



Lawful Development Certificate Application Report

Site: 1 Hillcrest, Callow, Hereford HR2 8BZ

Client: Mr. & Mrs. A L Butler

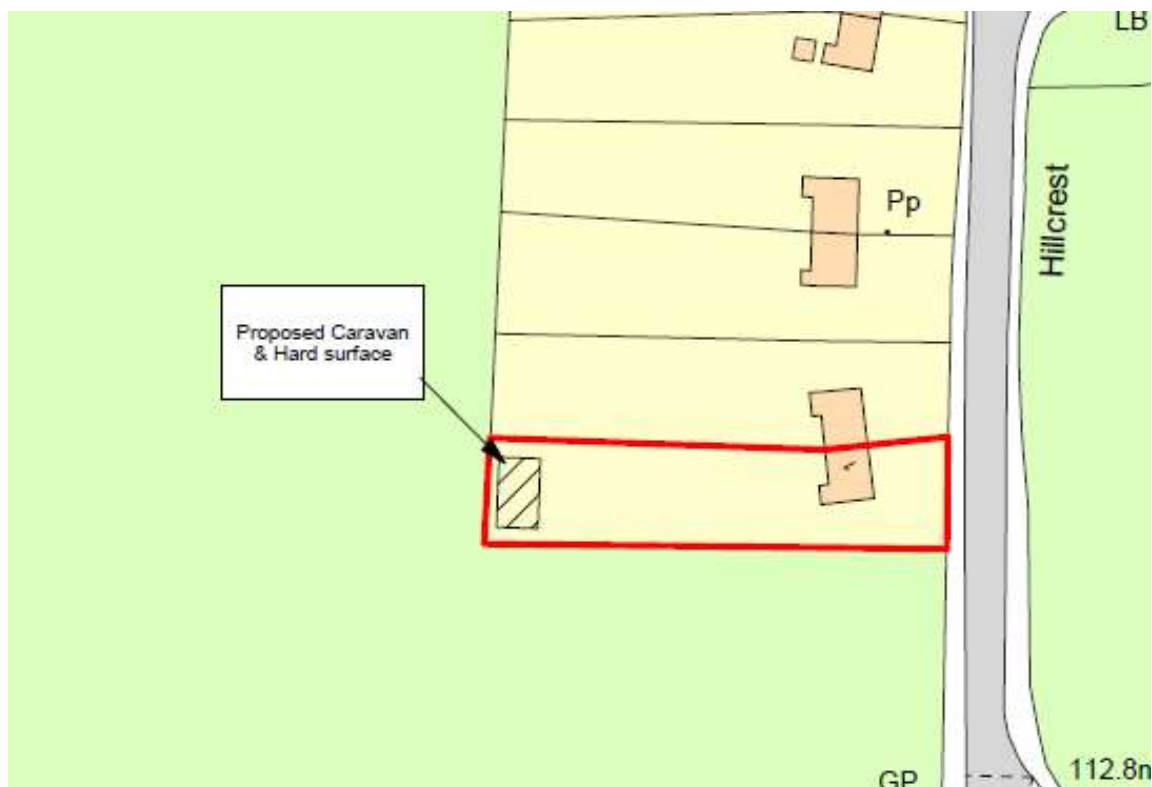
Prepared by Mrs. Rebecca Lord MSc MRTPI

Date: 8th November 2016

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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 The application by Mr. and Mrs. Butler is made to confirm that the provision of a mobile home within the grounds of the dwelling house at 1 Hillcrest, Callow to provide additional accommodation for Mrs. Butlers parents, Brian and Caroline Cunliffe does 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 semidetached house and gardens. The proposed location for the positioning of the mobile home is in the back garden as shown hatched in black in the extract of the combined location and block plan below. This may be subject to minor variation but the final location within the rear garden is, or indeed within the planning unit (apart from the hard surface) is immaterial in the consideration of the application.



- 1.4 The existing vehicle access is to the side of the house and will remain unchanged. As such there will be no separate access to the mobile home unit.



(extract Google Streets)

- 1.5 The proposed unit would have external measurements of 6m x 10m with a maximum internal floor to ceiling height of 3.05m.
- 1.6 The existing sheds will be removed, and to provide level siting for the caravan chassis a new hard surface not exceeding 30cm in height from existing ground level will be laid. This benefits from deemed consent pursuant to The Town and Country Planning (General Permitted Development) Order 2015, Schedule 2 Part 1 Class F. The hard surface area is the same hatched area as shown for the proposed caravan on the plan RL/081/1.



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

2. Assessment

- 2.1 The judgment in *Gabbittas 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 mobile home under section 13 could never be a 'building' for the purpose of the 1990 Act as amended, he also found that a mobile home 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 With regard to the issue of permanence the unit is required to meet the specific needs for additional accommodation members of the family as explained in the following subsection on use [see para 2.18].
- 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 found on residential caravan sites which are not readily transportable without the aid of cranes or lorries, yet are recognised in law as not amounting to buildings. The issues regarding mobility of the unit are examined in the following sub section [see para 2.12].

Definition of a Caravan

- 2.8 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, on b) any tent.
- 2.9 Section 13 of the Caravan Sites Act 1968 states that twin-units are 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).
- 2.10 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).
- 2.11 The dimensions of the proposed mobile home unit (see para 1.5) do not exceed these size limitations.
- 2.12 The mobile home unit will be constructed on site as a single unit. 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 unit either as a whole or in two parts onto a flatbed lorry using a crane.
- 2.13 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. It is common practice to build or assemble caravans in hard to access back gardens. In *Byrne v SSE and Arun DC QED 1997* 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.’*
- 2.14 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 for a twin unit mobile home.

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).

2.15 A certificate of conformity with the legislative limitations provided by the supplier is produced at Appendix 2.

- 2.16 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,

therefore the provision of the proposed unit on the land would not result in built or operational development.

Proposed Use

2.17 The application site is a single dwelling house with gardens. This comprises one planning unit. 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.

2.18 Additional accommodation is required for Mrs. Butlers parents Brian and Caroline Cunliffe who will live with the applicants as part of one family.

2.19 The facts of the proposed use are as follows:

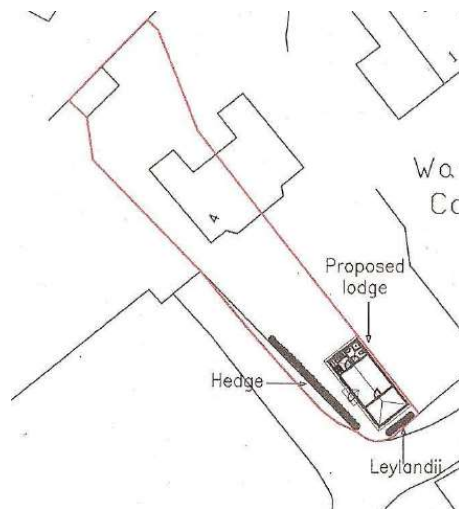
1. The mobile home unit will not be physically separated from the rest of the garden of the main dwelling.
2. The garden will be shared by all occupants.
3. No separate services are proposed, there will be one household electricity and water bill.
4. There would be no separate postal address.
5. The mobile home unit will provide a bedroom with a bathroom and a sitting room area with limited kitchenette facilities for hot drinks, snacks and light meals.
6. Brian and Caroline will take main meals with the rest of the family in the main house most days of the week.

7. They will socialise with the rest of the family in the living room and have access to other areas of the house.
 8. There will be no washing machine or laundry facilities other than in the main house, these will be used by all family members.
- 2.20 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.
- 2.21 In this case the property as a whole will remain in one ownership and control. The single main use will remain as a residential dwelling house.
- 2.22 On the basis of this information it is clear that the proposed mobile home will simply provide additional accommodation for use by one family. 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.
- 2.23 The proposal does not therefore amount to a change of use for planning purposes.
- 2.24 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.**
- 2.25 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

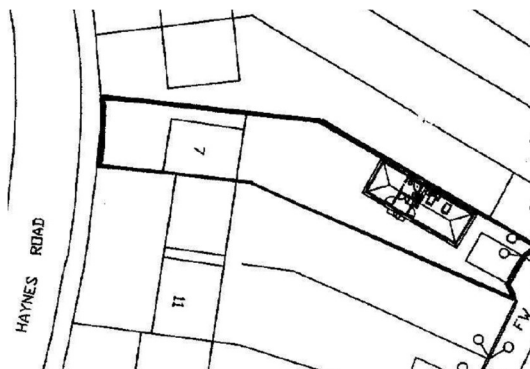
the unit is a caravan therefore it would involve a use of land. As that use would be the same as the lawful use in the remainder of the planning unit it would not involve a change of use that requires planning permission.



Extract of LDC plan showing relationship to house and scale.

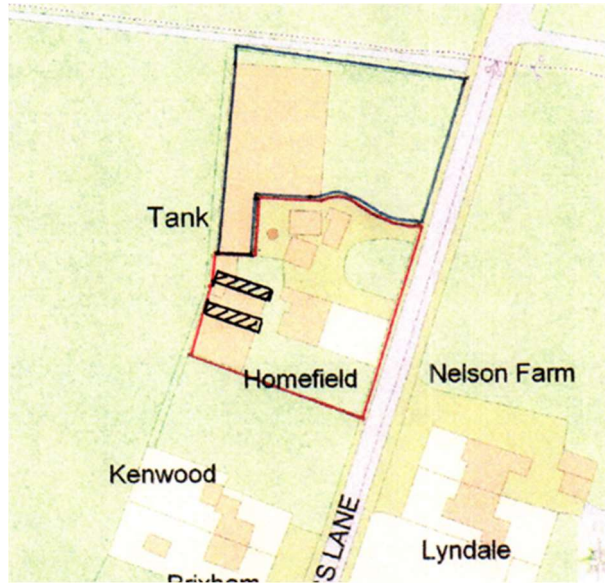
2190398: 7 Haynes Road, Northfleet, Gravesend: Gravesham BC

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.

- 2.26 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

- 2.27 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.



- 2.28 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.
- 2.29 There is case law on what can reasonably be considered to be incidental to the use of the dwellinghouse. 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.

2.30 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].

2.31 However, in this case the proposed unit is relatively small and is subordinate in scale to the accommodation in the 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. This falls squarely within the exemption from the definition of development in S55(2)(d).

3. Conclusion

- 3.1 The proposed unit is a mobile home structure that complies with the legal definition of a caravan and providing it on the land would not result in built development.
- 3.2 The proposed occupation of a mobile home by family members as part of the existing single residential planning unit use would be as an integral part of the primary residential use and would not result in a material change of use or the subdivision of the planning unit. As such this element of the proposal does not result in development within the definition at S.55 of the Act.
- 3.3 The provision of a hard surface for the level siting of the mobile home unit in the curtilage of the dwelling would benefit from deemed consent pursuant to The Town and Country Planning (General Permitted Development) Order 2015, Schedule 2 Part 1 Class F.
- 3.4 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)