Development Management - Delegated Officer Report

Application Number: AWDM/1249/21 **Recommendation – Issue Certificate**

Site: **2 Old Fort Road, Shoreham-By-Sea**

Proposal: **Application for Certificate of Lawfulness for proposed (static caravan) log cabin in rear garden for ancillary self contained accommodation for family members.**

Neighbours checked: N/A

Additional neighbour notifications: N/A

Proposal, Site and Surroundings

The application site is located in a residential area on Shoreham Beach.

This application is for a Certificate of Lawfulness to establish whether the proposal is operational development or constitutes a change of use of the land (as defined by Section 55 of the Town and Country Planning Act 1990) requiring planning permission. As such, the planning merits of the proposal are not a consideration in this instance.

The proposal is to site a static caravan/log cabin in the rear garden for use as an ancillary building for the use of family members within the household occupying 2 Old Fort Road the main dwelling house.

The Planning Statement submitted with the application confirms the dimensions of the caravan as being 7.4 metres long by 4 metres wide by 2.5 metres high. It advises that the caravan can be lifted and moved and is to be placed on a concrete raft and will not be fixed to the ground resting under its own weight. It is assembled on site into two distinguishable parts which are bolted together. It will be attached to existing services.

Relevant legislation

The Town and Country Planning Act (1990) Section 55 Meaning of 'Development' and 'New Development'

Caravan Sites and Control of Development Act 1960 (1960 Act).

The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006.

The above Act specifies that, in summary, a twin unit caravan is a structure designed for human habitation which is not of more than two sections and can be assembled on site. When assembled it should be capable of being moved by road, either by being towed or via a trailer by a single vehicle. The maximum dimensions of a

‘caravan’ as defined by the Act are as follows: Length – 20 metres; Width – 6.8m; Height – 3.05m measured internally from the floor at the lowest level to the ceiling at the highest level.

Consultations

Legal advice has been obtained and following this a Statutory Declaration has since been received from the applicant’s agent and legal are satisfied with this and confirm that the certificate can be issued.

Planning Assessment

The legal tests in this instance are related to, firstly, whether the proposed mobile home is ‘operational development’. Secondly, whether the use of the land is incidental to the use of the dwelling house and therefore would not constitute the creation of a new planning unit, i.e. “the making of any material change in the use of any buildings or other land” (Section 55 Town and Country Planning Act 1990).

The issues are:

I. Whether the proposed mobile home falls within the definition of mobile home in terms of its size and transportability (which includes assessment of whether it is connected to the ground, connected to services and can be transported by a single vehicle when fully assembled).

2. Whether the siting of the proposed mobile home would result in the creation of a new planning unit (a matter of fact and degree in terms of whether its use retains a functional link with the dwelling, 2 Old Fort Road, and is capable of providing living accommodation that can accommodate the requirements of day to day living independently).

Operational Development

It is first necessary to establish whether the proposal constitutes a ‘building operation.’ In this instance, the Council’s Legal Department has previously confirmed that a mobile home/caravan (as defined by the relevant legislation) would not be a permanent structure (and therefore not be operational development as defined in the Town and Country Planning Act 1990).

The length and width and minimum height of the proposed mobile home would be within the limits set out in the Caravan Sites Act 1968 Amendment Order (2006).

The Planning Statement confirms that the unit would not be permanently fixed to the ground and only services would be connected. It is to be constructed within the garden rather than craned into the site. However, previous appeal decisions, submitted in support of this application, suggest that it is established law that there is no requirement that the process of creating the two separate sections must take place away from the land. A mobile home would satisfy the construction test if it is

not composed of more than two sections separately constructed and designed to be assembled on site, which is the case here.

In view of the above, it appears that the proposal would not constitute operational development.

Use of the Land

The site is within the same residential curtilage as that of No 2 Old Fort Road. The issue is therefore whether the use of the land for the siting of the caravan is ancillary to the use of the main dwelling.

An annexe is defined as accommodation ancillary to the main dwelling within a residential curtilage. In order to meet the tests (in planning terms) of being part of the same planning unit the annexe must share the same access; parking area and garden and be in same ownership as the principal dwelling.

Historically, appeal decisions have generally interpreted the above definition strictly. It has been held that an annexe should be used for additional use only, in connection with the running of the main house. A building which contains all the facilities for day-to day living as a separate dwelling, i.e. living room, kitchen, bathroom and bedroom is physically capable of functioning on its own and, in turn could be occupied by a stranger with little impact on the inhabitants of the main dwelling, would require planning permission.

The proposed mobile home could co-exist and function alongside its neighbours with no connection and little impact on No.2 Old Fort Road. Therefore, in this instance, the question of whether the proposed use is lawful lies heavily on how the mobile home is used in relation to the parent building.

The High Court Case Whitehead v Secretary of State of the Environment and Mole Valley District Council (1992) the Deputy Judge concluded that planning permission would not be required for use of a building as ancillary for use by a housekeeper stating:

‘It mattered not, whether this building, as converted happened to include its own kitchen and bathroom’.

The above was referred to in an appeal decision against a refusal to grant a LDC for a mobile home within the curtilage of a dwelling house to provide ancillary staff accommodation (Sandy Holt, 9 Black Hills, Esher APP/K3605/X/12/2181651 15th April 2013). Other cases locally include:

17 Chantry Road, Worthing (AWDM/1723/15)
24 West Way, Worthing (AWDM/1221/14)
31 The Gardens, Southwick (AWDM/1181/13)
33 Springate Road, Southwick (AWDM/0609/18)
53 Underdown Road, Southwick (AWDM/0157/19)

In terms of the proposed mobile home at 2 Old Fort Road, the level of the accommodation provided and the physical separation between it and the main dwelling, mean that it could function on its own with some ease. However, the Planning statement submitted with the application confirms that the caravan is to be occupied ancillary to the main dwelling by family members and members of the main household.

Given that it would be sited within the curtilage of the principal dwelling, would share utility services with the principal dwelling, would not be provided with its own curtilage, and the occupiers –family member - would have a close functional link with the occupiers of the principal dwelling and would share with family members occupying the principal dwelling day to day living needs, the applicant is effectively stating that it will not function as a separate dwelling.

A statutory declaration has subsequently been submitted, following legal advice, which also confirms the incidental use of the mobile home.

The concern is whether use of the mobile home in this manner would be upheld.

An LDC can be revoked in certain circumstances and it is a criminal offence to make a false or misleading statement, which provides some comfort in terms of the use of the mobile home. For example, if it becomes clear that the mobile home was used by someone other than family/household members, then there may be options available to the Council to take enforcement action.

Conclusion

Having taken into account its proposed 'permanence' and 'attachment', the proposed structure would not fall within the definition of a building operation, the proposed mobile home would be a caravan in planning terms, as interpreted by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. The use of the proposed annexe would be incidental to the enjoyment of the dwelling house, if carried out in accordance with the information provided in the applicant's Planning and Personal Statements and Statutory Declaration. As such, the proposal does not amount to development requiring planning permission and the LDC can be granted.

RECOMMENDATION:

Permit Lawful Development Certificate.

REASONS FOR RECOMMENDATION:

The proposed siting of a caravan within the curtilage of the dwelling house and its use ancillary to the main dwelling, in accordance with the terms described in the Planning Statement received 19th July 2021, the Statutory Declaration dated 16th September 2021 and as shown on drawing nos. 21852-01 Rev A received 31st August 2021 accompanying the application, does not constitute development

requiring planning permission and is lawful within section 192 of the Town and Country Planning Act 1990 (as amended).

Case Officer: Hannah Barker Date: 20th September 2021

Authorised by: Peter Barnett Date: 21st September 2021