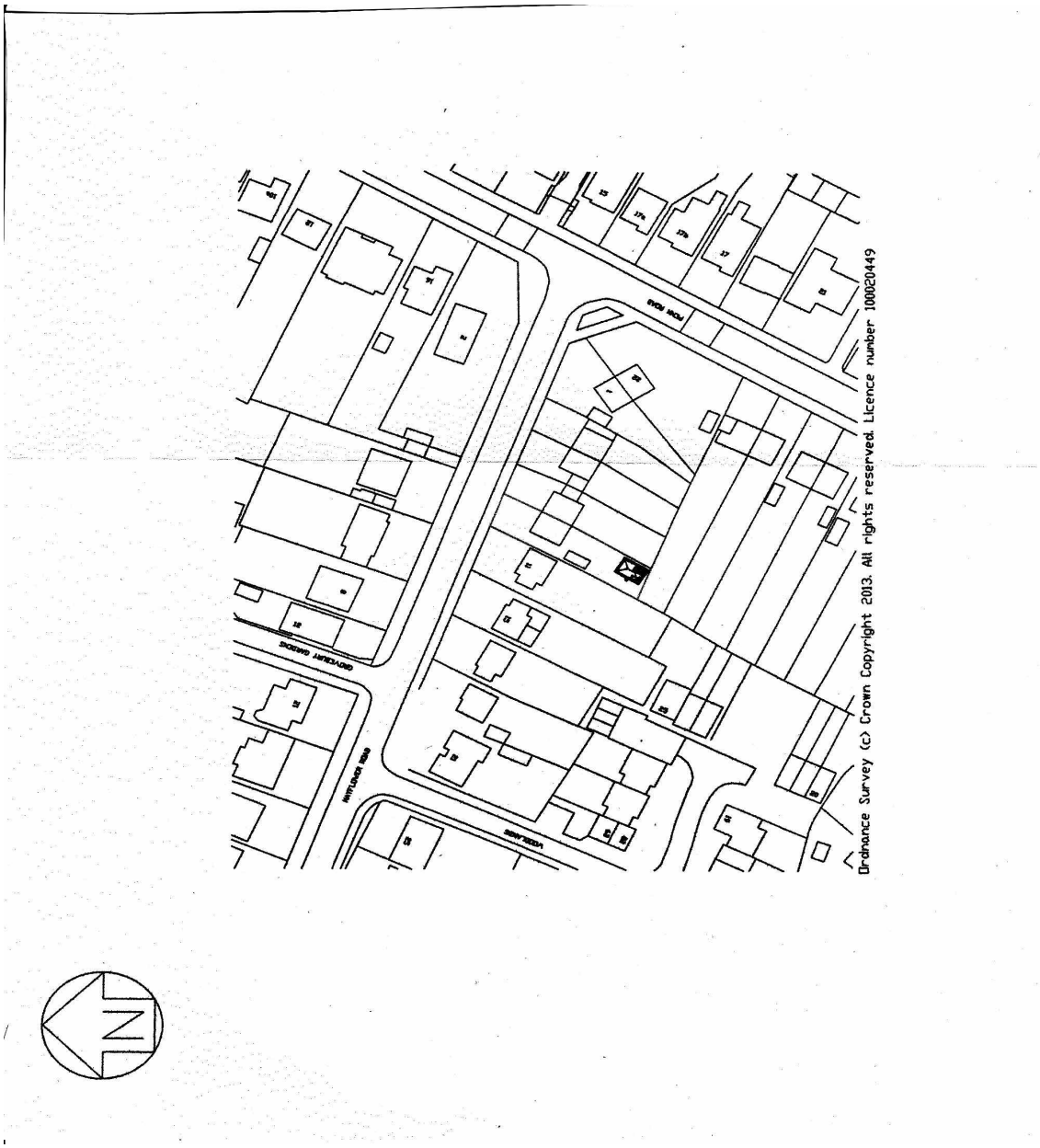
3. This certificate applies only to the extent of the use of the mobile home described in the First Schedule and specified in the Second Schedule and identified on the attached plans. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

4. The effect of the Certificate is subject to the provisions in Section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change of use, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

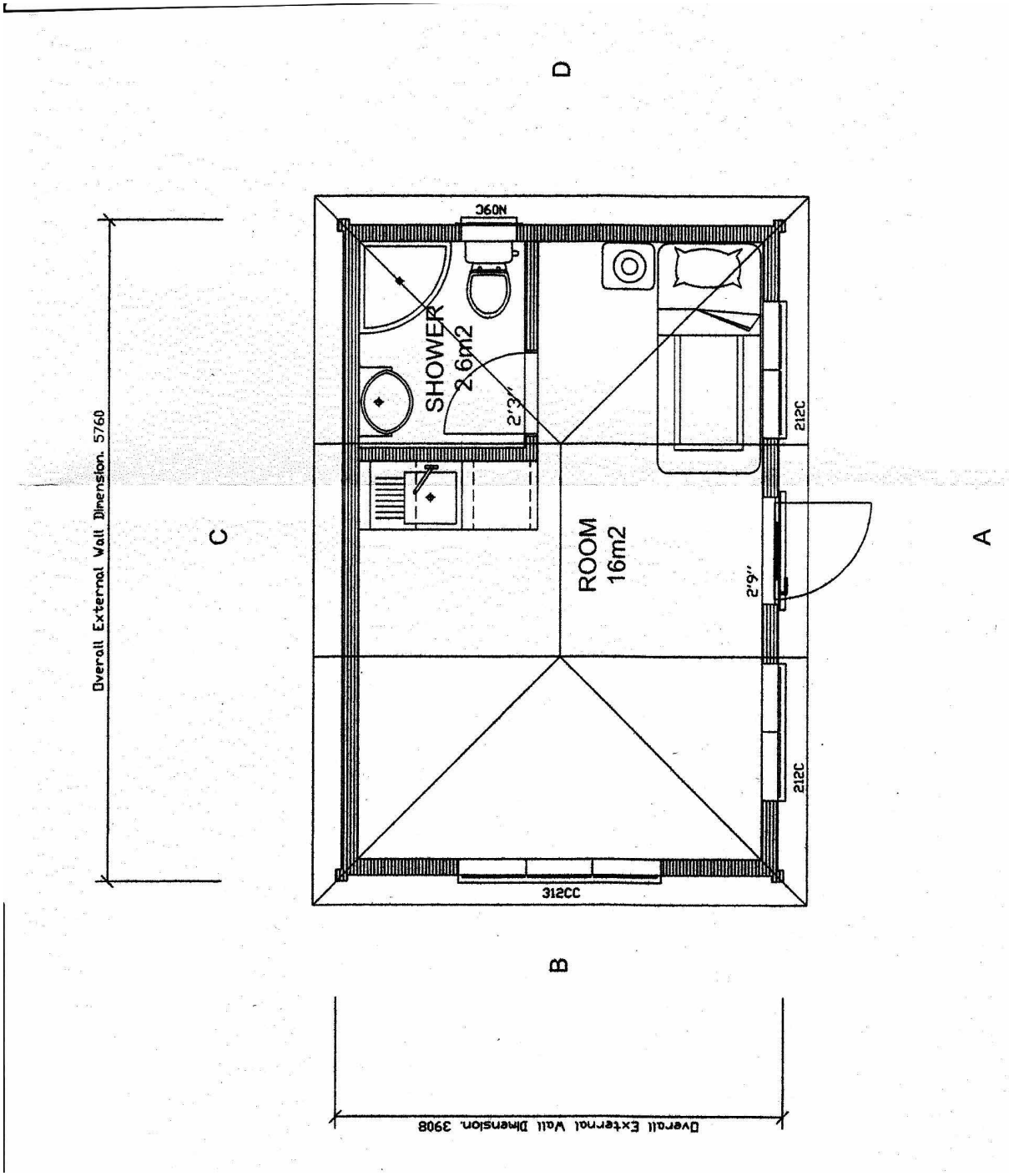
Lawful Development Certificate Plans

Appeal reference: APP/B1930/X/14/2216233

Land at No. 9 Mayflower Road, Park Street, St Albans AL2 2Q

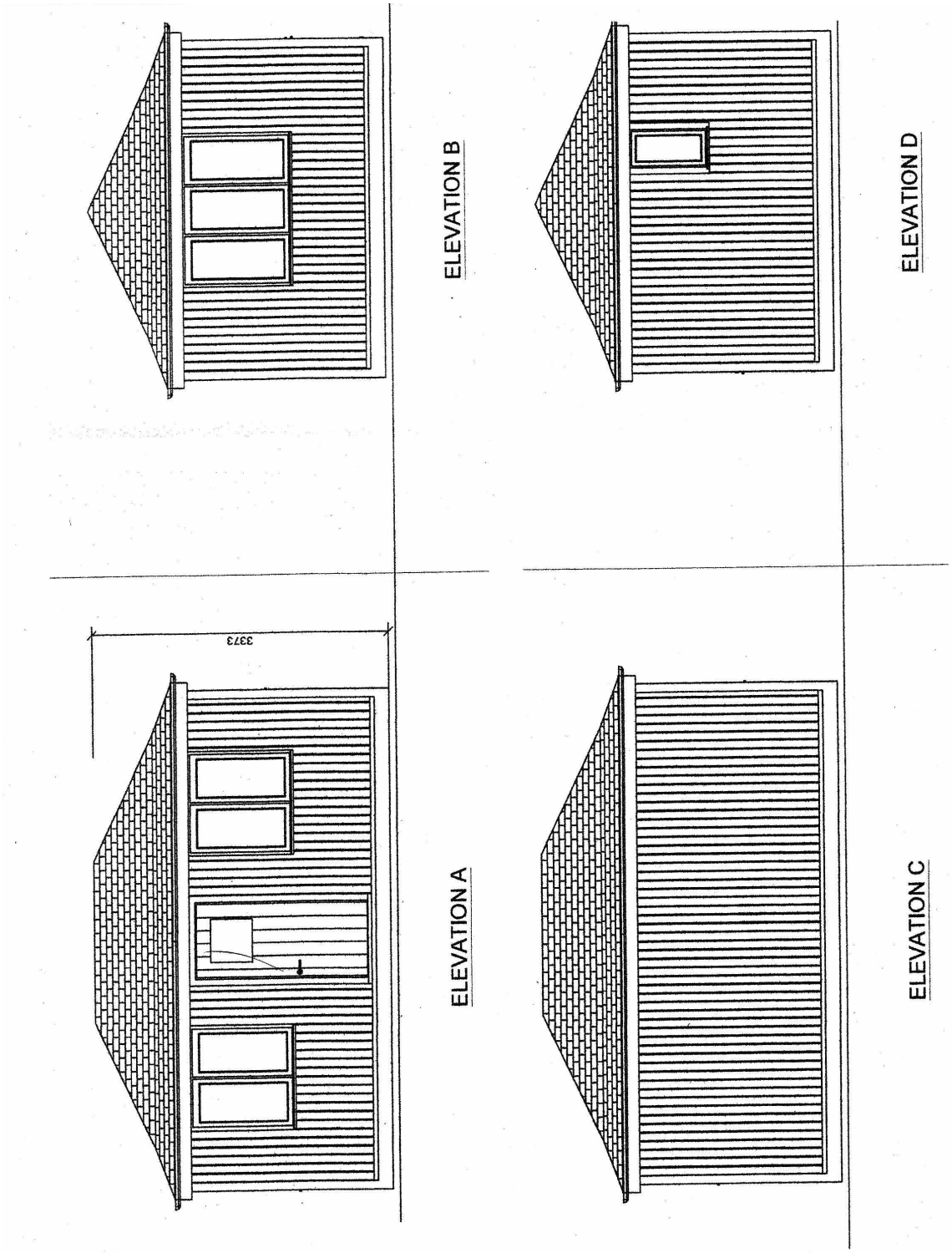


Plan 1 of 3 attached to the Lawful Development Certificate - Do not scale



Plan 2 of 3 attached to the Lawful Development Certificate

Do not scale



Plan 3 of 3 attached to the Lawful Development Certificate
Do not scale
Dated:15.01.2015

John Whalley

INSPECTOR