Lawful Development Certificate Application Report

Site: Pyewipe Farm, North Drove, Pode Hole, Spalding PE11 3JF

Client: Mr. Bernard Brighton

Prepared by Mrs. Rebecca Lord MSc MRTPI

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1. Introduction and Preliminary Issues

1.1 This report is submitted in support of an application for a Lawful Development Certificate (LDC) pursuant to S.192 of the Town and Country Planning Act 1990 (as amended).

1.2 This application by Mr Bernard Brighton is made to confirm that the provision of a twin unit mobile home in the garden of his home to provide additional accommodation for occupation by himself whilst his friends and carers reside in the main house, as part of one household, would not result in operational development or a material change of use, and as such planning permission is not required.

1.3 The property comprises a detached two storey house, outbuildings, and gardens. The proposed location for the positioning of the mobile home in the garden is shown cross hatched in black in the block plan extract below. This may be subject to minor variation but the final location within the garden is immaterial in the consideration of the application.



1.4 The existing vehicle access and main parking area will remain unchanged. No separate vehicle access to the mobile home unit is proposed.

1.5 The proposed twin unit mobile home would have maximum external measurements of 15.21m x 6.32m with a maximum internal floor to ceiling height of 3.05m.

1.6 The area of the garden for the siting is level and has a close physical and functional association to the dwelling house. The mobile home unit will sit on padstones.

1.7 The padstones are de minimis and as such planning permission is not required.

1.8 The dwelling house and its occupation by the applicant is lawful.

1.9 There is no enforcement notice or other planning restriction concerning the use of a mobile home as additional accommodation at the property.

1.10 No Caravan Site Licence is required for the mobile home as proposed.

2. Assessment

2.1 The judgment in Gabbitas v SSE & Newham LBC [1985] JPL 630 makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason not to grant a LDC, provided the Appellant's evidence is sufficiently precise and unambiguous.

2.2 In making the assessment of the proposal the following matters need to be addressed:

- Does the proposal comprise operational development?
- Is the mobile home unit a caravan within the legal definition?
- Is the proposed use consistent with the lawful use of the land or does it give rise to a material change of use?

Operational Development

2.3 Section 55 1A) of the Act defines development as including 'operations normally undertaken by a person carrying on a business as a builder.

2.4 The proposed mobile unit will not be constructed by a builder, and there is no intention to physically attach the unit to the land. The Courts have long held that connections to utilities do not amount to attachment as detachment from such services is a simple matter which can be achieved within minutes.

2.5 In the case of Measor v SSETR [1999] JPL 182 the Deputy Judge said that whilst he would be wary of holding, as a matter of law, that a 'structure' which satisfies the definition of, for example, a caravan under section 13 could never be a 'building' for the purpose of the 1990 Act as amended, he also found that a caravan would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment. Indeed, it would be contrary to the purposes of the 1990 Act as amended to hold that because caravans were defined as 'structures' in the 1960 Act they fell within the definition of 'building' in the 1990 Act. It can therefore be concluded that compliance with the definition of a 'caravan' is a useful indicator of whether operational development would be taking place.

2.6 Regarding the issue of permanence, the unit is required to meet the need for additional accommodation for the family as explained in the following subsection on use. The length of time the mobile home unit is required cannot be specified beyond this. Nonetheless it is not intended to be a permanent addition to the land and can be readily simply removed once it is no longer needed.

2.7 Also, whilst a unit of this kind cannot be moved around with the same ease as a touring caravan for instance the same can be said for 'static' caravans and mobile homes located on residential caravan sites. Such units are not readily transportable without the aid of cranes or lorries, yet are recognised in law as caravans not amounting to buildings. The issues regarding mobility of the unit are examined in the following sub section.

2.8 In addition, the appeal decision produced in Appendix 8 examines the 2012 'Woolley Chickens' case concerning the interpretation of a building. This concludes that the case law, which concerned poultry units, is distinguishable from the consideration of a LDC application for a caravan, as there was no need to consider the statutory definition of a caravan (paragraph 24.) which has greater weight in the determination. It was concluded that the mobile home was a caravan and not a building.

Definition of a Caravan

2.9 A caravan is defined in Section 29 of the Caravan Sites and Control of Development Act 1960 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 other 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.

2.10 Section 13 of the Caravan Sites Act 1968 extends the definition of caravan to include twin unit caravans, which must be (in order to meet the expanded definition) composed of not more than two sections, constructed or designed to be assembled on site by means of bolts, clamps or other devices, and should not exceed 60 feet in length, 20 feet in width and 10 feet in height overall (size later changed see below).

2.11 The size limitation of caravans as originally set out in the Caravan Sites and Control of Development Act 1960 was updated through The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006. The Order introduced the following maximum dimensions:

- Length (exclusive of any drawbar): 20 metres (65.616 feet)
- Width: 6.8 metres (23.309 feet)
- Height measured internally from the floor at the lowest level to the ceiling at the highest level: 3.05 metres (10.006 feet).

2.12 The dimensions of the proposed twin unit mobile home (see para 1.5) does not exceed these size limitations.

2.13 Due to the restricted access to the property the twin unit mobile home unit is designed to be assembled in two parts on site with the joining of these as the final act of assembly. The manufacturer confirms that once completed the proposed mobile home will be capable of being moved as one unit and therefore it conforms with the mobility test. The usual method for transportation by road is to lift the mobile home unit onto a flatbed lorry using a crane.

2.14 The mobile home need not have direct access to a road to be deemed a caravan, it must simply be capable of being moved in terms of its structural integrity. This transportability is confirmed by the manufacture in Appendix 2.

2.15 It is common practice to build or assemble caravans in hard to access back gardens. In Byrne v SSE and Arun DC QED 1997 concerning a twin unit mobile home it was found that:

'Though the Park Home was delivered by lorry in many pieces, I see no requirement in section 13(1)(a) that the process of creating two separate sections must take place away from the site on which they are joined together. It is necessary only that the act of joining to two section together should be the final act of assembly.'

2.16 The assembly of a caravan unit on site also complies with the construction tests as discussed in the extract of the appeal decision APP/N1025/C/01/1074589 (Erewash Borough Council). A full copy is produced in Appendix 1.

The construction test

5. The local planning authority draws my attention to the analysis of the meaning of the words 'composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices' which was given in *Byrne v SSE and Arun DC, QBD 1997*. There is no requirement for the 2 sections to be each identifiable as caravans, or capable of habitation, before they are joined together. However, it was found that it was 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 deemed to be a caravan, that there should be two sections separately constructed which are then designed to be assembled on a site..... If the process of construction was not by the creation of two separately constructed sections then joined together, the terms of the paragraph [section 13(1)(a) of the Caravan Sites Act 1968] are not satisfied'. They were not in that case because the log cabin concerned, composed of individual timbers clamped together as in that before me, had not at any time been composed of 2 separately constructed sections which were then joined together on the site.

6. That was not so in the case before me. Though the Park Home was delivered by lorry in many pieces I see no requirement in section 13(1)(a) 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 joining the 2 sections together should be the final act of assembly. The appellant's evidence and photographs taken during the process of assembly demonstrate that the 2 sections, split at the base and ridge and each with a separate ridge beam, were constructed separately. The appellant was clear on this point. His evidence as to the facts of the matter was not disputed. In my opinion the process of construction fulfilled the test of section 13(1)(a).

2.17 A certificate of compliance with the legislative limitations that has been provided by the supplier is produced at Appendix 2.

2.18 On the information provided it can be concluded that the proposed mobile home unit:

- conforms to all the size and constructional and mobility criteria of the legal definition of a caravan,
- that is not proposed to be physically attached to the land, and
- It is not a permanent building (as noted in the preceding section)

Therefore, the provision of the proposed unit on the land would not result in operational development.

Proposed Use

2.19 The application site is a single dwelling house with gardens. This comprises one residential planning unit with no planning restrictions on occupation. The issue of 'curtilage' is not relevant to the assessment as this is not a land use and permitted development rights are not being considered.

2.20 The mobile home unit will provide level access to living, bedroom and bathroom accommodation for the applicant Bernard Brighton (age 74). Due to various medical conditions Bernard can no longer manage the stairs in the farmhouse and requires a living space on one level. He has no immediate blood relatives and has been cared for by his friend Cassandra Newell and her family. They have assisted Bernard for years by looking after the

ponies, cooking meals, shopping and doing gardening. It is now proposed that they will move into the farmhouse to provide security for Bernard and to care for him by assisting with his day to day living needs. Bernard has a strong bond with Cassandra and her family as confirmed by the fact that Cassandra and her husband are jointly named as the beneficiaries in the applicant's will as evidenced in a letter from Bernard's solicitor which is produced as Appendix 11. In effect Cassandra and Peter are Bernard's family.

2.21 The facts of the proposed use are as follows:

1. The mobile home unit will not be physically separated from the rest of the garden of the main dwelling.
2. The garden will be shared by all occupants.
3. No separate services are proposed, there will be one household electricity and water bill.
4. There would be no separate postal address.
5. The mobile home unit will provide bedroom, bathroom and living room accommodation with limited kitchenette facilities for the preparation of hot drinks, and snacks.
6. Bernard will regularly take meals in the main house with the rest of the household.
7. Bernard will socialise with the rest of the family in the living room and will have access to other areas of the house, and other members of the household will have access to the mobile home unit.
8. There will be no washing machine or laundry facilities other than in the main house, these will be used by all members of the household.

2.22 The assessment of a planning unit and the relevant three tests is set out in the leading case of Burdle v Secretary of State for the Environment (1972):

> 1. Where it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities were incidental or ancillary, the whole unit of occupation should be considered as the planning unit.
> 2. Secondly however, it may be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities, it is not possible to say that one is incidental or ancillary to the other. In these instances, there would be a composite use where the component activities could fluctuate in their intensity from time to time but the different activities would not be confined within separate or physically distinct areas of land.
> 3. Thirdly though, it was recognised that it may frequently occur that within a single unit of occupation, two or more physically separate or distinct areas are occupied for substantially different and unrelated purposes. In such a case, each area used for a different main purpose ought to be considered as a separate planning unit.

2.23 In this case the property will remain in one ownership and control and the single main use will remain as a one residential dwelling house.

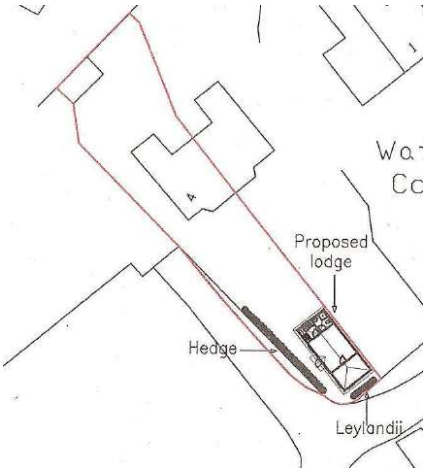
2.24 Based on this information it is clear that the proposed mobile home will simply provide additional accommodation for use by one household. This is consistent and indeed part of the primary residential dwelling house use, as such the property as a whole will remain as one planning unit with the single primary use as a dwelling house. The proposal does not therefore amount to a change of use for planning purposes.

2.25 This assessment is consistent with a Secretary of State decision reported at page 144 in the Journal of Planning Law [1987], and as referred to in the Whitehead judgment (1992 JPL report copy Appendix 3) concerned the meaning of incidental. In that case, the Secretary of State's view was that the use of an existing building in a residential garden as a bedroom was not incidental to the use of the dwelling, **but an integral part of the main use of the planning unit**.

2.26 The following planning appeal decision are produced as Appendix 4 and 5. These support the methodology of the assessment undertaken in this report.

2159970: 4 Waterwork Cottage Redricks Lane, Sawbridgeworth: East Hertfordshire DC.

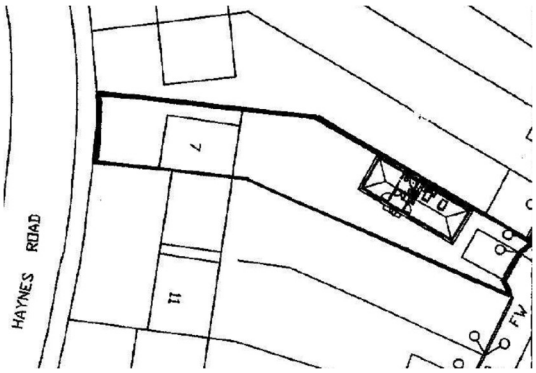
Whilst this case primarily addressed the issue of development in terms of construction and size, it is noted that the Council did not dispute that the mobile home would have facilities that enabled a degree of independent living and that the unit would in effect be a granny annexe. At paragraph 8 the Inspector confirms that the unit is a caravan therefore it would involve a use of land. As that use would be the same as the lawful use in the remainder of the planning unit it would not involve a change of use that requires planning permission.



Extract of LDC plan showing relationship to house and scale.

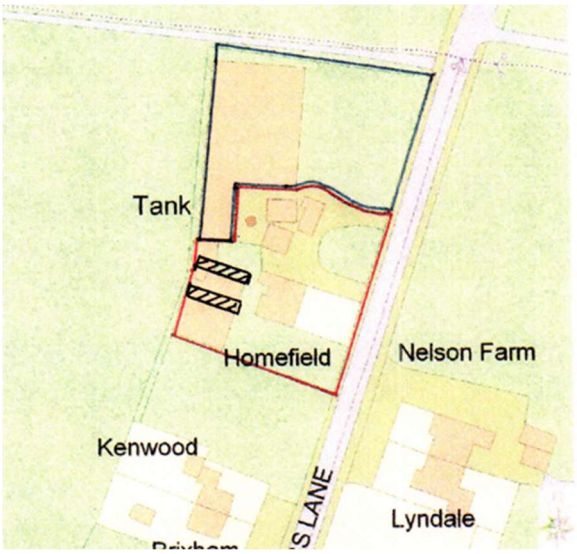
2190398: 7 Haynes Road, Northfleet, Gravesend: Gravesham BC

In this case the Inspector concluded that the use of a caravan (log cabin style) as a granny annexe would not amount to a change of use, see paragraphs 1, 2, 9 and 10. A LDC was issued for 'The stationing of a mobile home in the rear garden for use as a granny annexe'.



Extract of LDC plan showing relationship to house and scale.

2.27 In appeal decision 2109940 concerning Homefield, Moss Lane, Burscough, Ormskirk an Inspector found that the siting of two number static caravans within the grounds of a house to provide sleeping accommodation for two adult sons and for social and entertaining purposes was found to provide additional accommodation to the main dwelling, and the use of the words 'incidental and subordinate' were not relevant. Costs were awarded to the appellants as the local planning authority had incorrectly assessed the proposal. The appeal decision, site plan and costs decision are contained in Appendix 6. Attention is drawn to paragraph 4 of the costs decision.

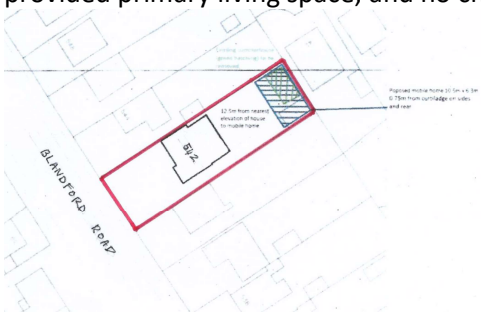


Extract of plan showing relationship of two units to the house

2.28 A further Appeal decision (2181651) concerned the provision of a log cabin type mobile home for staff accommodation at a site in Black Hills, Esher. On the evidence provided the Inspector concluded that 'given the clear functional link between the mobile home and the dwelling, and the ancillary and subordinate nature of the accommodation to be provided, the siting of a mobile home for the purposes described would not amount to a material change of use. Extract of the LDC plan with unit highlighted yellow below, copy of decision produced as Appendix 7.



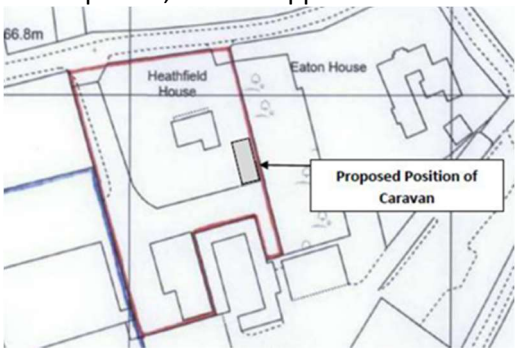
2.29 In addition, attention is drawn to the appeal decision (3142534) at Appendix 8, concerning a mobile home for use as a granny annex in the garden of a house in Poole. On the basis of circumstances that were very similar to this case the Inspector found at paragraph 20 that whilst the mobile home unit would have all the facilities for independent living, it would not be used in a manner independent from the main dwelling, and the use as described would be a use that comprised part and parcel of the primary dwelling house use which was already taking place within the planning unit. Further such use would not be incidental as it provided primary living space, and no change of use would occur.



2.30 Finally, attention is drawn the appeal and costs decisions at Appendix 9 concerning a proposed mobile home in the rear garden of a property in Chelmsford (3151073). This decision confirms that in applying the 'balance of probabilities test' the information originally provided with the application was sufficient for it to be concluded that the siting of the unit for residential use as part of the single household was lawful at the time the application was made (para 17). Additional information submitted after the application was validated (such as detailed structural calculations from the supplier and a written statement from the future occupier) was not necessary to reach this conclusion. An award of the full costs of the appeal was made against the LPA. As the agent for that application and appeal I can confirm the information was commensurate to that provided with this application.



2.31 A further appeal and costs decision against the refusal by Colchester Borough Council to issue a LDC for a caravan for use as additional accommodation is produced at Appendix 10 (3177321). The Inspector notes that while the Council concluded that the caravan 'is highly likely to be capable of independent occupation' that is not what was applied for and the evidence was that it was to be used as additional accommodation. As this was what had been applied for, this is what the LPA should have been tested. The LDC for a caravan for use as additional accommodation was granted on the basis that it would not constitute development, and full appeal costs were awarded in favour of the appellant.



Consideration of an Incidental Use

2.32 In addition to the planning unit based assessment above, which we rely on as the correct assessment methodology in this case, S.55(2)(d) of the Town and Country Planning Act 1990 (the Act) provides that any use incidental to a residential use within the curtilage of the dwelling is not development for planning purposes.

2.33 There is case law on what can reasonably be considered as an incidental to the use of a dwelling house. The Courts have determined that a degree of reasonableness has to be applied when deciding what is incidental. The word incidental is not defined in the Town and Country Planning Act, so its normal dictionary definition is used. The Oxford dictionary defines incidental as something which is minor to the main thing/event.

2.34 The Courts have looked at the question of whether a building (not a mobile home) that is substantially larger than the original dwelling house is incidental to the original dwelling house and determined that if it was so large it may no longer be incidental or ancillary [Eagles v Min of Environment and Welsh Assembly 2009 EWHC 1028].

2.35 However, in this case the proposed unit is subordinate in scale to the accommodation in the two storey main dwelling and the proposed use comprises the same use as the original dwelling (applying the Court's reasonableness test). The proposal will not create a separate dwelling and the unit will function as additional accommodation for the main dwelling.

2.36 Although we rely on the assessment that the provision of primary accommodation is part and parcel of the main dwelling house use, and as such it is not a material change of use or an incidental use, if that analysis is not accepted it is clear that the proposed use would be incidental to the main use of the land as a residential dwelling and would not, in any event, constitute development.

3. Conclusion

3.1 The proposed unit is a mobile home structure that complies with the legal definition of a caravan and providing the unit on the land would not result in operational development.

3.2 The proposed occupation of a mobile home by the applicant forming one household as part of the existing single residential planning unit would comprise an integral part of the primary residential use or alternatively, would be incidental to the main use of the land as a residential dwelling and as would not result in a material change of use or the subdivision of the planning unit. As such the proposal does not result in development within the definition at S.55 of the Act.

3.3 It is therefore concluded that based on this clear and unambiguous submission that a Lawful Development Certificate should be issued in accordance with the terms of the application.

List of Appendices:

1. Appeal decision 1074589 (Erewash Borough Council)
2. A certificate of conformity with the legislative limitations from the supplier
3. Whitehead judgment 1992 JPL
4. Appeal decision 2159970, LDC and plan (East Hertfordshire DC)
5. Appeal decision 2190398, LDC and plan (Gravesham BC)
6. Appeal decision 2109940 LDC and costs (West Lancashire DC)
7. Appeal decision 2181651 and LDC (Elmbridge DC)
8. Appeal decision 3142534 and LDC (Borough of Poole)
9. Appeal decision 3151073, LDC and Costs Decision (Maldon DC)
10. Appeal decision 3177321, LDC and Costs Decision (Colchester BC)
11. Letter from Maples Solicitors LLP